No. 24A831

In the Supreme Court of the United States

UNITED STATES DEPARTMENT OF STATE, ET AL.,
Applicants,

v.

AIDS VACCINE ADVOCACY COALITION, ET AL.

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.,
Applicants,

v.

GLOBAL HEALTH COUNCIL, ET AL.

ON APPLICATION TO VACATE THE ORDER ISSUED BY THE
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

OPPOSITION TO APPLICATION TO VACATE ORDER

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INTRODUCTION

The government comes to this Court with an emergency of its own making. On January 20, 2025, President Trump issued an executive order directing an immediate halt to thousands of congressionally funded foreign-assistance projects across the globe. In the following days, executive agencies issued wave after wave of stop-work orders, withheld the funding necessary for countless American businesses and nonprofits to maintain operations and pursue their missions, and upended the reliance interests of communities worldwide that depend on congressionally authorized foreign assistance. Respondents—recipients of foreign-assistance funding and associations thereof—challenged this foreign-assistance freeze as an unconstitutional exercise of presidential power in contravention of congressional will and as an arbitrary and capricious agency action.

More than two weeks ago, on February 13, the district court agreed that the foreign-assistance freeze was likely unlawful and found that respondents would suffer irreparable harm if the freeze were not immediately suspended. The court therefore entered a temporary restraining order (TRO) requiring the government to preserve the status quo that had prevailed prior to the executive order. Following entry of the TRO, however, the government took no steps toward compliance. On February 20, responding to a motion to enforce the TRO, the district court entered an order directing the government to comply. The government took no steps toward compliance. The next day, the district court denied another motion to enforce the TRO as moot, reasoning that it had already directed the government to comply. The government took no steps toward compliance. The day after that, in response the government's motion for "clarification," the district court again made

clear that the government was to suspend the foreign-assistance freeze. The government took no steps toward compliance.

With irreparable harms mounting, respondents once more asked the court to enforce its TRO. In response, after an hour-long hearing at which the government could not identify a single concrete step it had taken to comply, the district court on February 25 entered yet another order, this time identifying specific steps toward compliance that the government was required to take by a date certain. The government seeks vacatur of that February 25 minute order.

The government is not entitled to the relief it seeks. The TRO that the district court entered was intended to preserve the status quo while the court reached a preliminary determination on the merits of respondents' claims. This Court lacks jurisdiction to review an order of the district court directing the government to comply with that temporary measure, which the government has not appealed and could not appeal. The February 25 order at issue in the application for vacatur does no more than compel compliance with a previously issued TRO and presents no review-worthy legal question. And by any measure, the district court's order was within the district court's sound discretion to ensure compliance with one aspect of a TRO that the government had openly flouted for nearly two weeks. This Court should deny the request for vacatur.

STATEMENT

On January 20, the President issued an executive order directing a wholesale "pause" of congressionally appropriated foreign-assistance funding. Exec. Order No. 14,169 at § 2, 90 Fed. Reg. 8619 (Jan. 20, 2025). To implement that directive, the Secretary of State

and officials at USAID issued a series of agency memoranda immediately halting all such funding and ordering all work to stop, initially for a 90-day period.[1]

By forcing thousands of American businesses and nonprofits to suspend their work, and by halting disbursements for work that they had already performed, even work that already had been reviewed by the government and cleared for payment, the government plunged respondents into financial turmoil. As the district court found, respondents—private companies and nonprofits that have long collaborated with USAID and the Department of State—face extraordinary and irreparable harm that threatens their very existence. Appl. App 8a; see also Appl. App. at 17a, 90a. Respondents have had to furlough or lay off employees, and some are facing cancellation of credit lines, civil and regulatory actions for employment violations, evictions, insolvency, and even physical threats to personnel in conflict areas. See, *e.g.*, *AVAC* Dkt. 13-2, ¶¶ 11-12; *AVAC* Dkt. 13-4, at ¶ 12; *GHC* Dkt. 7-8, ¶ 11; *GHC* Dkt. 36-2, ¶¶ 9-10; *GHC* Dkt. 7-2, ¶ 10; *GHC* Dkt. 46-2, ¶¶ 2-7; *GHC* Dkt. 36-1, ¶¶ 7-12.[2] The government's continued noncompliance with the district court's TRO forced one respondent to lay off 110 employees *yesterday*. Another will default on severance obligations, triggering civil liability and potential regulatory enforcement, if

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[1] See *Memorandum from the Secretary of State*, 25 STATE 6828 (Jan. 24, 2025); USAID, *Notice on Implementation of Executive Order on Reevaluating and Realigning United States Foreign Aid* (Jan. 24, 2025); USAID, *Initial Instructions for Implementing Executive Order Reevaluating and Realigning United States Foreign Aid* (Jan. 22, 2025); USAID, *Follow-Up Instructions for Implementing Executive Order Reevaluating and Realigning United States Foreign Aid* (Jan. 24, 2025); USAID, *Clarification on Implementing the President's Executive Order on Reevaluating and Realigning United States Foreign Aid* (Jan. 26, 2025).

[2] Citations to the docket in Case No. 25-cv-400 take the form "*AVAC* Dkt." Citations to the docket in Case No. 25-cv-402 take the form "*GHC* Dkt."

it does not receive payment for past work by *today*. Meanwhile, many of those who depend on respondents' programming face starvation, disease, and death. See, *e.g.*, *AVAC* Dkt. 13-2, ¶ 11; *GHC* Dkt. 7-6, ¶ 13, *GHC* Dkt. 7-1, ¶ 8; *GHC* Dkt. 7-3, ¶ 14; *GHC* Dkt. 7-9, ¶ 14, *GHC* Dkt. 46-2, ¶¶ 2-7.

In response, respondents filed related lawsuits asserting Administrative Procedure Act (APA) and separation-of-powers violations. In each case, they sought a TRO. On February 13, after an adversarial hearing, the district court found that respondents were likely to succeed on their claims that the government's sweeping foreign-assistance freeze and stop-work orders were arbitrary and capricious. Appl. App. 9a-12a. The Court also found that respondents would suffer irreparable harm if that freeze remained effective pending resolution of their preliminary-injunction motions. Appl. App. 5a-8a. The district court accordingly entered a TRO restraining the government from implementing the challenged agency actions by, among other things, "suspending, pausing, or otherwise preventing the obligation or disbursement of appropriated foreign-assistance funds in connection with any contracts, grants, cooperative agreements, loans, or other federal foreign assistance award that was in existence as of January 19, 2025." Appl. App. 14a. The government has not sought review of that order.

When issuing the TRO, the Court also entered a scheduling order for preliminary injunction proceedings that substantially adhered to the government's proposed schedule, aside from directing that replies be filed by noon on February 27, 2025—only twelve hours after the deadline the government had requested. *AIDS Vaccine Advoc. Coal.* v. *Dep't of State* (*AVAC*), No. 25-cv-400, Minute Order (D.D.C. Feb. 14, 2025); see *AVAC* Dkt. 19, at 1.

Since then, the government has not taken "any meaningful steps" to come into compliance. Appl. App. 92a. In the twelve days between issuance of the TRO and the minute order that the government now asks this Court to vacate, it had not disbursed the frozen funds to respondents or other implementing partners in response to the TRO; had imposed further obstacles to obligation and disbursement; and had issued thousands of further terminations of foreign-assistance grants, contracts, and cooperative agreements. See, *e.g.*, *AVAC* Dkt. 26-1, ¶ 7; *AVAC* Dkt. 26-2, ¶ 7; *AVAC* Dkt. 44, ¶ 6; *GHC* Dkt. 29-6, ¶ 8; *GHC* Dkt. 29-1, ¶¶ 3, 6; *GHC* Dkt. 29-3, ¶ 3; *GHC* Dkt. 42-1, ¶¶ 23-24; *GHC* Dkt. 42-2, ¶¶ 7-11; *GHC* Dkt. 42-3, ¶¶ 9-15; *GHC* Dkt. 42-4, ¶¶ 11-15; see also *GHC* Dkt. 39-1, Ex. C; *GHC* Dkt. 29, at 7; *GHC* Dkt. 7-3, ¶¶ 8-9.

On February 19, respondents in *AVAC* filed a motion to enforce the TRO, which, following adversarial briefing, the court granted in substantial part on February 20. Appl. App. 16a-22a. Stating that "the TRO is clear," Appl. App. 16a, the court reiterated that the order prohibited the government from "suspending, pausing, or otherwise preventing the obligation or disbursement of appropriated foreign-assistance funds in connection with any contracts, grants, cooperative agreements, loans, or other federal foreign assistance award that was in existence as of January 19, 2025." Appl. App. 18a.

The next day, the court denied without prejudice as moot respondents' motion to enforce the TRO in *Global Health Council* v. *Trump* (*GHC*), No. 22-cv-402 (D.D.C.), explaining that, under the court's orders, applicants "are to *immediately* cease [the blanket suspension of funds] and to take all necessary steps … [to] disburs[e] all funds" payable

under relevant award documents. *GHC*, Minute Order (Feb. 21, 2025) (emphasis added, alteration in original, and citation omitted).

Unsatisfied, the government sought "clarification." In response, the court reiterated: "The line here is unambiguous. Defendants cannot continue to suspend programs or disbursements based on the blanket suspension that was temporarily enjoined." Appl. App. 24a-25a. As the court explained, the TRO's effect was "to restore the status quo as it existed before Defendants' blanket suspension of congressionally appropriated funds." Appl. App. 24a.

Still, the government took no action to comply with the TRO's requirement that it lift the funding freeze and stop-work orders that the court had found were likely unlawful. With several respondents on the verge of insolvency, respondents in *GHC* again moved to enforce the TRO, but this time limited their requested relief to disbursements for work already completed before the funding freeze took effect. *GHC* Dkt. 36. After government counsel informed the court that he was "not in a position to answer" whether the government had taken *any* action to unfreeze funds in compliance with the court's orders, Appl. App. 63a-64a, the court, again, ordered the government to comply with the TRO that it had issued nearly two weeks before. *GHC*, Minute Order (Feb. 25, 2025); see Appl. App. 85a-86a. Specifically addressing the relief requested in the motion to enforce, the court directed that "[b]y 11:59 p.m. on February 26, 2025, the restrained defendants shall pay all invoices and letter of credit drawdown requests on all contracts for work completed prior to the entry of the Court's TRO." Appl. App. 85a-86a. At the same time, the court made

clear that this order, while specifically addressing particular components of the TRO, "in no way limit[ed] the scope of the TRO or modif[ied] its terms." Appl. App. 83a-84a.

At no time during that hearing—or indeed, at any time before it sought emergency appellate review—did the government suggest to the district court that compliance would be infeasible on the timeline respondents had requested. See Appl. App. 91a. "If Defendants wanted to propose a different schedule for achieving compliance, that is something they could have proposed to [the court] and that [the court] could have considered alongside Plaintiffs' showings." Appl. App. 91a. The government did not.

Instead, the government noticed an appeal from the district court's minute order and—in the early morning hours of the day by which the court had ordered them to comply—asked for an emergency stay pending appeal.

Denying a stay of the February 25 minute order, the district court explained that respondents had repeatedly presented "evidence that Defendants have continued their funding freeze and evidence of irreparable harm to businesses and organizations across the country that justified the TRO." Appl. App. 89a-90a. And rather than "hold Defendants in contempt," the court had repeatedly ordered their compliance while reiterating that the government must "immediately cease" the conduct that the court had restrained, including by "disbursing all funds payable" before the restrained funding freeze went into effect. Appl. App. 90a. Moreover, in its third order directing compliance with the TRO, the court had ordered the government only "to unfreeze funds for work completed prior to February 13, consistent with the terms of the TRO and the Court's subsequent orders, giving Defendants an *additional* 36 hours to do so." Appl. App. 91a (emphasis added).

As for the appeal, the D.C. Circuit ordered respondents to quickly respond and then dismissed the government's appeal for lack of jurisdiction. See *AIDS Vaccine Advoc. Coal.* v. *Dep't of State,* Nos. 25-5046, 25-5047 (CADC Order), 2025 WL 621396, at *1 (D.C. Cir. Feb. 26, 2025). The court observed that applicants "cite no case that has held that such an order [seeking to enforce an unappealed TRO] is appealable." *Id.* at *1. And it determined that applicants "have not shown that the enforcement orders disrupt the *status quo* by requiring them to do anything more than they would have had to do absent the temporarily restrained agency actions, which are the subject of ongoing preliminary injunction briefing." *Ibid.*

Meanwhile, respondents' preliminary injunction motions were fully briefed as of yesterday, and any hearing on those motions will occur no later than Tuesday.

ARGUMENT

The government's application to vacate the district court's minute order requiring compliance with a TRO of which it has never sought review is extraordinary. For one, the district court made clear that the February 25 order did not enlarge the scope of the government's obligations under the TRO or its previous enforcement orders. A decision vacating the February 25 minute order therefore would not alter the government's obligation to comply with the TRO. Review of a district court's order directing compliance in this "very unusual procedural posture" is unheard of, and this Court "should not get into th[at] business." *United States* v. *Texas*, 144 S. Ct. 797, 798 (2024) (Barrett, J., concurring). Moreover, the February 25 order was within the district court's sound discretion to enforce compliance with the TRO that the district court determined the government had all but

ignored for nearly two weeks. The government's contrary arguments largely go to the merits of respondents' underlying legal claims, not to the propriety of the February 25 order as a mechanism for enforcing a TRO that the government has not put before this Court.

The government's application, in this posture, amounts to a request for license to continue defying a TRO of which it has not sought review—and only days before the district court holds a hearing on fully briefed preliminary injunction motions request. That request should be denied.

I. This Court Lacks Jurisdiction to Review the Minute Order

To ensure orderly adjudication and prevent piecemeal review, Congress has constrained federal courts' appellate jurisdiction, with limited exceptions, to review of a district court's final judgments. See 28 U.S.C. § 1291. Accordingly, the "general rule is that orders granting, refusing, modifying, or dissolving temporary restraining orders are not appealable." 16 Wright & Miller, *Fed. Prac. & Proc.* § 3922.1 (3d ed.). This jurisdictional rule is sensible, because such rulings are time-limited and directed solely to preserving "the status quo" in the face of a "strong showing of irreparable harm." Appl. App. 94a.

Underlying the government's application is a TRO requiring the government to administer USAID and State Department programs under established laws and practices, while the parties briefed motions for preliminary injunctions. See CADC Order, 2025 WL 621396, at *1. The TRO expires March 10, 2025, or the date on which the district court resolves the pending preliminary injunction motions, whichever comes sooner. Appl. App. 94a. No appeal lies from that TRO, and the government does not argue otherwise.

The government's application, though, is even less appropriate than an application seeking review of a TRO. The government asks this Court to summarily vacate a minute order directing it to comply with the TRO—again, a TRO as to which the government has not sought review. The sound reasons counseling against interlocutory review of a TRO apply with even greater force to review of an interlocutory order reiterating the TRO. Moreover, the developing record in this case is voluminous, complicated, and disputed. See, *e.g.*, *AVAC* Dkt. 13-2, 13-3, 13-4, 13-5, 26-1, 26-2, 26-3; *GHC* Dkt. 7-1, 7-2, 7-3, 7-4, 7-5, 7-6, 7-7, 7-8, 7-9, 25-1, 25-2, 25-3, 25-4, 25-5, 25-6, 25-7, 29-1, 29-2, 29-3, 29-4, 29-5, 29-6, 29-7, 29-8, 42-1, 42-2, 42-3, 42-4, 42-5, 46-1, 46-2, 46-3, 46-4, 46-5. Indeed, the government's arguments to this Court rest principally on a declaration filed *after* the government noticed its appeal—a declaration in considerable tension with other evidence developed in this case. See Appl. App. 96a-106. And the government asks this Court for a ruling on underdeveloped jurisdictional arguments that, as the government's own characterization suggests, are fact-dependent and uncertain on this record. See Appl. 11-12 (government's contention that "the Tucker Act *may* provide [an alternative] remedy" and that the Contract Disputes Act forecloses APA relief "*to the extent that some* of the funding instruments at issue in this case are procurement contracts" (emphasis added)).

Both longstanding jurisdictional rules and principles of sound judicial discretion disfavor the government's highly unusual application. With briefing on respondents' preliminary injunction motions completed yesterday, and the district court having stated that it will decide those motions with "full dispatch," Appl. App. 94a, this Court should deny the application to vacate an order over which it lacks jurisdiction.

II. Vacatur Is Unwarranted

A. The District Court's Minute Order Does Not Warrant Review

An interlocutory minute order directing the government to comply with a TRO that is not before this Court, days before a hearing on motions for preliminary injunctions, does not remotely warrant this Court's review, much less summary vacatur. Summary disposition is "unusual under any circumstances." *OPM* v. *Richmond*, 496 U.S. 414, 422 (1990). It is "bitter medicine," *Spears* v. *United States*, 555 U.S. 261, 268 (2009) (Roberts, C.J., dissenting), "usually reserved for cases where 'the law is settled and stable, the facts are not in dispute, and the decision below is clearly in error,'" *Pavan* v. *Smith*, 582 U.S. 563, 567-68 (2017) (Gorsuch, J., dissenting) (quoting *Schweiker* v. *Hansen*, 450 U.S. 785, 791 (1981) (Marshall, J., dissenting)). And as Members of this Court have emphasized, the Court should be cautious of entertaining requests for extraordinary relief in cases that do not demand review. "Were the standard otherwise, applicants could use the emergency docket to force the Court to give a merits preview in cases that it would be unlikely to take—and to do so on a short fuse without benefit of full briefing and oral argument." *Does 1-3* v. *Mills*, 142 S. Ct. 17, 18 (2021) (Barrett, J., concurring); see *Labrador* v. *Poe ex rel. Poe*, 144 S. Ct. 921, 931 (2024) (Kavanaugh, J. concurring). Because emergency applications call for rushed decisionmaking "without the benefit of full briefing and oral argument," this Court will generally deny them in cases where it would not grant plenary review. *Does 1-3*, 142 S. Ct. at 18 (Barrett, J., concurring); see *Hollingsworth* v. *Perry*, 558 U.S. 183, 190 (2010). The government does not acknowledge that demanding standard, let alone attempt to satisfy it.

And it falls far short of justifying the extraordinary step of superintending a district court's efforts to ensure compliance with its orders.

To start, vacatur of the district court's minute order would afford the government no meaningful relief, because the government does not seek review of the TRO with which the district court's minute order directed it to comply. As the district court has repeatedly stated, and as the court of appeals confirmed, its minute order "in no way … modif[ied] [the TRO's] terms." Appl. App. 91a.; see Appl. App. 89a (explaining that the court's minute order "g[ave] Defendants an additional 36 hours" to comply with "the terms of the TRO and the Court's subsequent orders"); CADC Order, 2025 WL 621396, at *1 (minute order "enforced previously entered temporary restraining orders" and did not "require [applicants] to do anything more than they would have had to do absent the temporarily restrained agency actions"). Regardless of any action on the government's application, the government will remain restrained from "suspending, pausing, or otherwise preventing the obligation or disbursement of appropriated foreign-assistance funds" in connection with awards that were in place before the foreign-assistance freeze. Appl. App. 14a. The district court's decision to "giv[e] Defendants an additional 36 hours," Appl. App. 89a, to achieve compliance with a mandate it had issued two weeks earlier and with which the government had refused to comply does not warrant review in any posture, much less on an emergency application for summary vacatur.

The government worries that the greater specificity of the enforcement order might increase "the risk of contempt proceedings and other sanctions." Appl. 5. But although the government claims complying with the deadline stated in the February 25 order was not

possible, the government did not raise that concern to the district court "at the [TRO enforcement] hearing or any time before filing their notice of appeal and seeking a stay pending appeal." Appl. 5. Moreover, no order for contempt or other sanctions is before this Court. And as the government itself explained to the district court, parties can avoid civil contempt by "demonstrat[ing] why they were unable to comply." *AVAC* Dkt. 29, at 7-8 (quoting *FTC* v. *Affordable Media*, 179 F.3d 1228, 1239 (9th Cir. 1999)). When it was before the district court, it made no attempt to do so.

Nor does the government identify any legal issue that merits review. Whether the February 25 order represents a proper construction of the government's obligations under an unappealed TRO is a case-specific matter that lacks any broader legal significance; the government does not argue otherwise. Although the government implies that the monetary stakes of complying with the February 25 order renders it a matter of national consequence, Appl. 19-20, that suggestion strains credulity. Again, while the precise timing of the government's foreign-assistance disbursements is of immense importance to respondents—indeed, it may determine whether their organizations survive—the government remains subject to a TRO that requires it to make those payments. It just has failed to take meaningful steps toward doing so since the TRO issued more than two weeks ago.

To the extent that this case, writ large, implicates broader legal questions about the scope of executive power or the availability of particular remedies for unlawful agency action, those questions are not presently before the Court in a form suitable for review.

They are, however, subject to active and ongoing district-court litigation. And for whichever parties do not prevail, an appealable order in that litigation is imminent, as explained above.

B. The Government Is Not Entitled to Summary Vacatur

This government's application also does not present the sort of settled law and undisputed facts that would make it amenable to summary disposition. See *Schweiker*, 450 U.S. at 791 (Marshall, J., dissenting). There is "no question" that a district court has "inherent power to enforce compliance with [its] lawful orders." *Shillitani* v. *United States*, 384 U.S. 364, 370 (1966). And a district court's "means of ensuring compliance" with its orders are entrusted to its broad discretion. *Spallone* v. *United States*, 493 U.S. 265, 276 (1990). The district court did not abuse that discretion here.

The district court was best positioned to determine the scope of its prior orders, the extent of the government's compliance, and any appropriate remedial steps. This Court is particularly ill-positioned to second-guess the district court here given that the government's application rests almost entirely on assertions in declarations that the government offered for the first time after it noticed its appeal. See Appl. App. 96a-106a, 151a-154a; see also *Cutter* v. *Wilkinson*, 544 U.S. 709, 718, n. 7 (2005) ("[W]e are a court of review, not first view ….").

Indeed, the government relies at every turn on arguments and allegations it failed to develop below. To begin, its contention that compliance is infeasible within the time the court allowed "[wa]s not something that Defendants have previously raised in [the district court], whether at the hearing or any time before filing their notice of appeal. That is so even though Plaintiffs' motion to enforce explicitly proposed compliance on this time

frame." Appl. App. 91a. Similarly, "in defending the challenged action at the [district court's] TRO hearing, Defendants did not even attempt to argue that the agency action was or could be justified based on waste or fraud." Appl. App. 92a. Nor had the government "adduced any evidence" about that possibility beyond "conclusory statements in their motion" for a stay pending appeal. Appl. App. 92a. And although the government asserted in passing that it had sovereign immunity, its "undeveloped arguments on this point … d[id] not meaningfully engage with the large body of precedent on this question." Appl. App. 93a (citing cases).

III. The Standard for a Stay is Neither Applicable Nor Satisfied

Although the government asserts that the factors applicable to consideration of a stay apply here, Appl. 10 n.2, it is not seeking a stay: it is seeking vacatur. Accordingly, if the Court found some basis for jurisdiction and some reason to grant review of an interlocutory order requiring compliance with a TRO, the weakness of the government's merits position would require denial of the application. In any event, the government fares no better if its request for summary vacatur is somehow cast as a request for a stay, with consideration of irreparable harm and the balance of the equities, including the public interest. "A stay is an 'extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.'" *Murthy* v. *Missouri*, 144 S. Ct. 7, 8 (2023) (Alito, J., dissenting) (quoting *Winter* v. *Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008)). It "is not a matter of right, even if irreparable injury might otherwise result." *Nken* v. *Holder*, 556 U.S. 418, 433 (2009) (citations omitted). By any standard, the

government cannot bear the burden of showing that the extraordinary remedy it seeks is warranted.

A. The Government Is Wrong on the Merits

The government's application does not approach the strong showing required to establish that the district court abused its discretion in responding to the government's continued noncompliance with the TRO. Neither its claims of unfair surprise, its tentative jurisdictional arguments, nor its complaints about the scope of a TRO not before this Court justify intrusion into the district court's efforts to ensure compliance with its orders.

1. The government claims that the February 25 order imposed an "abrupt deadline" to reimburse providers of foreign assistance for work they had performed. Appl. 2. That characterization disregards essential context for the district court's order directing compliance with aspects of the TRO by a date certain. Specifically, in the days following entry of the TRO, the government took no steps toward restoring "the obligation or disbursement of appropriated foreign-assistance funds" that the TRO required. Appl. App. 14a. The government issued no guidance to agency personnel directing them to disburse funding, see *GHC* Dkt. 29-3, ¶¶ 4-5; *GHC* Dkt. 29-5, ¶ 6, and indeed Secretary Rubio issued an additional "15-day disbursement pause" on all State Department grants, *GHC* Dkt. 29-1, ¶ 3. Meanwhile, the government stripped line-level officers most familiar with the relevant awards of authority to make disbursements and channeled purported "review" of payments through a handful of political appointees. See, *e.g.*, *GHC* Dkt. 42-3, ¶¶ 9-15; *GHC* Dkt. 42-2, ¶¶ 7-11; *GHC* Dkt. 42-4, ¶¶ 11-15; *GHC* Dkt. 29-6, ¶ 8; see also *GHC* Dkt. 39-1, Ex. C; *GHC* Dkt. 29 (describing artificial bottleneck).

The district court gave the government every opportunity to demonstrate what steps it was taking to release foreign-assistance funding, as the TRO required, and to explain any practical impediments it faced in pursuing compliance. But even by the time of the district court's February 25 hearing—nearly two weeks after the TRO had issued—government counsel could not identify a single action the government had taken in the twelve days since the TRO to release frozen funds. As the district court found, based on the facts before it, the government had "not rebutted" respondents' evidence that the government had "not lifted the [foreign-assistance] suspension or freeze of funds as the TRO required." Appl. App. 84a. Even "[w]hen asked," the court continued, the government was "not able to provide any specific examples of unfreezing funds pursuant to the Court's TRO." Appl. App. 84a-85a; see also Appl. App. 63a-64a.

In the absence of evidence that the government had taken even minimal steps toward compliance with the TRO, the district court found it necessary to impose a timeline for compliance in light of the "irreparable harms" that the court had twelve days prior found to be imminent. Appl. App. 85a-86a. The government now claims that the timeline was not "logistically or technically feasible." Appl. 23. But it never once voiced concerns about the feasibility of compliance during the twelve days in which the TRO was in effect prior to the February 25 order or in the many hearings and government submissions addressing the TRO—including the February 25 hearing that culminated in the challenged order and at which the form of relief granted in that order was squarely at issue. See *AVAC* Dkt. 28; *GHC* Dkt. 23, 25, 33, 34, 37; Appl. App. 29a-88a. In this context, the district court acted well

within its discretion in ordering concrete steps toward immediate compliance with a TRO that had been ignored for nearly two weeks.

2. To the extent that the government claims that sovereign immunity rendered the district court powerless to order funds released to effectuate its prior orders, the Court's decision in *Bowen* v. *Massachusetts*, 487 U.S. 879, 901 (1988), squarely forecloses that position. There, the Court allowed an injunction under the APA compelling the government to release grant funds wrongfully withheld. *Bowen*, 487 U.S. at 910. The Court held that such an order was "for specific relief … rather than for money damages" because it directed the disbursement of specific grant funds rather than awarding compensation. *Ibid.* It was thus "within the District Court's jurisdiction under § 702's waiver of sovereign immunity." *Ibid.* In any event, the district court has made no final decision as to whether respondents are entitled to relief and, if so, what form that relief should take. Those arguments are the subject of preliminary injunction briefing that the district court will be considering in just a few days. See *AVAC* Dkt. 45, at 1-3; *GHC* Dkt. 46, at 6-10. As the district court recognized, there is a "large body of precedent on this question" with which the government has not yet "meaningfully engage[d]" at this early stage. Appl. App. 93a (citing cases).

3. The government's claim that the district court's order is "overbroad" is misplaced. Appl. 14-15. The government characterizes the February 25 order as granting a "universal remed[y]" that "provide[s] relief to non-parties," Appl. 14-15, but the government overlooks that the TRO was intended to bar the government from implementing a blanket freeze on foreign assistance and required the government to take steps to restore the status quo that prevailed before that freeze was instituted. The government has not challenged the scope

of the TRO—indeed, it has not sought review of the TRO at all—and it cannot plausibly claim that the February 25 order was any broader than the TRO that it effectuated.

4. Finally, the government's concerns about what the district court may have "signaled" or "threat[ened]" about its future rulings are premature. Appl. 15, 17. Specifically, the government frets that the court might "not accept the agencies' decisions to terminate particular contracts going forward" if the court determines that those thousands of terminations were based on "pretext." Appl. 15-16. The government's concern about future district court rulings about the validity of future contract terminations has nothing to do with the order under review, which orders the release of congressionally appropriated funds for work already done under existing contracts.

B. The Government Faces No Irreparable Harm

To prevail on the irreparable harm factor, the government must show that it faces likely "substantial and immediate" irreparable injury. *O'Shea* v. *Littleton*, 414 U.S. 488, 502 (1974); see *Hollingsworth*, 558 U.S. at 190. The government cannot satisfy this demanding standard.

To start, the government suggests that the February 25 order, which put a timeline on compliance with one aspect of the TRO in light of the government's obstinance, intrudes on the prerogatives of the executive branch. See Appl. 21. Setting aside that the government's vision of "unbounded [Executive] power" is inconsistent with this Court's precedent, *Zivotofsky ex rel. Zivotofsky* v. *Kerry*, 576 U.S. 1, 20 (2015), the only specific injury the government identifies is that it may not be able to ensure that disbursements are "free from fraud and abuse." Appl. 21–23. That concern is far too speculative to warrant the

extraordinary relief it seeks here. The government offers no evidence that any of the requests for payment for already-completed foreign assistance work are illegitimate. And it ignores USAID's proven track record of recovering improperly disbursed funds. *GHC* Dkt. 29 at 10 &n.7 ("recovery rate of 97.95%, which higher than that of nearly every other agency"). That impressive track record strongly indicates that the government's purported economic harms from complying with the district court order are remediable. See *Sampson* v. *Murray*, 415 U.S. 61, 90 (1974).

The government also asserts (at 18, 21) that the court's order may lead to "wrongly disbursed funds" as the government rushes to meet its deadline. But if the government is rushed, that is its own fault. It made no effort to comply with the TRO for two weeks and arrived at an enforcement hearing unable to describe a single step taken to follow the court's directives. See Appl. App. 64a. Having refused to comply with the TRO in a timely manner, the government cannot now be permitted to leverage its procrastination into an emergency vacatur. See *Pennsylvania* v. *New Jersey*, 426 U.S. 660, 664 (1976) (noting that no party "can be heard to complain about damage inflicted by its own hand").

C. The Equities and Public Interest Disfavor the Government's Application

The equities strongly disfavor the government's last-minute attempt to derail orderly adjudication after flouting the district court's TRO for twelve days. The government's defiance, recounted above, is more than enough to swing the equities strongly in respondents' favor. In addition, as the district court found (and the government does not dispute), respondents, their employees, and those who depend on respondents'

programming would face extraordinary and irreversible harm if the funding freeze continues.

A stay would also be contrary to the public interest. Respondents have submitted unrebutted evidence that the government's actions bring their very existence—and the existence of fellow foreign-aid partners—to the brink. This industry-wide extinction is sure to have devastating and far-reaching effects on the American economy. See, *e.g.*, *GHC* Dkt. 4, at 35-36. And respondents' work advances U.S. interests abroad and improves—and, in many cases, literally saves—the lives of millions of people across the globe. In doing so, it helps stop problems like disease and instability overseas before they reach our shores. The government's actions have largely brought this work to a halt. See, *e.g.*, *id.* at 36-37. With Americans out of work, businesses ruined, food rotting, and critical medical care withheld, see, *e.g.*, *GHC* Dkt. 1, at 19-24, the public interest weighs heavily against the government. These are the fruits of the government's actions; its application—like the arbitrary agency actions challenged in this case—grapples with none of them.

CONCLUSION

The Court should lift the administrative stay and deny the application. Respondents respectfully request that the Court act as quickly as possible to lift the administrative stay so as to prevent ongoing irreparable harm to respondents and the communities that depend on their work.

Respectfully submitted.

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