No. 26-____

In the

Supreme Court of the United States

CITIBANK, N.A.,

Petitioner,

v.

CLIMATE UNITED FUND, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The federal government instructed Citibank, its financial agent, to pause disbursement of certain grant funds. Citibank followed that instruction and pledged to obey any court order regarding the disputed funds. The district court nevertheless issued a preliminary injunction against the government *and* Citibank, which the en banc court of appeals affirmed in an unreasoned judgment. Neither the district court nor the en banc court offered any meaningful analysis with respect to Citibank, and both failed to consider—let alone apply—most of the required preliminary-injunction factors with respect to Citibank. The question presented is:

Whether the preliminary injunction against Citibank for following the federal government's instructions can remain in place.

PARTIES TO THE PROCEEDINGS BELOW

Petitioner is Citibank, N.A. (defendant-appellant below).

Respondents (plaintiffs-appellees below) are Climate United Fund; Coalition for Green Capital; Power Forward Communities, Inc.; California Infrastructure and Economic Development Bank; Efficiency Maine Trust; Illinois Finance Authority; Minnesota Climate Innovation Finance Authority; Justice Climate Fund; and Inclusiv, Inc.

The U.S. Environmental Protection Agency; Lee Zeldin, in his official capacity as Administrator of EPA; and W.C. McIntosh, in his official capacity as Acting Deputy Administrator of EPA, were defendants-appellants below. David Fotouhi is automatically substituted under Supreme Court Rule 35.3 for his predecessor in his official capacity as Deputy Administrator of EPA. Under Supreme Court Rule 12.6, they are respondents in this Court.[*]

[*] Petitioner understands that the government parties are separately filing a petition for a writ of certiorari.

CORPORATE DISCLOSURE STATEMENT

Petitioner Citibank, N.A. is a wholly owned subsidiary of Citicorp LLC, which in turn is a wholly owned subsidiary of Citigroup Inc. (NYSE: C), a publicly traded corporation. No publicly held company owns 10% or more of Citigroup Inc.'s stock.

STATEMENT OF RELATED PROCEEDINGS

Consolidated proceedings in the U.S. District Court for the District of Columbia (preliminary injunction entered Apr. 16, 2025):

- *Climate United Fund v. Citibank, N.A.*, No. 25-cv-698;
- *Coalition for Green Capital v. Citibank, N.A.*, No. 25-cv-735;
- *Power Forward Communities, Inc. v. Citibank, N.A.*, No. 25-cv-762;
- *California Infrastructure & Economic Development Bank v. Citibank, N.A.*, No. 25-cv-820;
- *Justice Climate Fund v. EPA*, No. 25-cv-938;
- *Inclusiv, Inc. v. EPA*, No. 25-cv-948.

Consolidated proceedings in the U.S. Court of Appeals for the D.C. Circuit (en banc judgment entered Aug. 4, 2026):

- *Climate United Fund v. Citibank, N.A.*, Nos. 25-5122 & 25-5123.

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INTRODUCTION

Citibank agreed to serve as a financial intermediary in administering a significant federal grant program. When the government reported that it had uncovered purported fraud by some grantees and ordered Citibank to freeze funds, Citibank followed that direction—as it was contractually obligated to do. Some grantees then sued both the government and Citibank. The district court entered a preliminary injunction against Citibank premised entirely on the finding that the government likely acted unlawfully. The en banc D.C. Circuit ultimately affirmed that part of the injunction by an equally divided court.

The upshot is that Citibank is subject to a preliminary injunction even though no court has explained how it did anything wrong. To make matters worse, respondent grantees have contended that the injunction against Citibank should remain in place even if the preliminary injunction against the government is vacated. Citibank files this petition to urge the Court to avoid that legally unwarranted and impractical outcome. Citibank takes no position on the dispute between the government and grantees. But if the Court accepts the government's request to further review this case, the Court should grant this petition too. And however the Court resolves the other parties' dispute, it should vacate the preliminary injunction against Citibank.

The government's lead argument is that the claims against it should be channeled to the Court of Federal Claims ("CFC") under the Tucker Act, 28 U.S.C. §1491(a). If the Court agrees with the government's

position, it should vacate the preliminary injunction against Citibank and hold that the claims against Citibank cannot continue in the district court. Grantees' contrary position would force the district court to decide the very question—the lawfulness of the government's grant termination—that the Tucker Act channels to the CFC. That result makes no sense and would circumvent the review scheme that Congress designed.

If the Court vacates the preliminary injunction against the government on any other ground, "the derivative injunction against Citibank must be vacated as well," as the D.C. Circuit panel explained and no judge hearing this case has disputed. Pet.App.42a. Citibank's contractual compliance and defenses would preclude an injunction against it even if grantees were likely to succeed against the government. And in any event, the equities do not support a preliminary injunction against a financial intermediary like Citibank. To the contrary, the public interest weighs overwhelmingly in favor of protecting such entities from the burdens of injunctive relief. Otherwise, the government may not find competent intermediaries willing to serve.

In short, the preliminary injunction against Citibank is unwarranted. If the Court finds the case worthy of review, it should grant Citibank's petition and vacate the preliminary injunction against Citibank.

OPINIONS BELOW

The district court's opinion granting a preliminary injunction is reported at 778 F. Supp. 3d 90

(Pet.App.126a). Its subsequent opinion clarifying that injunction (Pet.App.121a) is unreported. The D.C. Circuit's since-vacated panel opinion is reported at 154 F.4th 809 (Pet.App.9a). The en banc D.C. Circuit's order affirming the preliminary injunction is reported at 184 F.4th 679 (Pet.App.1a).

STATEMENT OF JURISDICTION

The en banc D.C. Circuit entered judgment on August 4, 2026 (Pet.App.1a). This Court has jurisdiction under 28 U.S.C. §1254(1).

STATEMENT OF THE CASE

A. Factual Background

1. As part of the Inflation Reduction Act, Congress created the Greenhouse Gas Reduction Fund ("GGRF"), which established certain grant programs. 42 U.S.C. §7434(a)(2)-(3) (repealed 2025, *see* p. 6, *infra*). Congress empowered the Environmental Protection Agency ("EPA") to select grant recipients and administer the programs. *Id.* The federal government then contracted with Citibank to serve as its financial agent with respect to the grant funds. C.A. J.A. 2127; *see also* Pet.App.13a.

Citibank's role as a financial agent is purely ministerial. Citibank does not decide who receives grant funds, the amount of funds a grantee should receive, or whether grantees are complying with the federal grant program. Instead, Citibank is party to a Financial Agency Agreement ("FAA") with the Treasury Department, a contract requiring Citibank to "provide commercial banking and finance services"

related to the grants. C.A. J.A. 2145-2150; *see also* Pet.App.13a.

Under the FAA, Citibank "owes a fiduciary duty of loyalty and fair dealing to the United States when acting as a financial agent of the United States," and must "act at all times in the best interests of the United States when carrying out its responsibilities under [the] FAA and in all matters connected with [the] agency relationship." C.A. J.A. 2129.

The FAA requires Citibank to establish accounts in the names of each grantee. C.A. J.A. 2145; *see also* Pet.App.49a-50a. Such accounts "shall be subject to account control agreements whose terms" permit EPA "to exercise exclusive control over the account." C.A. J.A. 2145. Grantees can access funds only "in accordance with, and subject to" the FAA's conditions and restrictions. *Id.* The FAA also requires Citibank to "implement account controls … as instructed by EPA." C.A. J.A. 2147. It further provides that Citibank "shall freeze accounts, and transfer funds in frozen accounts, at the direction of [EPA], in accordance with the account control agreements." C.A. J.A. 2148. Citibank must notify EPA before withdrawals above certain limits, C.A. J.A. 2147, and must give EPA "full account visibility" into each account, C.A. J.A. 2149.

2. In 2024, EPA selected certain grantees—respondents here—to receive grant funds.[1] Pursuant to the FAA, Citibank established accounts in the

[1] Some grantees in turn selected subgrantees to receive part of their grant funds. For simplicity, this petition refers to both sets of entities as "grantees."

names of and entered into account control agreements ("ACAs") with each grantee. *E.g.*, C.A. J.A. 70. Like the FAA, the ACAs acknowledge Citibank's status as an "agent of the United States," C.A. J.A. 71; *see also* Pet.App.13a-14a, and make clear that Citibank's duties with respect to grant funds are exclusively "administrative or ministerial," C.A. J.A. 73. Each ACA also absolves Citibank of liability for, among other things, government actions: Citibank "shall not incur any liability for not performing any act or fulfilling any obligation hereunder by reason of any occurrence beyond its control," including "any act of any governmental authority." C.A. J.A. 74.

After Citibank established accounts for grantees, EPA funded the designated accounts. *See* C.A. J.A. 136-137. For several months, Citibank processed disbursement requests from grantees and distributed the requested funds. *Id.*

3. In February 2025, following the change in presidential administration, the federal government began instructing Citibank not to disburse funds to grantees. The FBI first requested that Citibank place a 30-day administrative freeze on the accounts. C.A. J.A. 99. The FBI informed Citibank that it had "credible information" that the accounts had "been involved in possible criminal violations," including "[c]onspiracy to defraud the United States" and "[w]ire fraud." C.A. J.A. 100. Pursuant to its fiduciary obligation, Citibank paused disbursements while seeking more information.

Two weeks later, the Treasury Department ordered Citibank not to disburse funds from any

accounts before the end of the day on March 9, 2025. C.A. J.A. 111. On March 10, the Treasury Department and EPA instructed Citibank to continue not processing disbursement requests. C.A. J.A. 68. EPA told Citibank "to pause the processing of payment instructions for the GGRF accounts until further notice"—a step EPA said was "critical" to "prevent the misuse of funds" given "concerns regarding potential fraud and/or conflicts of interest" and the "ongoing criminal investigation." C.A. J.A. 65. The Treasury Department was even more pointed: "In accordance with Treasury's authorities under the FAA, Treasury is instructing Citibank, in its capacity as fiduciary, to comply with EPA's instructions to Citibank pursuant to the FAA." C.A. J.A. 68.

On March 11, 2025, EPA terminated the grants "effective immediately" because of "material deficiencies" related to "programmatic fraud, waste, abuse, and conflicts of interest." C.A. J.A. 390.

4. Several months later, Congress passed and President Trump signed the One Big Beautiful Bill Act ("OBBBA"), which repealed the GGRF and rescinded all unobligated funds. *See* Pub. L. No. 119-21, §60002, 139 Stat. 72, 154 (2025).

B. Proceedings Below

1. After losing access to grant funds (but before Congress repealed the GGRF), grantees sued EPA, EPA leadership, and Citibank in federal district court. Grantees invoked federal-question jurisdiction for their claims against the government defendants and

supplemental and diversity jurisdiction for their claims against Citibank. C.A. J.A. 354-357, 1279-1280.

Grantees alleged that the government violated the Administrative Procedure Act ("APA") and various constitutional provisions by terminating their grants. *E.g.*, C.A. J.A. 157-167. As to Citibank, grantees alleged that following the government's instructions not to disburse their funds constituted a breach of the ACAs and various torts. *E.g.*, C.A. J.A. 167-171. Grantees sought temporary restraining orders ("TROs") and preliminary injunctive relief on their claims against the government and their contract claims against Citibank. *E.g.*, C.A. J.A. 49-50, 354-358, 1279-1280.

2. At a hearing, the district court stressed that Citibank is "between a rock and a hard place" because it had been sued by grantees for not distributing funds yet had "been told by EPA … that it would be impermissible to distribute the funds." C.A. J.A. 180, 201. The court nonetheless entered multiple forms of injunctive relief against *all* defendants.

The district court first issued a TRO enjoining Citibank from moving or transferring grant funds and enjoining EPA from giving effect to the termination notices issued to grantees. C.A. J.A. 287. A month later, the court entered a preliminary injunction. Pet.App.180a. As clarified, that injunction requires Citibank to "disburse any funds properly incurred since the mid-February suspension of [grantees'] funds." Pet.App.125a.

In entering that relief, the district court focused almost exclusively on grantees' claims against the government. Of the 39-page opinion accompanying its imposition of the preliminary injunction, for example, the court devoted barely a page to Citibank. *See* Pet.App.167a. While concluding that Citibank "performed its obligations under the FAA in accordance with its responsibilities as a financial agent of the United States," the court reasoned that Citibank should be enjoined because "the instructions it received were not lawful." *Id.* The court never addressed Citibank's defenses. The court also made no findings that the equities or the public interest supported enjoining Citibank. *See* Pet.App.176a-178a.

3. The government and Citibank both appealed. The D.C. Circuit issued a partial administrative stay barring enforcement of the preliminary injunction to the extent it requires Citibank to disburse funds. Pet.App.118a-119a. That stay (which remains in effect) also bars the parties from taking "any action, directly or indirectly" regarding the funds. *Id.*; *see* Pet.App.116a-117a.

A D.C. Circuit panel then vacated the injunction. Pet.App.9a. In an opinion authored by Judge Rao and joined by Judge Katsas, the panel held that the APA claims against the EPA defendants were "essentially contractual" and thus could proceed only in the CFC under the Tucker Act. Pet.App.12a. On grantees' constitutional claims, the panel vacated the preliminary injunction, concluding that grantees had not shown a likelihood of success on the merits and that

the other preliminary-injunction factors did not support relief. Pet.App.32a-42a.

As to Citibank, the panel reasoned that "[t]he district court did not find that the grantees were likely to succeed on any of their independent claims against Citibank." Pet.App.42a. The panel explained that the injunction against Citibank was "derivative" of the injunction against the government and should be vacated in light of the panel's vacatur of the injunction against the government. *Id.*

In dissent, Judge Pillard disagreed with vacating the injunction against the government but nowhere disagreed with the panel's analysis regarding Citibank or otherwise addressed the propriety of maintaining the injunction against Citibank. *See* Pet.App.43a-115a.

4. The D.C. Circuit granted rehearing en banc and reinstated the injunction against both the government and Citibank in a one-page unreasoned per curiam judgment. Pet.App.1a. By a 6-4 vote, the court affirmed "the portion of the preliminary injunction enjoining EPA Defendants from effectuating" the termination notices. Pet.App.2a. The rest of the injunction—including all provisions binding Citibank—was "affirmed by an equally divided court." *Id.* The en banc court did not address Citibank's defenses and never applied the preliminary-injunction factors with respect to Citibank.[2]

5. The government filed an unopposed motion, which Citibank joined, seeking a stay of the mandate

[2] Judge Henderson did not participate in the en banc court's decision. Pet.App.1a n.*.

and an extension of the administrative stay pending this Court's resolution of its petition for a writ of certiorari. The en banc court of appeals granted the motion. Pet.App.116a-117a.

REASONS FOR GRANTING THE PETITION

This case presents multiple significant questions, most of which involve disputes between the government and grantees. The downstream questions involving Citibank are important too. If the Court grants the government's petition for a writ of certiorari, it should grant this petition as well.

The only reason for the preliminary injunction against Citibank is that it received instructions from the government that the district court concluded are likely unlawful. If grantees' claims against the government must be channeled to the CFC or cannot support the injunction against it on other grounds, then grantees' claims against Citibank cannot justify derivative injunctive relief. Indeed, such relief against Citibank is unwarranted even if the government is not likely to succeed on the merits. There is no sound legal or practical reason to impose a preliminary injunction on Citibank—a financial intermediary that contracted with the government and grantees to advance the public interest and has pledged to follow any ultimate ruling resolving the proper disposition of the funds.

The preliminary injunction against Citibank should thus be vacated regardless of how the Court disposes of the preliminary injunction against the government. Vacatur of the preliminary injunction against Citibank is especially crucial if the Court vacates the

preliminary injunction against the government. Otherwise, Citibank could be placed in the impossible position of facing a court order to disburse grant funds that the government has (without any contrary order in place) instructed it not to disburse. That chaotic and contradictory result makes no sense and would harm Citibank, the other parties, and the judicial system itself.[3]

I. THE PRELIMINARY INJUNCTION AGAINST CITIBANK IS UNWARRANTED

A preliminary injunction is "an extraordinary remedy never awarded as of right." *Winter v. NRDC, Inc.*, 555 U.S. 7, 24 (2008). Before ordering such relief, "district courts must use the traditional four-part test," which requires a plaintiff to "make a clear showing" that (1) he is "likely to succeed on the merits," (2) he is "likely to suffer irreparable harm in the absence of the preliminary relief," (3) "the balance of equities tips in his favor," and (4) "an injunction is in the public interest." *Starbucks Corp. v. McKinney*, 602 U.S. 339, 345-46 (2024) (quoting *Winter*, 555 U.S. at 20, 22). The district court did not justify entry of a preliminary injunction against Citibank under those factors. This Court should accordingly vacate the preliminary injunction against Citibank no matter how

[3] If the Court grants the government's petition but is not inclined to grant this one for plenary review, it should hold this petition pending the plenary review initiated by the government's petition. The Court should then dispose of this petition as appropriate, including through a potential grant, vacatur, and remand order.

it disposes of the preliminary injunction against the government.

A. Grantees Are Not Likely To Succeed On The Merits Against Citibank

The preliminary injunction against Citibank is unwarranted first because grantees cannot show that they are likely to succeed on the merits against Citibank, regardless of whether grantees are likely to succeed on the merits against the government.

1. If the government prevails on jurisdiction, grantees' claims against Citibank are unlikely to succeed

The government's lead argument below was that grantees' claims against it must be channeled to the CFC under the Tucker Act. *See* Gov't C.A. En Banc Br. 23-43. Grantees, by contrast, contend that their claims may be heard in the district court under the APA. *See* Grantees C.A. En Banc Br. 17-31.[4] The en banc court of appeals appears to have agreed with grantees, in conflict with other courts that have held that similar claims must be channeled to the CFC. Pet.App.2a; *see, e.g.*, *Solutions in Hometown Connections v. Noem*, 165 F.4th 835, 841-44 (4th Cir. 2026); *Sustainability Inst. v. Trump*, 165 F.4th 817, 825-29 (4th Cir. 2026). Citibank takes no position on the proper resolution of that jurisdictional dispute.

Grantees have further argued that, even if their claims against the *government* must be channeled to

[4] Citations to grantees' briefing below refer to the briefs filed by the prime grantees.

the CFC under the Tucker Act, the preliminary injunction against *Citibank* should remain in place and the litigation against Citibank should proceed "independently" in the district court. Grantees C.A. En Banc Br. 54. That argument is badly mistaken, as the government agrees. *See* Gov't C.A. En Banc Br. 43 n.6. Simply put, grantees' claims against Citibank are "derivative of their claims against the government," *id.*, and if grantees' claims against the government cannot provide the basis for a preliminary injunction or proceed in the district court, grantees' claims against Citibank may not do so either.

That conclusion follows from the statutory text, structure, and purpose. The Tucker Act provides the CFC with jurisdiction to award money damages for "any claim against the United States founded … upon … any express or implied contract." 28 U.S.C. §1491(a)(1); *see United States v. Mitchell*, 463 U.S. 206, 216 (1983). The CFC is the *only* court with jurisdiction to adjudicate such claims. *See United States v. Tohono O'odham Nation*, 563 U.S. 307, 313-14 (2011). That is because the government is both immune from suit and protected from awards of monetary relief without congressional authorization, and no other statute authorizes suit or monetary relief against the government for the category of claims covered by the Tucker Act. *See, e.g.*, *United States v. Bormes*, 568 U.S. 6, 9-11 (2012); *OPM v. Richmond*, 496 U.S. 414, 425-26 (1990).[5]

[5] The Little Tucker Act provides district courts with concurrent jurisdiction over contract claims against the

Congress adopted the Tucker Act to avoid the "burdensome" prior system of resolving monetary claims against the government through private bills, *Bormes*, 568 U.S. at 11, which produced "delays and inequities," *Mitchell*, 463 U.S. at 213. The Tucker Act provided a "comprehensive measure by which claims against the United States may be heard and determined," *id.* (citation omitted), by "a single, uniquely qualified forum," *Ingersoll-Rand Co. v. United States*, 780 F.2d 74, 78 (D.C. Cir. 1985). Congress later centralized all appeals on Tucker Act claims in the Federal Circuit to ensure "nationwide uniformity" and avoid "inconsistent decisions on the same issue." *United States v. Hohri*, 482 U.S. 64, 72-73 (1987) (citation omitted).

Allowing grantees' claims to proceed against Citibank in the district court while the CFC adjudicates their claims against the government would defy that statutory design. The district court's only basis for finding grantees' claims against Citibank likely to succeed was that "the instructions [Citibank] received" from the government "were not lawful" because "there was no legal basis for the government to order that the funds be frozen." Pet.App.167a. But whether the government had a "legal basis" for its action, *id.*, is the very issue that grantees are litigating in their claims against the government. If the government is correct that the CFC must decide those claims, allowing the district court to decide grantees'

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government worth less than $10,000. 28 U.S.C. §1346(a)(2). All agree that the value of grantees' claims, if they are properly regarded as contract claims, far exceeds that amount.

derivative claims against Citibank would directly undermine Congress's direction to centralize adjudication of government-breach-of-contract claims before a "single, uniquely qualified forum," *Ingersoll-Rand*, 780 F.2d at 78.

The preliminary injunction against Citibank illustrates the problem. The district court "order[ed] Citibank to disburse" the grant funds. Pet.App.178a; *see also* Pet.App.125a. But if Citibank does that, it will at a minimum seriously disrupt—and may effectively moot—any litigation before the CFC over whether grantees are entitled to recover those same grant funds from the government. Even worse, the district court and the CFC could ultimately reach conflicting decisions on whether the government's instructions to terminate the grants were lawful, thereby replicating the very problems of inequity and inconsistency that Congress sought to avoid. *See, e.g.*, *Hohri*, 482 U.S. at 72; *Mitchell*, 463 U.S. at 213.

Grantees' principal response below was that the CFC lacks jurisdiction over claims against Citibank, and thus grantees would not be able to pursue their claims against Citibank in any court if they cannot pursue them in the district court. *See* Grantees C.A. En Banc Br. 53-54. But if the government is correct that the claims against it must be channeled to the CFC under the Tucker Act, grantees' inability to proceed on the derivative claims against Citibank is simply the result of the review scheme that Congress designed. It is hardly uncommon for Congress to preclude litigants, even impliedly, from suing particular parties in particular courts as part of a broader review scheme.

See, e.g., *Elgin v. Dep't of Treasury*, 567 U.S. 1, 10-15 (2012); *United States v. Fausto,* 484 U.S. 439, 443-47 (1988); *Block v. Cmty. Nutrition Inst.*, 467 U.S. 340, 345-48 (1984).

For the reasons described above, "the purpose of the [Tucker Act], the entirety of its text, and the structure of review that it establishes" all support precluding district court review of grantees' claims against Citibank if the Court concludes that the Tucker Act requires grantees' claims against the government to be resolved by the CFC. *Fausto*, 484 U.S. at 444. Allowing grantees' claims to proceed against Citibank in the district court while channeling their claims against the government to the CFC would "seriously undermine[]" the Tucker Act review scheme and create precisely the risks of "inconsistent decisionmaking" and "duplicative judicial review" that this Court has invoked in finding implicit preclusion. *Elgin*, 567 U.S. at 14; *see Fausto*, 484 U.S. at 451 (rejecting reading that would "undermin[e] the consistency of interpretation by the Federal Circuit envisioned by" the statute); *see also TM v. Univ. of Md. Med. Sys.*, 608 U.S. 668, 685 (2026) (rejecting reading that would produce "arbitrarily different results" and "duplicat[ive]" litigation).

The flaws in grantees' position are underscored by Federal Rule of Civil Procedure 19, which requires joinder of a party if "the court cannot accord complete relief" otherwise or proceeding without that party will prejudice another party. Fed. R. Civ. P. 19(a)(1). Rule 19 is especially important when the government is the missing party. By law, "[a] case may not proceed

when a required-entity sovereign is not amenable to suit." *Republic of Philippines v. Pimentel*, 553 U.S. 851, 867 (2008); *see also* 7 Charles A. Wright, et al., *Federal Practice & Procedure* §1617 (3d ed. 1998) (collecting cases). Indeed, sovereign interests are so significant that dismissal is required even if a plaintiff "will be left without a forum for definitive resolution of [his] claims." *Pimentel*, 553 U.S. at 871-72. This rule ensures that "the government's liability can not be tried 'behind its back,'" including by attempting to litigate against the government's agent instead. *Mine Safety Appliances Co. v. Forrestal*, 326 U.S. 371, 375 (1945) (citation omitted).

Grantees' contention that their claims should be allowed to proceed in the district court against Citibank alone cannot be squared with Rule 19. If that were to happen, the government's sovereign immunity would be undermined because the lawfulness of its decisions would be litigated "behind its back." *Id.* And the prejudice to Citibank would be palpable. Citibank would have to defend the government's actions, even though Citibank—as a mere financial agent—does not have access to the confidential information that the government relied on to support its instructions to Citibank. Congress would not have created such a nonsensical review scheme. *See, e.g., Fausto*, 484 U.S. at 453 (describing the "classic judicial task of reconciling many laws enacted over time, and getting them to 'make sense' in combination").

Finally, the logic of this Court's orders in other grant-related litigation refutes grantees' position. In two recent cases, the Court stayed orders that were

premised on the theory that the APA empowered district courts "to order relief designed to enforce any obligation to pay money pursuant to those grants." *NIH v. Am. Pub. Health Ass'n*, 145 S. Ct. 2658, 2659 (2025); *see Dep't of Educ. v. California*, 604 U.S. 650, 650-51 (2025). Plaintiffs in both cases had sued under the APA to challenge the government's termination of their grants. District courts then entered orders requiring the government to pay the grant funds at issue. Relying upon the APA, these district courts rejected the government's arguments that the Tucker Act required the channeling of these claims to the CFC. In both instances, this Court granted the government's requests for interim relief. *See NIH*, 145 S. Ct. at 2659; *Dep't of Educ.*, 604 U.S. at 650-51. Both of this Court's orders appear to rest on the conclusion that plaintiffs cannot circumvent the Tucker Act's channeling provisions by repackaging breach-of-contract claims against the government as APA claims. *See, e.g.*, *NIH*, 145 S. Ct. at 2662 (Barrett, J., concurring); *id.* at 2664 (Gorsuch, J., concurring in part and dissenting in part); *id.* at 2665 (Kavanaugh, J., concurring in part and dissenting in part).

The same reasoning applies here. Plaintiffs may no more circumvent the Tucker Act by bringing against private parties claims that require deciding whether the government breached a contract than they may do so by bringing such claims against the government. Like the claims at issue in *NIH* and *Department of Education*, grantees' claims against Citibank "stem from the government's refusal to pay promised grants according to the terms and conditions that accompany

them." *Id.* at 2664 (Gorsuch, J., concurring in part and dissenting in part). If the Court agrees, those claims cannot be adjudicated in the district court, *see id.* at 2659 (per curiam), and grantees cannot be found likely to succeed on the merits.

2. In any event, grantees' claims against Citibank are unlikely to succeed on the merits

Alternatively, if the Court concludes that the injunction against the government cannot stand for other reasons, the injunction against Citibank should be vacated too. As noted above, the district court "did not find that the grantees were likely to succeed on any of their independent claims against Citibank." Pet.App.42a. Accordingly, as Judge Rao explained for the panel, if "the injunction against the government should be vacated, the derivative injunction against Citibank must be vacated as well." *Id.* No judge hearing this case has expressed any disagreement on that point. *See also Geo Grp., Inc. v. Menocal*, 607 U.S. 438, 441 (2026) (explaining derivative protection for government contractors executing the government's will); *Yearsley v. W.A. Ross Constr. Co.*, 309 U.S. 18, 21 (1940) (same).

Even if grantees were likely to succeed on the merits of their claims against the government, they would still not be likely to succeed on their claims against Citibank. Under the FAA that it entered into with the government, Citibank "owes a fiduciary duty of loyalty … to the United States" and must "act at all times in the best interests of the United States." C.A. J.A. 2129. Citibank must also "implement account

controls … as instructed by EPA." C.A. J.A. 2147. Citibank therefore was contractually obligated to follow the United States' instructions to stop disbursing the grant funds.

Grantees object that they were not parties to the FAA. *See* Grantees C.A. En Banc Br. 55-56. But that theory fails at the threshold because the ACAs are subject to the FAA. The ACAs themselves acknowledge Citibank's status as an "agent of the United States." C.A. J.A. 71; *see also* Pet.App.13a-14a. The FAA makes grantees' access to grant funds "subject to … the conditions and restrictions detailed in" the FAA. C.A. J.A. 2145. And contracts concerning the same transactions and subject matter, like the FAA and the ACAs here, must be read together. *See* Restatement (Second) of Contracts §202(2) (1981).

Regardless, the ACAs independently absolve Citibank of liability. They provide that Citibank "shall be entitled to rely upon any instruction, notice, [or] request … delivered to it *without being required to determine the authenticity or validity thereof*" and "*shall not incur any liability* for not performing any act or fulfilling any obligation hereunder by reason of any occurrence beyond its control … including, without limitation … *any act of any governmental authority*." C.A. J.A. 74 (emphases added). The agreements, on their face, thus entitle Citibank to rely on federal instructions. Citibank's pause in processing disbursement requests plainly is the result of an "occurrence beyond its control"—namely, an "act of" various "governmental authorit[ies]," including the FBI, Treasury Department, and EPA. *Id.*

B. The Equitable Factors Do Not Support A Preliminary Injunction Against Citibank

Apart from grantees' failure to show likelihood of success on the merits, the preliminary injunction against Citibank should be vacated because neither court below mentioned—let alone found satisfied—three of the four required preliminary-injunction factors with respect to Citibank.

The Court has explained that lower courts "must use the traditional four-part test when evaluating [a] request for a preliminary injunction." *Starbucks*, 602 U.S. at 345. And that "traditional four-factor test" must be "satisfied." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 157 (2010). When a court fails to apply "the traditional four-factor framework that governs the award of injunctive relief," the injunction must be vacated. *eBay Inc. v. MercExchange, LLC*, 547 U.S. 388, 394 (2006).

That direction applies here. The district court's analysis regarding Citibank consists of just two paragraphs concluding that grantees are likely to succeed on the merits. Pet.App.167a. But "a preliminary injunction does not follow as a matter of course from a plaintiff's showing of a likelihood of success on the merits." *Benisek v. Lamone*, 585 U.S. 155, 158 (2018) (per curiam). And the district court never addressed the other preliminary-injunction factors, nor did the en banc D.C. Circuit in affirming the injunction against Citibank by an equally divided court.

Ultimately, the courts below appear to have concluded that if grantees are entitled to an injunction against the government, Citibank should be enjoined, too. Yet injunctions, like standing, should never be "dispensed in gross." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021). Instead, "a court must balance the competing claims of injury and must consider the effect *on each party* of the granting or withholding of the requested relief." *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 542 (1987) (emphasis added).

Applying the equitable factors with respect to Citibank leaves no doubt that a preliminary injunction was improper. To begin, grantees face no threat of irreparable harm from Citibank, which has pledged to "follow any court order" respecting the funds. *E.g.*, Citibank TRO Opp. 2; Citibank C.A. En Banc Br. 11. That pledge undercuts any need to enjoin Citibank. Indeed, the en banc court justified the preliminary injunction against the government in part because it "ha[d] made no argument or showing" that it would permit grantees access to the funds "if the injunction were lifted." Pet.App.3a. By contrast, Citibank has made clear that it will release the funds if a court orders it to do so. Enjoining Citibank thus is not "necessary to provide complete relief to the plaintiffs." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979).

Likewise, the balance of the equities and public interest weigh overwhelmingly against injunctive relief as to Citibank. If an agent of the government can be held liable simply for following the government's instructions, "no prudent man would consent to become a public agent." *Hodgson v. Dexter*, 5 U.S. (1

Cranch) 345, 363-64 (1803) (per Marshall, C.J.). The prospect of holding Citibank liable for following the government's direction thus would not only be unfair and inequitable to Citibank, but would also undermine the public interest. As this Court has explained elsewhere, "[t]he imposition of liability on Government contractors will directly affect the terms of Government contracts: either the contractor will decline to [contract with] the Government, or it will raise its price." *Boyle v. United Techs. Corp.*, 487 U.S. 500, 507 (1988). Making it more difficult for the government to obtain affordable services also undermines the United States' "long-run interest" in being "a reliable contracting partner." *United States v. Winstar Corp.*, 518 U.S. 839, 883 (1996). No court exercising the powers of equity should invite such "injurious consequences to the public." *Hodgson*, 5 U.S. (1 Cranch) at 363.

II. THE COURT SHOULD GRANT REVIEW AND VACATE THE PRELIMINARY INJUNCTION AGAINST CITIBANK

If the Court grants the government's petition, it should grant Citibank's petition too. Not only are the questions presented closely intertwined, but denying Citibank's petition while granting the government's could lead to an untenable scenario in which Citibank becomes subject to a preliminary injunction requiring it to disburse funds to grantees while the government is still defending its efforts to terminate the underlying grants and its direction to Citibank not to disburse the very same funds. This Court "often … grant[s] certiorari on attendant questions that are not

independently 'certworthy,' but that are sufficiently connected to the ultimate disposition of the case that the efficient administration of justice supports their consideration." *City & Cnty. of S.F. v. Sheehan*, 575 U.S. 600, 620 (2015) (Scalia, J., concurring in part and dissenting in part). That is particularly true where, as here, the government and a private party both seek review of a single decision. *See, e.g.*, *FDA v. All. for Hippocratic Med.*, 602 U.S. 367 (2024); *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657 (2020).

Review is also warranted because subjecting Citibank, in its capacity as a financial intermediary for the government, to a preliminary injunction has implications beyond this case. Governments often use agents "when there is a particular need for specialized knowledge or expertise." *Filarsky v. Delia*, 566 U.S. 377, 390 (2012). Agents provide such services subject to the expectation that they will not be held liable simply for following orders. Otherwise, agents may find themselves "holding the bag—facing full liability for actions taken in conjunction with government employees who enjoy immunity for the same activity." *Id.* at 391. If a government's agent can be enjoined merely for obeying the instructions of its principal, "contracting would become more cumbersome and expensive for the Government, and willing partners more scarce." *Salazar v. Ramah Navajo Chapter*, 567 U.S. 182, 192 (2012). As explained above, that result would have adverse consequences for the public interest, which further underscores the need for this Court's review.

CONCLUSION

The Court should grant Citibank's petition.

Respectfully submitted,

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