

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.

**APPLICATION TO VACATE THE ORDER ISSUED
BY THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
AND REQUEST FOR AN IMMEDIATE ADMINISTRATIVE STAY**

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PARTIES TO THE PROCEEDING

Applicants (defendants-appellants below) are the United States Department of State; the United States Agency for International Development (USAID); Marco Rubio, Secretary of State, and Acting Administrator of USAID; Peter Marocco, Acting Deputy Administrator for Policy and Planning, Acting Deputy Administrator for Management and Resources of USAID, and Director of Foreign Assistance at the Department of State; Office of Management and Budget; Russell T. Vought, Director of the Office of Management and Budget; and Donald J. Trump, President of the United States.

Respondents (plaintiffs-appellees below) are AIDS Vaccine Advocacy Coalition; Journalism Development Network, Inc.; Global Health Council; Small Business Association for International Companies; HIAS; Management Sciences for Health, Inc.; Chemonics International, Inc.; DAI Global LLC; Democracy International, Inc.; and the American Bar Association.

RELATED PROCEEDINGS

United States District Court (D.D.C.):

AIDS Vaccine Advocacy Coalition v. United States Department of State,
No. 25-cv-400 (Feb. 25, 2025)

Global Health Council v. Trump, No. 25-cv-402 (Feb. 25, 2025)

United States Court of Appeals (D.C. Cir.):

United States Department of State v. AIDS Vaccine Advocacy Coalition, No. 25-
5046 (Feb. 26, 2025)

Trump v. Global Health Council, No. 25-5047 (Feb. 26, 2025)

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No. 24A

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Pursuant to Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Acting Solicitor General—on behalf of applicants United States Department of State, et al.—respectfully files this application to vacate the February 25, 2025 order issued from the bench by the U.S. District Court for the District of Columbia (App., *infra*, 85a-87a). In addition, the Acting Solicitor General respectfully requests an administrative stay of the district court’s order, which requires the government’s immediate action by 11:59 p.m. tonight, pending the Court’s consideration of this application.

Midday yesterday, a federal district court ordered the Executive Branch to pay

nearly \$2 billion by 11:59 p.m. tonight as an interim remedy in a putative Administrative Procedure Act (APA) suit brought by ten plaintiffs—eight nonprofits and businesses that receive federal foreign-assistance funding and two membership associations whose members do. The order directs the Department of State and the United States Agency for International Development (USAID) to pay “all invoices and letter of credit drawdown requests” for reimbursements on foreign-aid-related contracts and grants for “work completed prior to” February 13, 2025. App., *infra*, 86a. On that date, the district court entered its original temporary restraining order (TRO), which barred the government from relying on the President’s Executive Orders as grounds for blanket suspension or termination of foreign-aid funding. App., *infra*, 86a. And the government has, since then, complied with that order, instead relying on its discretionary authorities and individual reviews. Neither the original TRO nor the district court’s subsequent clarifications in any way suggested that the government must pay particular invoices on particular dates.

The court’s 11:59 p.m. 30-some-hour deadline thus moved all the goalposts. It is not tailored to any actual payment deadlines associated with respondents’ invoices or drawn-down requests, or anyone else’s. And it has thrown what should be an orderly review by the government into chaos. The order does not limit its abrupt deadline to respondents’ own invoices or letters of credit, instead apparently compelling the government to pay requests from any organization that has asked for such funds. Those requests are not even in the record, nor are the underlying instruments. The timing of the order does not allow the government to conduct payment-integrity review to ensure that payments are made only for obligations that are legitimate or supported by necessary documentation—much less deny improper payments. The timing of the order does not even let the government ascertain whether the sums are

actually due or owing under the terms of the instruments. The timing of the order is particularly difficult because, based on the district court's other orders, the government has been expediting review of thousands of foreign-aid grants and contracts to decide which contracts are in the interests of the United States to terminate and which should be retained. Such wholesale, universal relief plainly exceeds what district courts can order under Article III and principles of equity and effectively allows a single federal district court to supervise the federal government's contracting decisions regarding foreign aid—an area where the Executive Branch ordinarily has the broadest discretion.

On top of that, the district court lacked any jurisdiction even to issue this order dictating contractual payments by a date certain to remedy purported contractual breaches. The federal government has sovereign immunity from this type of breach-of-contract claim everywhere but the Court of Federal Claims. See 28 U.S.C. 1346(a)(2). Congress has created an intricate statutory scheme—along with a court with jurisdiction—to address claims that the government owes money under its contracts and other funding instruments. That scheme precludes the district court's attempt to remedy alleged breaches of contract under the guise of a temporary restraining order in an APA case.

The district court sidestepped those arguments—though the government raised them in its opposition to a preliminary injunction filed last week and renewed them at yesterday's hearing—on the ground that the government had not adequately preserved them, in writing, between the filing of a motion Monday night and an emergency hearing convened at 11:00 a.m. Tuesday morning. As of midday yesterday, the court stated that it would not consider its jurisdiction now, but “[i]f you want to brief that at the PI stage, I suppose you can.” App., *infra*, 65a. In today's order denying a

stay pending appeal, the district court now claims to have “considered its jurisdiction at each stage of this case,” *id.* at 93a, and believes itself empowered to force the United States to make billions of dollars in expenditures from federal funds based on its preliminary view of the government’s contractual obligations. That is plainly incorrect.

To be very clear, the government is committed to paying legitimate claims for work that was properly completed pursuant to intact obligations and supported by proper documentation. It is attempting to navigate the district court’s evolving orders—and the ensuing, resource-consuming contract-review process—as best it can. The government is undertaking significant efforts to ensure that it can make proper payments. Agency leadership reports, for example, that the Secretary of State “has directed that invoices identified by the [respondents]” in their submissions to the district court “be processed and expedited for payment without the ordinary vetting procedures,” and that approximately \$4 million of such payments “are expected to be issued today.” App., *infra*, 146a. And the payment process is “being prioritized” by USAID. *Ibid.* The district court’s underlying orders are erroneous, but the government is doing what it reasonably can to comply in good faith.

What the government cannot do is pay arbitrarily determined demands on an arbitrary timeline of the district court’s choosing or according to extra-contractual rules that the court has devised. That mandate creates an untenable payment plan at odds with the President’s obligations under Article II to protect the integrity of the federal fisc and make appropriate judgments about foreign aid—clear forms of irreparable harm. The order appears to contemplate the immediate outlay of nearly \$2 billion. And the government has no sure mechanism to recover wrongfully disbursed funds delivered to entities that claim to be near insolvency.

Worse, this order exposes the government to the risk of contempt proceedings and other sanctions. Agency leadership has determined that the ordered payments “cannot be accomplished in the time allotted by the” district court. App., *infra*, 97a. That risk is especially concerning because the district court appears poised to require mini-trials, discovery, and depositions of senior officials as to whether a host of foreign-aid decisions genuinely rested on the government’s conceded discretionary authority to terminate contracts and grants, or were instead supposed pretexts for a blanket foreign-aid cut that the district court considers unlawful. See *id.* at 141a (respondents’ proposed discovery plan) (requesting deposition of Secretary of State). Respondents are pressing even further, demanding discovery into personnel actions, payment-processing protocols, and other agency actions that have nothing to do with their original APA claims challenging a categorical funding pause. The threat of invasive discovery into senior officials’ subjective motivations only exacerbates the Article II harms inflicted by the court’s order.

This Court has jurisdiction to grant emergency relief from orders that, like this one, compel specific actions by a specific date—the very definition of a mandatory injunction. Vacatur of the order is warranted to ensure that the government is not subjected to an unlawful order with which it is not feasible to comply, despite the government’s efforts. The court of appeals has not yet ruled on the government’s request for an administrative stay by 1:00 p.m. today or a stay pending appeal by 4:00 p.m. In light of that extraordinary circumstance, and to allow this Court time to consider the issues this application raises before the order’s 11:59 p.m. deadline, the government is filing this application now and respectfully requests, at a minimum, an immediate administrative stay. See Sup. Ct. R. 23.3.

STATEMENT

1. On January 20, 2025, the President issued Executive Order No. 14,169, 90 Fed. Reg. 8619 (Jan. 30, 2025), titled *Reevaluating and Realigning United States Foreign Aid*. That Executive Order recognized that foreign-assistance funds “are not aligned with American interests and in many cases antithetical to American values” in ways that “serve to destabilize world peace.” *Id.* § 1. The Executive Order accordingly declared that “[i]t is the policy of the United States that no further United States foreign assistance shall be disbursed in a manner that is not fully aligned with the foreign policy of the President.” *Id.* § 2.

To provide time to review foreign-assistance programs “for programmatic efficiency and consistency with United States foreign policy,” the Executive Order directed agencies to “immediately pause new obligations and disbursements of development assistance funds to foreign countries” and implementing organizations and contractors. Executive Order No. 14,169, § 3(a). “[W]ithin 90 days,” agencies would conduct a review and determine “whether to continue, modify, or cease each foreign assistance program” in consultation with the Director of the Office of Management and Budget and with the concurrence of the Secretary of State. *Id.* § 3(b), (c). The Secretary of State has authority to waive the pause “for specific programs” and may approve new obligations or resume disbursements during the 90-day review period if review is completed sooner. *Id.* § 3(d), (e).

Consistent with the President’s Executive Order, the Secretary of State directed a pause on foreign-assistance programs funded by or through the State De-

partment and USAID. See D. Ct. Doc. 15-1, at 18-22 (Feb. 12, 2025).¹ The Secretary has approved various waivers, including for foreign military financing for Israel and Egypt, emergency food expenses, and life-saving humanitarian assistance pending review. *Id.* at 6-7; Sec’y of State, *Emergency Humanitarian Waiver to Foreign Assistance Pause* (Jan. 28, 2025), <https://www.state.gov/emergency-humanitarian-waiver-to-foreign-assistance-pause>. The Secretary has also approved a waiver for legitimate expenses incurred before the pause went into effect. D. Ct. Doc. 15-1, at 6-7.

2. Respondents are organizations that receive, or have members who receive, federal funds for foreign-assistance work. On February 10, 2025, they challenged the Executive Branch’s decision to pause foreign-assistance funds pending further review as a violation of the Administrative Procedure Act (APA) and the Constitution. D. Ct. Doc. 1 (Feb. 10, 2025); see 25-cv-402 D. Ct. Doc. 1 (Feb. 10, 2025). They moved for temporary restraining orders on February 11 and 12, 2025. See D. Ct. Doc. 13 (Feb. 12, 2025); 25-cv-402 D. Ct. Doc. 4 (Feb. 11, 2025).

The district court granted relief to respondents on February 13, 2025, without waiting for an opposition brief. App., *infra*, 14a-15a. While recognizing that the pause was designed to provide the government with an “opportunity to review programs for their efficiency and consistency with priorities” and that “there is nothing arbitrary and capricious about executive agencies conducting [such] review,” the court questioned whether the pause “was a rational precursor to reviewing programs,” and determined that the agencies had not adequately accounted for the reliance interests of aid recipients. *Id.* at 10a. Instead of ordering the government to

¹ Unless indicated otherwise, references to the district court docket are to the docket in *AIDS Vaccine Advocacy Coalition v. United States Department of State*, No. 25-cv-400 (D.D.C.).

consider or explain its treatment of reliance, the court concluded that respondents' harms outweighed "the importance of respecting the President's Article II power as it relates to foreign policy." *Id.* at 12a.

The district court enjoined the agency defendants and their heads from "enforcing or giving effect to" any directive implementing the President's Executive Order No. 14,169, including the State Department's memorandum. *App., infra*, 14a. The order implemented that prohibition by barring the government from "suspending, pausing, or otherwise preventing the obligation or disbursement of appropriated foreign-assistance funds" and "issuing, implementing, enforcing, or otherwise giving effect to terminations, suspensions, or stop-work orders" in connection with contracts, grants, or other agreements that existed on January 19, 2025. *Ibid.* The order, however, allowed the agency defendants to "tak[e] action to enforce the terms of particular contracts, including with respect to expirations, modifications, or terminations pursuant to contractual provisions." *Ibid.*

In the interim, the parties have submitted several status reports and filings regarding various factual developments and compliance efforts. Late in the evening on February 24, the *Global Health* respondents submitted an emergency motion to enforce the court's order. Their declarations focused on "work completed prior to January 24, 2025" and sought prompt payment for such work. *Global Health Council v. Trump*, No. 25-cv-402, Doc. 36-1, at 2 (D.D.C. Feb. 24, 2025); *see Global Health Council*, Doc. 36-2, at 1 (D.D.C. Feb. 24, 2025) (discussing invoices "for work that preceded Secretary Rubio's [memorandum] on January 24, 2025").

Yesterday morning (February 25), without first requesting or awaiting a written response from the government, the district court held a hearing and orally granted respondents' motion. *App., infra*, 85a. The court declined to address the

government's argument that claims for specific monetary payments did not fall within the waiver of sovereign immunity provided by the APA and would instead need to be pursued through ordinary dispute-resolution procedures or in another lawsuit, potentially in the Court of Federal Claims. Nor did the court explain why its original order, which simply suspended a categorical pause, compelled the payment of specific invoices by specific dates. But the court ordered that, by tonight, February 26, 2025, at 11:59 p.m., the agency defendants "shall pay all invoices and letter of credit drawdown requests" on all contracts, grants, and assistance agreements "for work completed prior to the entry of the Court's [order] on February 13." *Id.* at 86a. The court further directed that the defendants "shall take all necessary action to ensure the prompt payment of appropriated foreign assistance funds." *Ibid.* This directive was not party-specific, was not limited to invoices that are due or overdue, and did not explain how agencies are supposed to identify those invoices.

Last night, applicants filed an emergency motion for a stay pending appeal, first in the district court, and then in the court of appeals. See Gov't C.A. Emergency Mot. 3 n.1. The district court denied the stay, asserting that applicants have supposedly "already had nearly two weeks to come into compliance," and rejecting the government's assertion of sovereign immunity and an intrusion on its sovereign prerogatives. App., *infra*, 92a-94a.

Applicants asked the court of appeals to grant an administrative stay by 1:00 p.m. today, or to rule on the stay motion by 4:00 p.m. today. *Id.* at 1-2. At about 10:00 a.m. this morning, the court of appeals requested that respondents file a response by 1:00 p.m. But as of the time of this filing, the court of appeals has not acted on either the government's request for a stay pending appeal or for an administrative stay.

ARGUMENT

Under Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Court may stay or vacate a district order’s interlocutory order granting emergency relief. See, e.g., *Trump v. International Refugee Assistance Project*, 582 U.S. 571 (2017) (per curiam); *Brewer v. Landrigan*, 562 U.S. 996 (2010); *Brunner v. Ohio Republican Party*, 555 U.S. 5, 6 (2008). An applicant must show (1) a likelihood of success on the merits, (2) a reasonable probability of obtaining certiorari, and (3) a likelihood of irreparable harm. See *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam). In “close cases,” “the Court will balance the equities and weigh the relative harms.” *Ibid.* Those factors overwhelmingly support relief here.²

A. The Government Is Likely To Succeed On The Merits

The district court ordered the government to pay—within 36 hours—nearly \$2 billion on thousands of foreign-assistance payment requests for already-performed work without knowing what all of those requests actually are or even how to identify them. The vast bulk of them do not involve respondents. And the court refused to consider whether it has jurisdiction to command such payments when issuing the order—instead purporting to consider jurisdiction only in this morning’s stay denial. That jurisdictional problem is severe. Congress created an intricate and exclusive statutory scheme to address disputes over contractual payments for already-performed work. The court’s order in this APA suit sidestepped that scheme entirely, and is thus unlikely to survive this Court’s review.

² The government has applied to “vacate” rather than “stay” the district court’s order because the affected agencies believe that the order’s deadline cannot feasibly be met. See p. 26, *infra*. Regardless of the label, the practical effect of the relief is the same, and the traditional stay standard should govern. See Appl. to Vacate Order at 11 n.4, *Bessent v. Dellinger*, 144 S. Ct. 338 (No. 24A790).

1. The district court lacked jurisdiction to order the government to make immediate payments of nearly \$2 billion on thousands of separate requests. Federal courts generally lack jurisdiction to order the federal government to pay money unless Congress “unequivocally” waives the government’s sovereign immunity. *Lane v. Pena*, 518 U.S. 187, 192 (1996). Although respondents purported to bring their claims under the APA, the APA does not waive the government’s sovereign immunity from suit for the relief that the court ordered here. The APA provides a limited waiver of sovereign immunity for claims “seeking relief other than monetary damages.” 5 U.S.C. 702. The APA’s waiver, however, “comes with an important carve-out”: it does not apply “if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.” *Match-E-Be-Nash-She-Wish Band of Pottawatomí Indians v. Patchak*, 567 U.S. 209, 215 (2012) (quoting 5 U.S.C. 702). That carve-out “prevents plaintiffs from exploiting the APA’s waiver to evade limitations on suit contained in other statutes.” *Match-E-Be-Nash-She-Wish*, 567 U.S. at 215.

Congress has provided detailed, comprehensive statutory schemes for recovering payments based on federal funding instruments, and those schemes either explicitly or impliedly displace the APA’s waiver of sovereign immunity. See *Brown v. GSA*, 425 U.S. 820, 834 (1976) (explaining that “a precisely drawn, detailed statute preempts more general remedies”). First, to the extent that some of the funding instruments at issue in this case are procurement contracts, any dispute about payment on those contracts for work already performed would be governed by the Contract Disputes Act (CDA). Critically, the CDA permits suit only following administrative exhaustion in the Civilian Board of Contract Appeals and the United States Court of Federal Claims, pursuant to specific review procedures set out by statute. See 41 U.S.C. 7103, 7104, 7105. Those remedies operate to the exclusion of any suit in dis-

district court under the APA. See *A&S Council Oil Co. v. Lader*, 56 F.3d 234, 239-242 (D.C. Cir. 1995); see *United Aeronautical Corp. v. United States Air Force*, 80 F.4th 1017, 1028 (9th Cir. 2023) (“The availability of [a CDA] action in the Court of Federal Claims ‘impliedly forbids’ Aero from bringing its action in district court” under the APA.).

For other instruments, the Tucker Act may provide a remedy. That statute states that the “United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded” on “any express or implied contract with the United States.” 28 U.S.C. 1491(a); see 28 U.S.C. 1346(a)(2) (“the district courts shall not have jurisdiction of any civil action or claim against the United States founded upon any express or implied contract with the United States”). The D.C. Circuit has “held that the Tucker Act impliedly forbids” the bringing of “contract actions” against “the government in a federal district court.” *Albrecht v. Committee on Employee Benefits of the Fed. Reserve Emp. Benefits Sys.*, 357 F.3d 62, 67-68 (2004) (citation omitted). It has, in other words, “interpreted the Tucker Act * * * to ‘impliedly forbid[]’ contract claims against the Government from being brought in district court under the waiver in the APA,” and conducted careful analysis to determine whether “an action is ‘in essence’ contractual.” *Perry Capital LLC v. Mnuchin*, 864 F.3d 591, 618-619 (D.C. Cir. 2017). To the extent that the government has implemented its grant programs by “employ[ing] contracts to set the terms of and receive commitments from recipients,” then the proper recourse for any asserted violation of those grant terms may also be a “suit in the Claims Court for damages relating to an alleged breach.” *Boaz Housing Auth. v. United States*, 994 F.3d 1359, 1368 (Fed. Cir. 2021).

The inability to establish which of those alternative remedial frameworks precludes review as to each individual funding instrument only underscores the breadth of the district court's remedy and its failure to respect proper procedures or jurisdictional guardrails. The court's order requiring the government to make specific contractual or grant-based payments exceeds the court's jurisdiction. Yet, when issuing the 11:59 p.m. payment deadline, the district court declined to consider the jurisdictional question before entering its order. Although the court recognized that the government had articulated many of these principles in its "briefing at the preliminary injunction stage," the court believed that the argument was "not sufficiently developed to be considered" before entering its order. App., *infra*, 85a; see *id.* at 65a (government pressing the jurisdictional argument at the hearing). The court, however, had entered its original TRO before the government even filed an opposition brief.

Earlier today, in denying applicants' stay motion, the district court asserted that it has, in fact, "considered its jurisdiction at each stage of the case." App., *infra*, 93a. But at the hearing at which it orally entered the challenged order, the court said the opposite: that it was waiting to give applicants' jurisdictional argument "due consideration at the [preliminary-injunction] stage" because it was "not sufficiently developed to be considered today." *Id.* at 85a. Shifting tack, the court said that the government's "undeveloped arguments on this point to date" had not "persuaded the Court that they would affect [its] prior likelihood of success analysis as it relates to the TRO." *Id.* at 93a. The court stated for the first time that the government has not "meaningfully engage[d] with the large body of precedent on this question," but the court cited only cases about the potential availability in an APA suit of "monetary relief" on the basis of statutory and regulatory requirements and entitlements. *Ibid.* That does not address the jurisdiction of the Court of Federal Claims over *contract-*

based claims, which is exclusive for the type of claim effectively asserted by respondents' motion granted yesterday.

The district court's refusal to consider its own jurisdiction before entering its order was wrong several times over. To begin, the government's jurisdictional argument was indeed "sufficiently developed" in both the government's preliminary-injunction briefing and during yesterday's telephone hearing. Regardless, courts have an "independent obligation to assure" themselves "that jurisdiction is proper" before ordering relief. *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316, 324 (2008). That "obligation extends to sovereign immunity," including whether the APA's waiver applies or is impliedly displaced by other statutes. *Perry Capital LLC*, 864 F.3d at 619. If the district court wanted more time to consider its jurisdiction, the court could have refrained from ordering sweeping relief in an emergency posture. Courts must seriously consider their jurisdiction *before* ordering the disbursement of billions of dollars, not afterwards.

2. At a minimum, the district court's order is impermissibly overbroad. Rather than adhering to equitable principles mandating a tailored remedy, the court's order directs the government to "pay *all* invoices and letter of credit drawdown requests on *all* contracts" for pre-TRO work, App., *infra*, 86a (emphasis added)—even contracts to which neither respondents nor their members are parties. As Members of this Court have recognized, such universal remedies exceed "the power of Article III courts," conflict with "longstanding limits on equitable relief," and impose a severe "toll on the federal court system." *Trump v. Hawaii*, 585 U.S. 667, 713 (2018) (Thomas, J., concurring); see *DHS v. New York*, 140 S. Ct. 599, 599-601 (2020) (Gorsuch, J., concurring in the grant of stay).

Under Article III, “a plaintiff’s remedy must be limited to the inadequacy that produced his injury.” *Gill v. Whitford*, 585 U.S. 48, 66 (2018) (brackets and citation omitted); see *Lewis v. Casey*, 518 U.S. 343, 360 (1996) (narrowing an injunction that improperly granted “a remedy beyond what was necessary to provide relief” to the injured parties). This Court recently granted a stay of an injunction to the extent it provided relief to non-parties. See *Labrador v. Poe*, 144 S. Ct. 921 (2024). That action served to “remind lower courts of the foundational rule that any equitable remedy they issue” must be tailored to “the plaintiff’s injuries.” *Id.* at 927 (Gorsuch, J., concurring).

Principles of equity reinforce that constitutional limitation. A federal court’s power to grant equitable relief is generally limited to the types of relief that were “traditionally accorded by courts of equity.” *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 319 (1999). Courts of equity traditionally adhered to the principle that relief must, at most, be “no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.” *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). And courts of equity traditionally “did not provide relief beyond the parties to the case.” *Hawaii*, 585 U.S. at 717 (Thomas, J., concurring).

The universal relief entered by the district court flouts those principles. And it does so without any apparent justification. The court did not explain why such broad relief was necessary or appropriate in these circumstances. At a minimum, the government should have been allowed to identify the at-issue payment requests and flag any defenses or concerns about their validity or legitimacy.

3. Compounding the problems with the district court’s latest order, the court has signaled that it will not accept the agencies’ decisions to terminate partic-

ular contracts going forward, even when those decisions are based on the unambiguous terms of the instrument authorizing termination and thus have nothing to do with the original pause that respondents challenged. The court has maintained that its order directing the payment of nearly \$2 billion for already-performed work is a way to “enforce” the original TRO. The original TRO, however, made clear that the agencies could continue to “tak[e] action to enforce the terms of particular contracts, including with respect to expirations, modifications, or terminations pursuant to contractual provisions.” App., *infra*, 14a. Consistent with that order, the agencies have been “expeditiously examining each USAID and State foreign assistance award on an individual basis and through a multi-step process to determine whether, beyond the directives to the contract and grant officers to comply with the TRO, USAID and State will” terminate funding under the authority conferred by the terms of the specific instrument. App., *infra*, 145a. As of this morning, the Secretary has “made a final decision with respect to each award, on an individualized basis,” ultimately deciding to terminate, for USAID, nearly 5800 awards and retain more than 500 awards. *Ibid.* And with respect to State Department grants and awards, the Secretary has decided to terminate approximately 4100 and retain 2700. *Ibid.* The original pause that the court enjoined was designed to provide breathing room so that those individualized decisions could be made over the course of months. As a result of the court’s order, the agencies prioritized their review, shifted resources, and reached those final determinations in a matter of days.

Yet despite those efforts, the district court continues to express concern that the government is “just coming up with a pretextual basis for” the blanket pause that has been enjoined. App., *infra*, 67a; see *id.* at 25a (indicating that the court would probe whether terminations were based on “good faith” or “pretext”). The court’s ap-

parent assumption that outstanding payments on already-performed work somehow violate its TRO, instead of reflecting the operation of the agencies' review process, shows that the court is poised to question the agencies' lawful individualized termination decisions going forward—and that the court may seek to do so by directing discovery requests at Cabinet secretaries or through contempt proceedings (both of which respondents have already sought). See App., *infra*, 140a-142a (requesting deposition of Secretary of State and other senior officials). Indeed, the court's recent orders explicitly contemplate discovery into whether the government's termination decisions—even if undertaken pursuant to express termination clauses in the instruments themselves—were undertaken with the correct subjective motivation. See *id.* at 28a (requesting parties to identify, in the event of a dispute over compliance, officials for depositions and any expedited discovery that is needed).

The district court's threats of discovery reflect how far this litigation has strayed from any appropriate conception of an APA case and amplify the already serious intrusion on Article II prerogatives. The government cannot function—and the President cannot discharge his Article II responsibilities over foreign affairs—if a district court can appoint itself the claims-processor for the federal government and second-guess the Executive Branch's determinations on pain of contempt proceedings.

4. The fact that the district court labeled its February 25 order as an order granting a motion to enforce a temporary restraining order should not deprive the government of relief. The “label attached to an order is not dispositive.” *Abbott v. Perez*, 585 U.S. 579, 594 (2018). Instead, “where an order has the ‘practical effect’ of granting or denying an injunction, it should be treated as such for purposes of appellate jurisdiction.” *Ibid.* “This ‘practical effect’ rule serves a valuable purpose. If an

interlocutory injunction is improperly granted or denied, much harm can occur before the final decision of the district court.” *Id.* at 595. Accordingly, “Congress authorized interlocutory appellate review of such orders. But if the availability of interlocutory review depended on the district court’s use of the term ‘injunction’ or some other particular language, Congress’s scheme could be frustrated.” *Ibid.* A district court could “shield its orders from appellate review merely by designating them as temporary restraining orders, rather than as preliminary injunctions,” and thereby “would have virtually unlimited authority over the parties in an injunctive proceeding.” *Sampson v. Murray*, 415 U.S. 61, 86-87 (1974).

Although the district court labeled its order as one granting a motion to enforce a temporary restraining order, the order has the practical effect of an injunction. Rather than seeking to maintain the status quo while the district court considers a request for a preliminary injunction, the court’s order directed the government to disburse money in less than 36 hours. The order was therefore not temporary in any relevant sense—the district court has definitively resolved how the government must dispose of this specific universe of funds with no time to even ensure that the demands for payment are legitimate. And the order will indeed do “much harm” unless the court grants immediate relief, given that recovering wrongly disbursed funds would be challenging if not impossible under these circumstances. *Abbott*, 585 U.S. at 595. It would be especially anomalous not to treat the order at issue as an appealable injunction when “an adversary hearing has been held, and the court’s basis for issuing the order strongly challenged.” *Sampson*, 415 U.S. at 87.

Even if the district court’s order were not directly appealable, the government asked the court of appeals, in the alternative, to treat its appeal and stay motion as a petition for a writ of mandamus. C.A. Gov’t Emergency Mot. 21-22. The district

court’s extraordinary order—sweeping so broadly, requiring immediate compliance, and entered without consideration of the court’s jurisdiction—readily satisfies the mandamus standard. See *Cheney v. United States Dist. Ct. for D.C.*, 542 U.S. 367, 380-381 (2004). If the government could not directly challenge the district court’s order, it would have “no other adequate means to attain the relief [it] desires.” *Id.* at 380 (citation omitted). The government’s right to relief is also “clear and indisputable” in light of the district court’s lack of jurisdiction and outright refusal to consider the jurisdictional question before ordering sweeping relief. *Id.* at 381 (citation omitted). And mandamus is “appropriate under the circumstances” because the district court’s actions “threaten the separation of powers.” *Ibid.*

* * *

In short, the district court’s order exceeds the district court’s jurisdiction and directs the government to immediately release billions of dollars of payments without permitting the Executive Branch to conduct review needed to ensure the legitimacy of those expenditures. The court also flouts the limitations of Article III by ordering the government to fulfill funding obligations entirely unrelated to respondents and their members. That unlawful order is unlikely to survive this Court’s review.

B. The Other Factors Support Relief From The District Court’s Order

In deciding whether to grant emergency relief, this Court also considers whether the underlying issues warrant its review, whether the applicant likely faces irreparable harm, and, in close cases, the balance of equities. See *Hollingsworth*, 558 U.S. at 190. Each of those factors overwhelmingly supports relief here.

1. The issues in this case warrant the Court’s review

The district court’s order directs agencies to process nearly \$2 billion in contract payments in less than 36 hours, an arbitrary timeline that is not tailored to the

underlying requests and effectively precludes the agencies from exercising their lawful authority to ensure that those payments are legitimate. This Court routinely intervenes in cases in which lower courts have attempted to direct the functioning of the Executive Branch. See, e.g., *Heckler v. Lopez*, 463 U.S. 1328, 1329 (1983) (Rehnquist, J., in chambers) (granting stay of district court order requiring Secretary of Health and Human Services “immediately to reinstate benefits to the applicants” and mandating that the Secretary then make certain showings “before terminating benefits”); cf. *Trump v. Sierra Club*, 140 S. Ct. 1 (2019) (granting stay of district court order enjoining the Department of Defense from undertaking any border-wall construction using funding the Acting Secretary transferred pursuant to statutory authority); *INS v. Legalization Assistance Project*, 510 U.S. 1301, 1305-1306 (1993) (O’Connor, J., in chambers) (granting stay of district court order requiring INS to engage in certain immigration procedures, as “an improper intrusion by a federal court into the workings of a coordinate branch of the Government”). This case involves intrusions on a far greater scale. It therefore necessarily presents an issue that likewise would warrant this Court’s review.

2. The district court’s order causes irreparable harm to the Executive Branch

The district court’s order represents an extraordinary usurpation of the President’s authority, causing significant and irreparable harm.

Under the guise of “enforcing” its TRO, the district court ordered the government to, “[b]y 11:59 p.m.” today, “pay all invoices and letter of credit drawdown requests on all contracts for work completed prior to the entry of the Court’s [order] on February 13.” App., *infra*, 85a-86a. Although the previous order did not address or resolve claims under any specific funding instruments—or even *identify* them—the

court ordered the government to “permit and promptly pay letter of credit drawdown requests and requests for reimbursements on grants and assistance agreements.” *Id.* at 86a. The government’s understanding is that the universe of potential payments encompassed by this order—which is not limited to requests submitted by respondents—approaches \$2 billion, although it is difficult to be certain given the vagueness of the order and the difficult of identifying its bounds. See App., *infra*, 97a.

This new order requiring payment of enormous sums of foreign-assistance money in less than 36 hours intrudes on the prerogatives of the Executive Branch. The President’s power is at its apex—and the power of the judiciary is at its nadir—in matters of foreign affairs. See *American Ins. Ass’n v. Garamendi*, 539 U.S. 396, 414 (2003) (“[T]he historical gloss on the ‘executive Power’ * * * has recognized the president’s ‘vast share of responsibility for the conduct of our foreign relations.’”) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 610-611 (1952) (Frankfurter, J., concurring)); *Chicago & Southern Air Lines, Inc. v. Waterman S.S. Corp.*, 333 U.S. 103, 111 (1948) (observing that foreign policy decisions are “of a kind for which the Judiciary has neither aptitude, facilities nor responsibility and which has long been held to belong in the domain of political power not subject to judicial intrusion or inquiry”); *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 320 (1936) (describing “the very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations”). Here, the district court’s order blocks the Executive Branch not only from ensuring that foreign-aid payments are consistent with the President’s policy priorities, but from conducting even basic diligence to ensure that payments are free from fraud and abuse.

Relevant agency leadership have determined that, “[h]istorically, USAID had limited and insufficient payments control or review mechanisms,” which led to payments being made “without sufficient opportunity for payments integrity or program review.” D. Ct. Doc. 22-1, at 2. Agency leadership has determined that those “system deficiencies and inability to provide complete information” have “led to serious questions about waste, fraud, abuse, and even illegal payments.” *Ibid.* For example, agency leadership’s “understanding is that some payment requests are not supported by any documentation”—or are supported by “inadequate documentation to show actual work performed, compliance with the terms of the relevant contract or award, and the like.” App., *infra*, 103a. As a result, “USAID is in the process of adopting a comprehensive review process for assuring payment integrity and determining that payments under existing contracts and grants are not subject to fraud.” D. Ct. Doc. 22-1, at 3. Agency leadership has determined that payments “will be released as they are processed through” this comprehensive review structure. *Ibid.* None of this is inconsistent with the terms of the district court’s original temporary restraining order.

Similarly, agency leadership has “implemented revisions to the system for disbursements of foreign assistance funds” from the State Department. D. Ct. Doc. 22-1, at 7. Those “new procedures” are intended to “ensure payments are both in compliance with policy and have the appropriate management controls”—controls that “are intended to assure payment integrity and determine that payments under existing contracts and grants are not subject to fraud or other bases for termination.” *Ibid.* As with USAID, the record reflects that the State Department has begun processing legitimate payments through these new systems—including “authoriz[ing] or request[ing] the disbursement of \$112.9 million” between January 24 and February 18.

Id. at 8. Again, none of this is inconsistent with the terms of the district court’s original temporary restraining order against the funding pause.

The district court’s order disregards the Executive Branch’s serious interest in ensuring that payments are made only for legitimate expenses and bypasses the Executive’s procedures for reviewing payments. By requiring that the government make nearly \$2 billion payments by 11:59 p.m. tonight—less than 36 hours after entry of the court’s order—the court has precluded the government from scrutinizing the relevant invoices or conducting a payment-by-payment analysis to ensure the legitimacy of all payments. As a result, the government faces the possibility of being forced to expend enormous sums of taxpayer dollars without knowing whether those payments are even for legitimate expenses. And even setting that serious concern aside, agency officials have stated that the payment of all outstanding amounts by tonight is not logistically or technically feasible.

To be clear, the government is committed to paying for work that was properly completed, so long as the claims are legitimate. To that end, the State Department will make about \$4 million in payments to two respondents today, which will take approximately two days to process. *App.*, *infra*, 153a. And USAID has been authorized by the Secretary to pay more than \$11 million on respondents’ other invoices, which the agency estimates will be fully issued within two weeks. *Ibid.* But USAID’s payment systems involve “the need to manually identify, review, and pull each invoice,” and thus take time. *Id.* at 146a. “[T]his process has already begun and is being prioritized by the agency.” *Ibid.* Yet the court’s latest order requires the government to make thousands more payments immediately, on an untenable timeline, and without conducting review that the Executive Branch has deemed critical for fraud, abuse, payments without documentation, and other problems.

The order's universal scope amplifies the harms to the government. As explained, the district court ordered the government to immediately make payments not just on any outstanding obligations to respondents but on thousands of obligations to absent parties. See pp. 14-15, *supra*. That breadth substantially increases the financial burden on the government. Agency leadership estimates that the order requires the payment of nearly \$2 billion on thousands of payment requests that have been nowhere identified and extend well beyond the respondents and even their organizational members. App., *infra*, 97a. The order's reach also impedes case-by-case analysis for all payment requests, and makes it impossible for the government to conduct such an analysis by the court's arbitrary 11:59 p.m. deadline.

That breadth is particularly inexplicable and unnecessary because, had the court tailored its order to provide relief for only respondents and their members, the order would have imposed much smaller financial and administrative burdens on the government. The State Department is already prepared to issue \$4 million in payments to two respondents today, which should be received in two days. App., *infra*, 153a. Instead, the court reached out far beyond its jurisdiction and ordered relief that will impose more substantial harms on the government, and by extension, the public.

b. The harms to the government and the public that will result from the district court's order likely cannot be unwound. Even apart from the order's intrusion on the government's sovereign interests, the order threatens to require the government to release billions of dollars in federal funds without confirming that those payments are for legitimate expenses. See p. 23, *supra*. And if the government later discovers that particular payments did reflect fraud or abuse, there would be no guarantee that the funds would be retrievable from the recipients after the fact. The

agencies report that the prospect of recovery is particularly uncertain given that “many USAID programs involve sub-awards,” making it “likely that any funds disbursed would soon be transferred to third-party sub-vendors and contractors.” App., *infra*, 105a. That “[c]ontractual counterparties and grant recipients are often overseas” only adds to the uncertainty of recovery. *Ibid.* In addition, to the extent that respondents have claimed “that many grant recipients and contractual counterparties are insolvent or nearly so,” that raises the possibility that “they will immediately spend any funds they receive—making it impossible for the Government to recover those funds as a practical matter.” *Ibid.*

3. Granting relief would not irreparably harm respondents

Conversely, respondents have not established that the district court’s order is necessary to protect them from irreparable harm. If respondents believe that the government has failed to make timely payments for work already performed on contracts or quasi-contractual funding instruments, they may be able to pursue claims under the Contract Disputes Act or the Tucker Act, under the specific procedures that those statutes provide. See pp. 11-13, *infra*. Agency leadership has confirmed that the State Department and USAID are “prepared to entertain such claims and seek resolution.” App, *infra*, 104a. And the CDA in particular is designed to ensure quick resolution of claims: it requires administrative contracting officers to adjudicate claims brought under that statute “within 60 days” for claims less than \$100,000, and within a reasonable time for larger claims. 41 U.S.C. 7103(f). Respondents will therefore have the opportunity to recover that Congress has provided if the government wrongly fails to make prompt payment on their legitimate claims. That “possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, [weighs] heavily against a claim of irrepa-

rable harm.” *Dennis Melancon, Inc. v. City of New Orleans*, 703 F.3d 262, 279 (5th Cir. 2012) (citation omitted), cert. denied, 569 U.S. 994 (2013).

C. This Court Should Grant An Administrative Stay

At a minimum, the Acting Solicitor General respectfully requests that this Court grant an administrative stay while it considers applicants’ submission. The Executive Branch takes seriously its constitutional duty to comply with the orders of Article III courts. The government is undertaking substantial efforts to review payment requests and release payments. Officials at the highest levels of government are engaged on this matter. And as described above, agency leadership has reported that the agencies have been “expeditiously examining” individualized contracts and have even bypassed ordinary protocols to allow payment to respondents. App., *infra*, 145a.

But the district court’s imminent and arbitrary deadline makes full compliance impossible. Even assuming all of the relevant payment requests are legitimate, agency leadership has determined that the ordered payments “cannot be accomplished in the time allotted by the” district court. App., *infra*, 146a. That is because “restarting funding related to terminated or suspended agreements is not as simple as turning on a switch or faucet,” but instead requires multiple steps, involves multiple agencies, and requires substantial documentary evidence. *Id.* at 146a-147a. An administrative stay is warranted to ensure that the agencies are not placed in the position of violating a federal court order requiring payments on thousands of requests within a 30-some-hour deadline, despite their efforts, while this Court reviews the merits of their challenge.

CONCLUSION

This Court should vacate the district court's February 25, 2025 order granting respondents' motion to enforce the February 13, 2025 temporary restraining order. In addition, the Acting Solicitor General respectfully requests an immediate administrative stay of the district court's order pending the Court's consideration of this application.

Respectfully submitted.

SARAH M. HARRIS
Acting Solicitor General

FEBRUARY 2025

APPENDIX

District court order granting temporary restraining order (D.D.C. Feb. 13, 2025)	1a
District court order granting in part and denying in part motion to enforce the temporary restraining order and for contempt (D.D.C. Feb. 20, 2025)	16a
District court order denying defendants' motion to clarify temporary restraining order (D.D.C. Feb. 22, 2025).....	23a
District court motion hearing transcript and order from the bench (D.D.C. Feb. 25, 2025)	29a
District court order denying motion for stay pending appeal (D.D.C. Feb. 26, 2025)	89a
Supplemental declaration of Peter Marocco (D.D.C. Feb. 25, 2025)	96a
Joint status report (D.D.C. Feb. 26, 2025).....	130a
Supplemental declaration of Peter Marocco (D.D.C. Feb. 26, 2025)	151a

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AIDS VACCINE ADVOCACY
COALITION, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
STATE, *et al.*,

Defendants.

Civil Action No. 25-00400 (AHA)

GLOBAL HEALTH COUNCIL, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

Civil Action No. 25-00402 (AHA)

Order

Plaintiffs in *Global Health Council v. Trump*, No. 25-cv-00402, are (or represent) small and large businesses, nonprofits, and other organizations across the United States. Plaintiffs in *AIDS Vaccine Advocacy Coalition v. United States Department of State*, No. 25-cv-00400, are health and journalistic nonprofits that receive federal grant money to perform foreign assistance work. In both cases, Plaintiffs have brought claims under the Administrative Procedure Act (APA) and federal Constitution challenging the issuance and implementation of Executive Order 14169, which immediately stopped all congressionally appropriated foreign assistance funding pending future review. *AIDS Vaccine*, ECF No. 1 ¶¶ 45–73; *Glob. Health*, ECF No. 1 ¶¶ 111–31. Plaintiffs

in both cases have moved for a temporary restraining order, with evidence detailing the devastating effects on American businesses and nonprofits, which have been forced to shut down programs, to furlough or lay off employees, and in some instances to shutter altogether as a result of the challenged action. *See AIDS Vaccine*, ECF No. 13 at 7–8; *Glob. Health*, ECF No. 4 at 15–17. Plaintiffs’ proposed temporary restraining orders originally sought to enjoin all Defendants, including the President, from enforcing the Executive Order in its entirety. *AIDS Vaccine*, ECF No. 13-6; *Glob. Health*, ECF No. 4-1. The Court held a prompt hearing, at which the Government rightly highlighted the importance of respecting the President’s Article II power, while also recognizing that the harms Plaintiffs described may well be irreparable. During the hearing, the Court questioned the breadth of Plaintiffs’ proposed relief, which Plaintiffs have since narrowed. For the reasons below, the Court grants Plaintiffs’ motions for a temporary restraining order in part, on narrower terms than Plaintiffs originally and subsequently requested.

I. Background

Each year, Congress appropriates billions of dollars of funds for foreign assistance, which are then administered by the U.S. Agency for International Development (USAID) and the U.S. Department of State. *Glob. Health*, ECF No. 1 ¶ 3. USAID “is the lead international humanitarian and development arm of the U.S. government.” Cong. Rsch. Serv., IF10261, *U.S. Agency for International Development: An Overview* 1 (Jan. 6, 2025). Among other things, it “provides assistance to strategically important countries and countries in conflict” and “leads U.S. efforts to alleviate poverty, disease, and humanitarian need.” *Id.* Most USAID projects are administered through grants, cooperative agreements, or contracts with partner organizations. *Id.*

On January 20, 2025, the President issued an executive order entitled “Reevaluating and Realigning United States Foreign Aid.” Exec. Order No. 14169, 90 Fed. Reg. 8619 (Jan. 20, 2025).

The order directed an immediate pause in “United States foreign development assistance” and directed the Office of Management and Budget (OMB) to “enforce this pause through its apportionment authority.” *Id.* § 3(a). The order further directs responsible department and agency heads to review each foreign assistance program and to determine within 90 days of the order “whether to continue, modify, or cease each foreign assistance program,” in consultation with the Director of OMB and with the concurrence of the Secretary of State. *Id.* §§ 3(b), (c). The order provides that the Secretary of State has authority to waive the pause “for specific programs” and allows for new obligations or the resumption of disbursements during the 90-day review period, if a review is conducted sooner and the Secretary of State, in consultation with the Director of OMB, approves. *Id.* §§ 3(d), (e).

In the days that followed, agency officials took actions to institute an immediate suspension of all congressionally appropriated foreign aid. The Secretary of State issued a memorandum suspending all new funding obligations, pending a review, for foreign assistance programs funded by or through the State Department and USAID. *Glob. Health*, ECF No. 1 ¶ 42. USAID officials also issued instructions to pause new funding, immediately issue stop-work orders, and develop appropriate review standards. *Id.* ¶¶ 41, 44–45. The OMB’s acting director issued a memorandum ordering a temporary pause of all federal financial assistance, including assistance for foreign aid and nongovernmental organizations.” *Id.* ¶ 47. According to the *Global Health* complaint, Defendants have “halt[ed] the obligation and disbursement of foreign-assistance funding wholesale.” *Id.* ¶ 56. Plaintiffs have adduced evidence of numerous letters terminating programs and contracts received as a result of these actions. *See, e.g., Glob. Health*, ECF No. 7-4 at 2, 5, 7, 13. A list Defendants provided to the Court shows that roughly 230 contracts and grants were terminated in just the two days after they were sued, and Defendants say that list does not include

the contracts and grants cancelled by the State Department and may not reflect all the contracts cancelled by USAID in those two days. *Glob. Health*, ECF Nos. 20, 20-1.

Plaintiffs claim that they have suffered and will continue to suffer enormous and concrete harm to their businesses, and that their core missions and existence are in jeopardy as a result of Defendants' actions. Among other things, Plaintiffs have provided evidence that they have been and will continue to be forced to shut down program offices, to furlough or terminate staff, and in some cases to shutter their businesses entirely. *See Glob. Health*, ECF No. 4 at 20–23. They have also provided supporting evidence that Defendants' actions have had and will continue to have a catastrophic effect on the humanitarian missions of several plaintiffs. *See id.* at 15–19.

Plaintiffs seek a temporary restraining order enjoining Defendants from implementing, enforcing, or otherwise giving effect to Executive Order 14169 and subsequent instructions and clarifications issued by the State Department and USAID. The Court held a hearing in both cases on February 12, 2025. Following the hearing, Plaintiffs submitted revised proposed orders that narrowed the scope of their requested relief. *AIDS Vaccine*, ECF No. 16-1; *Glob. Health*, ECF No. 18.

II. Legal Standard

The grant of temporary injunctive relief is “an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). A plaintiff seeking a temporary restraining order must make the same showing as he would if seeking a preliminary injunction: he must establish “that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of

preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Gordon v. Holder*, 632 F.3d 722, 724 (D.C. Cir. 2011).¹

III. Discussion

At least at this early stage, the Court finds Plaintiffs have met their burden for temporary, emergency relief, although not with the breadth they initially or subsequently proposed.

The Court begins with irreparable harm, given the scale of the disruption Plaintiffs have described. Plaintiffs attest Defendants’ blanket suspension of congressionally appropriated funds has caused them immense financial harm and has, in many cases, forced them to significantly cut down on staff or otherwise reduce core operations. Plaintiffs do not assert this harm based upon expectations of receiving future grants or aid; they do so upon expectations set in existing contracts with the respective agencies. To give just a few examples from the record:

- One plaintiff, a large investigative journalism organization, has agreements with USAID and the State Department that constitute 38% of its budget, which supports investigations into corruption, sanction violations, and other wrongdoing. *AIDS Vaccine*, ECF No. 13-4 ¶¶ 2, 6–7, 9. Due to the suspension of appropriated funding and stop-work orders received as a result, the organization has been forced to cut 43 of 199 staff members, with most remaining being moved to a shorter work week. *Id.* ¶ 12. The organization has had to cancel events, cut travel for reporting, and freeze new equipment purchases. *Id.* The organization attests that the disruption will continue absent relief. *Id.* ¶ 13.
- A nonprofit plaintiff focused on protecting refugees and asylum seekers has had to lay off 535 staff members since receiving termination notices for multiple grants. *Glob. Health*, ECF No. 7-3 ¶¶ 3–4, 13. It has been forced to shutter program offices and defer payments to vendors. *Id.* ¶ 21.

¹ At the hearing on these motions, Plaintiffs noted that courts in this Circuit have sometimes employed a “sliding scale” approach to these factors, which was particularly common before the Supreme Court’s decision in *Winter*. See *Nat’l Council of Nonprofits v. Off. of Mgmt. & Budget*, ___ F. Supp. 3d ___, No. 25-cv-239, 2025 WL 368852, at *9 (D.D.C. Feb. 3, 2025) (quoting *Sherley v. Sebelius*, 644 F.3d 388, 392 (D.C. Cir. 2011)). However, the Court’s resolution of these motions does not depend on a sliding scale method and arrives at the same place when each prong is evaluated as “an independent, free-standing requirement.” *Sherley*, 644 F.3d at 393 (citation omitted).

- Another plaintiff representing small businesses across all sectors attests that the suspension included USAID failing to pay its member organizations for months of unpaid invoices. *Glob. Health*, ECF No. 7-2 ¶ 8. This has forced small businesses to furlough “most U.S. national staff in home offices and on contracts, and terminate foreign national staff or risk keeping them and being uncertain of payments under stop work orders.” *Id.* ¶ 10.
- Another plaintiff focused on addressing the global HIV/AIDS epidemic has already been forced to lay off seven employees and will lay off ten more over the next month if the suspension of appropriated foreign aid continues. *AIDS Vaccine*, ECF No. 13-2 ¶ 12.

Other plaintiffs have described how the blanket suspension of funds has undermined their core missions and jeopardized vital services to vulnerable populations. For example:

- One plaintiff asserts that the suspension of appropriated foreign aid has disrupted critical health programs, including maternal and child health programs and infectious disease prevention efforts administered by its member organizations. *Glob. Health*, ECF No. 7-1 ¶ 8. One of those member organizations reports that a \$20 million project to support the development of hospital accreditation in Cambodia has been suspended. *Id.* Another reports that a stop-work order has disrupted a total of \$4 million in funding for American Schools and Hospitals Abroad grants in Nepal and Vietnam. *Id.* The plaintiff organization attests that the suspension of appropriated foreign aid funding “is an existential threat to [its] members and their life-saving work.” *Id.* ¶ 11.
- Another plaintiff reports that it can no longer fund shelters for minors in Central America trying to escape recruitment into criminal gangs. *Glob. Health*, ECF No. 7-7 ¶ 10.
- A different plaintiff explains that it has abruptly stopped providing medical services for hundreds of adolescents and young students in need in Bangladesh. *Glob. Health*, ECF No. 7-8 ¶ 12(a).
- An additional plaintiff attests that the freeze has delayed several time-sensitive antimalaria campaigns that are expected to benefit millions of people in Kenya, Uganda, Ghana, Ethiopia, and Zimbabwe. *Glob. Health*, ECF No. 7-1 ¶ 8(d).
- Another plaintiff that supports HIV prevention research and the rollout of HIV prevention medication to high-risk communities in various African countries asserts that the funding freeze has disrupted clinical trials and the rollout of life-saving medication. *AIDS Vaccine*, ECF No. 13-2 ¶¶ 3–4, 11.

At the Court’s hearing, Defendants acknowledged that the types of harms above affecting Plaintiffs’ businesses, as well as the availability of food and medicine, are types of harm that are appropriately considered in the irreparable harm inquiry. Defendants offered that some of the contracts terminated might have included clauses that allowed them to be terminated in certain circumstances, but also acknowledged that the approach taken was blanket and not limited to such contracts.²

Plaintiffs have further adduced evidence that this harm has taken place and is likely to continue despite the Secretary of State’s authority to waive the suspension of appropriated funds for specific programs. *See Glob. Health*, ECF No. 17-1 at 21. They have proffered specific facts that this has not meaningfully mitigated the harm they have described. One plaintiff, for example, attests to a meeting with the State Department to discuss what activities would qualify for a waiver and thus be exempted from suspension. *Glob. Health*, ECF No. 7-3 ¶ 11. The officer contacted stated that he could not provide any information regarding the application of the waiver. *Id.* ¶¶ 11–12. The plaintiff further attests that even in the event of a waiver, no funds could be disbursed because federal government payout portals are no longer functioning. *Id.* ¶ 11. Another plaintiff

² While not necessary to the Court’s analysis given the extensive and, at least to date, unrebutted evidence of other types of irreparable harm, Plaintiffs have also offered evidence that they will suffer harm to “goodwill, reputation, and relationships with employees, partners, subcontractors, foreign governments, and other stakeholders.” *Glob. Health*, ECF No. 4 at 23. This includes concrete examples such as having to violate contractual duties by deferring payments to suppliers, vendors, and landlords, *Glob. Health*, ECF No. 7-6 ¶¶ 10, 15; disruptions to relationships with longstanding partners whose trust had been cultivated over decades, *id.*; and having to go back on previous assurances made to clients and partners in reliance on the agreements that have now been cancelled, *Glob. Health*, ECF No. 7-9 ¶ 21. *See Armour & Co. v. Freeman*, 304 F.2d 404, 406 (D.C. Cir. 1962) (holding that irreparable harm was apparent where defendant’s conduct “could not fail to damage [plaintiff’s] good name”); *Atlas Air, Inc. v. Int’l Bhd. of Teamsters*, 280 F. Supp. 3d 59, 103 (D.D.C. 2017) (“Injury to reputation can, at least at times, rise to the level necessary to support the issuance of an injunction.”); *Xiaomi Corp. v. Dep’t of Def.*, No. CV 21-280, 2021 WL 950144, at *9 (D.D.C. Mar. 12, 2021) (collecting cases).

attests that it received a waiver, but was told that the waiver lasted only for a thirty-day period. *Glob. Health*, ECF No. 7-6 ¶ 6. The plaintiff explains that such waivers do not address the problem because a business cannot halt global supply chains midstream and then resume operations with uncertainty as to whether it will have to halt again in thirty days. *Id.* At the hearing, Defendants pointed to the waiver process but did not rebut this evidence, acknowledging that the waiver process may have had “hiccups.” At this stage, the record before the Court does not suggest that the waiver process in place has mitigated the irreparable harms Plaintiffs face.

Plaintiffs have made a sufficient preliminary showing that the loss of funding at issue in this litigation “threatens the very existence of [their] business.” *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985). And they have likewise shown that the “obstacles” created by Defendants’ conduct “make it more difficult for the [plaintiffs] to accomplish their primary mission.” *League of Women Voters of United States v. Newby*, 838 F.3d 1, 9 (D.C. Cir. 2016). The *Global Health* Plaintiffs have also adduced evidence indicating that terminations and resulting harms have continued, and possibly increased, in the two days since this lawsuit was filed. Since the filing of their motion for a temporary restraining order, multiple plaintiffs that had not previously received terminations or stop-work orders have started to receive them. *See Glob. Health*, ECF No. 19 at 3. At the request of the Court, Defendants submitted documentation showing that just in the two days after they were sued, they have cancelled roughly 230 additional contracts, which Defendants say do not include the contracts cancelled by the State Department and may not reflect all the contracts cancelled by USAID in those days. *Glob. Health*, ECF Nos. 20, 20-1. Absent temporary injunctive relief, therefore, the scale of the enormous harm that has already occurred will almost certainly increase. Plaintiffs have made a strong preliminary showing of irreparable harm.

It also appears, at least at this early stage, that Plaintiffs are likely to succeed on the merits. Between the two cases, Plaintiffs challenge the actions at issue as (1) arbitrary and capricious in violation of the APA; (2) contrary to law in violation of the APA; (3) in violation of the separation of powers; (4) in violation of the Constitution's Take Care Clause; and (5) *ultra vires*. *AIDS Vaccine*, ECF No. 1 ¶¶ 45–73; *Glob. Health*, ECF No. 1 ¶¶ 111–31. The Court need only find that Plaintiffs are likely to succeed on one of these claims for this factor to weigh in favor of a temporary restraining order. That said, as the Court emphasized at the hearing and Plaintiffs acknowledged, any relief should also be tailored accordingly.³

The APA permits judicial review of “final agency action” and requires a court to “hold unlawful and set aside agency action, findings, and conclusions” that are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. §§ 704, 706(2)(A). “The scope of review under the ‘arbitrary and capricious’ standard is narrow and a court is not to substitute its judgment for that of the agency.” *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Rather, the court “must confirm that the agency has fulfilled its duty to examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.” *Ark Initiative v. Tidwell*, 816 F.3d 119, 127 (D.C. Cir. 2016) (quotation marks omitted) (quoting *State Farm*, 463 U.S. at 43). “[A]n agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency,

³ Both parties will, of course, have the opportunity to develop their claims further at the preliminary injunction phase, where the record and therefore the appropriate relief may well evolve, and to develop them further as the case continues.

or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Id.* (alteration in original) (quoting *State Farm*, 463 U.S. at 43).

Here, the stated purpose in implementing the suspension of all foreign aid is to provide the opportunity to review programs for their efficiency and consistency with priorities. However, at least to date, Defendants have not offered any explanation for why a blanket suspension of all congressionally appropriated foreign aid, which set off a shockwave and upended reliance interests for thousands of agreements with businesses, nonprofits, and organizations around the country, was a rational precursor to reviewing programs. The most Defendants offer is the possibility that some of the abruptly terminated contracts might have had clauses which allowed termination in certain circumstances; however, as noted, Defendants have acknowledged that they implemented a blanket suspension that was not based on the presence or consideration of such contractual terms. To be sure, there is nothing arbitrary and capricious about executive agencies conducting a review of programs. But there has been no explanation offered in the record, let alone a “satisfactory explanation . . . including a rational connection between the facts found and the choice made,” as to why reviewing programs—many longstanding and taking place pursuant to contractual terms—required an immediate and wholesale suspension of appropriated foreign aid.

Plaintiffs have also shown that implementation of the blanket suspension is likely arbitrary and capricious given the apparent failure to consider immense reliance interests, including among businesses and other organizations across the country. No aspect of the implemented policies or submissions offered by Defendants at the hearing suggests they considered and had a rational reason for disregarding the massive reliance interests of the countless small and large businesses that would have to shutter programs or shutter their businesses altogether and furlough or lay off swaths of Americans in the process. In their implementation of the blanket suspension of foreign

aid, Defendants accordingly appear to have “entirely failed to consider an important aspect of the problem.”

At the Court’s hearing, Defendants’ principal argument was that the State Department’s and USAID’s actions taken to implement a blanket suspension of appropriated foreign aid funds should not be considered “agency action” within the meaning of the APA. Defendants observe that the President’s own actions are not reviewable under the APA because the President is not an “agency.” *See Franklin v. Massachusetts*, 505 U.S. 788, 800–01 (1992). It follows, they say, that an agency’s actions implementing Presidential directives should not be considered agency action. At least at this juncture, that argument does not appear persuasive. Defendants do not ground their argument in the text of the APA, which specifically defines “agency” to include “each authority of the Government of the United States.” 5 U.S.C. § 551(1). While it is true that implementation of the blanket suspension of appropriated funds took place in accordance with Presidential policy and priorities, as agency action routinely does, the relevant directive of the Secretary of State and subsequent determinations of agency heads have immediate effect and constitute the action under review, without any further action by the President. And Defendants’ argument, at least as it has been articulated to date, proves too much—it would allow the President and agencies to simply reframe agency action as orders or directives originating from the President to avoid APA review.⁴

Defendants will, of course, have an opportunity to more fully develop this argument as it relates

⁴ Defendants’ argument also presupposes that this is an area where the President has exclusive authority and runs into Plaintiffs’ contention that the President was acting in violation of the separation of powers because he “does not have unilateral authority to refuse to spend the funds” Congress appropriates. *In re Aiken County*, 725 F.3d 255, 261 n.1 (D.C. Cir. 2013). As Plaintiffs point out, even just a 90-day review period would extend past the date that relevant appropriations are due to expire and therefore funds would literally be unspent. The Court expects Defendants will give further shape to this argument as this litigation continues to the preliminary injunction phase.

to the particular actions in this case at the preliminary injunction stage. For now, however, Plaintiffs have shown that they are likely to succeed in their argument that the implementation of the suspension of congressionally appropriated foreign aid violated the APA.

The final two factors—balancing the equities and the public interest—often overlap in the context of an action to enjoin the government. *See Pursuing Am.’s Greatness v. FEC*, 831 F.3d 500, 511 (D.C. Cir. 2016); *D.A.M. v. Barr*, 474 F. Supp. 3d 45, 67 (D.D.C. 2020). Here, there are important interests on both sides, but the factors, at least at this stage, again favor Plaintiffs. Defendants have repeatedly, and rightly, emphasized the importance of respecting the President’s Article II power as it relates to foreign policy. Plaintiffs, for their part, have emphasized the Constitution’s separation of powers, which also demands respect for Congress’s Article I role in legislating, including Congress’s choice to allow judicial review through the APA and other statutes constraining the Executive Branch, as well as Congress’s important role in appropriating funds. Ultimately, Plaintiffs have adduced, and Defendants have not (yet) meaningfully contested, detailed and credible evidence of harm to countless American businesses, ranging from shutting down programs, to furloughing and laying off employees, to shuttering altogether. Plaintiffs also detailed the existential consequence to their missions, which may endanger the health and safety of children and other vulnerable populations. At the Court’s hearing, Defendants did not dispute the likelihood of those consequences, although they looked forward to having more time to develop a record in response as the proceedings continue. And on the other side, Defendants did not argue or adduce evidence that any concrete, real-world harm will take place in the event temporary relief is granted. Notwithstanding the important principles on both sides, which will continue to be given careful consideration, Plaintiffs’ credible and un rebutted evidence of harm, and the absence of any

such evidence on the other side, tilts both the balance of equities and the public interest in their favor.

IV. Conclusion

For the foregoing reasons, Plaintiffs' motions for a temporary restraining order are denied in part and granted in part.

Plaintiffs' initial proposed relief asked the Court to enjoin the President and enforcement or implementation of Executive Order 14169. The Court does not find it appropriate or necessary to enjoin the President or the Executive Order itself. Given the breadth of the relief initially sought by Plaintiffs, the Court also makes clear that it does not enjoin the President's or Secretary of State's statements of purpose or policy, nor does the Court enjoin any aspect of the Government's ability to conduct a comprehensive internal review of government programs. While Plaintiffs have made the showing required for a temporary injunction, such relief would not be adequately tailored to the showing made at this stage.

The Court finds Plaintiffs have satisfied their burden for a narrower injunction concerning the implementation of the blanket suspension of foreign aid funding, as specified below. However, the Court also finds Plaintiffs' proposed injunctions overbroad by including specific directives regarding USAID personnel decisions or operational details. *See Glob. Health*, ECF No. 4-1 (proposed language enjoining Defendants from "terminating, furloughing, or placing personnel on administrative leave" and ordering Defendants to clear "any administrative, operational, human resource, or technical hurdles"); *Glob. Health*, ECF No. 18 (revised proposal, including the same language). Plaintiffs appear to be including such language to ensure meaningful compliance with the Court's order; however, directives as to such specific operational details are overbroad in the

absence of evidence of non-compliance. As specified below, it is sufficient to order Defendants to take all necessary steps to carry out the Court's order.

Finally, at the hearing, Defendants noted that some contracts at issue may include terms that allow them to be modified or terminated in certain circumstances. The Court finds on this record that it would be overbroad to enjoin Defendants from taking action to enforce the terms of particular contracts, including with respect to expirations, modifications, or terminations pursuant to contractual provisions.

Consistent with the reasoning above, it is hereby **ORDERED** that Defendants Marco Rubio, Peter Marocco, Russell Vought, the U.S. Department of State, the U.S. Agency for International Development, and the Office of Management and Budget (the "Restrained Defendants") and their agents are temporarily enjoined from enforcing or giving effect to Sections 1, 5, 7, 8, and 9 of Dep't of State, Memorandum, 25 STATE 6828 (Jan. 24, 2025) and any other directives that implement Sections 3(a) and 3(c) of Executive Order Number 14169, "Reevaluating and Realigning United States Foreign Aid" (Jan. 20, 2025), including by:

- 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; or
- issuing, implementing, enforcing, or otherwise giving effect to terminations, suspensions, or stop-work orders in connection with any contracts, grants, cooperative agreements, loans, or other federal foreign assistance award that was in existence as of January 19, 2025.

It is further hereby **ORDERED** that nothing in this order shall prohibit the Restrained Defendants from enforcing the terms of contracts or grants.

It is further hereby **ORDERED** that the Restrained Defendants shall take all steps necessary to effectuate this order and shall provide written notice of this order to all recipients of existing contracts, grants, and cooperative agreements for foreign assistance.

It is further hereby **ORDERED** that the Restrained Defendants shall file a status report by February 18, 2025, apprising the Court of the status of their compliance with this order, including by providing a copy of the written notice described above.

The parties shall meet and confer and file a joint status report by February 14, 2025, at 5:00 p.m. proposing an expedited preliminary injunction briefing schedule.



AMIR H. ALI
United States District Judge

Date: February 13, 2025

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AIDS VACCINE ADVOCACY
COALITION, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
STATE, *et al.*,

Defendants.

Civil Action No. 25-00400 (AHA)

GLOBAL HEALTH COUNCIL, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

Civil Action No. 25-00402 (AHA)

Order

The Court granted in part Plaintiffs’ motions for a temporary restraining order (“TRO”) in these two related cases on February 13, 2025. *AIDS Vaccine*, ECF No. 17; *see AIDS Vaccine Advoc. Coal. v. U.S. Dep’t of State*, No. 25-cv-00400, 2025 WL 485324 (D.D.C. Feb. 13, 2025). Defendants have filed a status report in both cases concerning their compliance with the Court’s order and have asked the Court to confirm their understanding that the TRO does not restrain Defendants’ “exercise of authorities under statutes, regulations, and other legal authorities.” *AIDS Vaccine*, ECF No. 22 ¶¶ 14–18; *Glob. Health*, ECF No. 25 ¶¶ 14–18. As discussed below, the TRO is clear, and Defendants are correct that it does not restrain the agencies’ exercise of authorities

under law. At the same time, of course, the TRO does not permit Defendants to simply search for and invoke new legal authorities as a post-hoc rationalization for the enjoined agency action. This is particularly so given that Defendants do not contend that any of the authorities bear on the justifications for granting the TRO—the authorities do not, for instance, have any effect on the Court’s finding of irreparable harm or whether the blanket suspension of congressionally appropriated funds pending review was arbitrary or capricious for failing to even consider the immense reliance interests at stake. The *AIDS Vaccine* Plaintiffs have moved to enforce the TRO and to hold Defendants in contempt. *AIDS Vaccine*, ECF No. 26. Defendants oppose the motion, arguing that they have been making good faith efforts to comply with the TRO in limited time. *AIDS Vaccine*, ECF No. 28. As discussed below, Plaintiffs’ motion is granted in part, insofar as Defendants have continued their blanket suspension of funds pending review of agreements, the very action that the TRO enjoined pending the parties’ requested briefing schedule and the Court’s prompt resolution of whether to issue a preliminary injunction. But the Court finds that contempt is not warranted on the current record and given Defendants’ explicit recognition that “prompt compliance with the order” is required. *Id.* at 8.

The Court’s TRO was clear. It found that Plaintiffs had satisfied their demanding burden for temporary injunctive relief, including by showing that Defendants’ blanket suspension of congressionally appropriated foreign aid pending a review had and would continue to cause irreparable harm and that the blanket suspension was likely arbitrary and capricious under the Administrative Procedure Act (APA) for failing to consider the immense reliance interests of businesses and organizations around the country. *AIDS Vaccine*, ECF No. 17 at 5–13. The Court ordered that Defendants and their agents are:

temporarily enjoined from enforcing or giving effect to [certain sections of the Secretary of State’s January 24, 2025, memorandum] and any other directives that implement Sections 3(a) and 3(c) of Executive Order Number 14169 . . . , including by:

- 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; or
- issuing, implementing, enforcing, or otherwise giving effect to terminations, suspensions, or stop-work orders in connection with any contracts, grants, cooperative agreements, loans, or other federal foreign assistance award that was in existence as of January 19, 2025.

Id. at 14. The Court explained, however, that while it was enjoining directives to suspend aid, it “would be overbroad to enjoin Defendants from taking action to enforce the terms of particular contracts, including with respect to expirations, modifications, or terminations pursuant to contractual provisions.” *Id.* It accordingly ordered that “nothing in this order shall prohibit the Restrained Defendants from enforcing the terms of contracts or grants.” *Id.* at 15.¹

In their status report, Defendants state that they “have begun an analysis of the thousands of contracts, grants, and cooperative agreements on which action was taken” pursuant to the Executive Order and other agency directives. *AIDS Vaccine*, ECF No. 22 ¶ 8. They state that “at least substantially all” of USAID’s actions and “a large share” of the State Department’s actions to terminate or suspend foreign aid contracts and grants could have been “allowed by the terms of those instruments or terms implicitly incorporated into those instruments.” *Id.* ¶¶ 9–10. Defendants also ask the Court to confirm their understanding that the TRO does not enjoin Defendants from

¹ The Court also narrowed the scope of the relief granted by declining to enjoin the President or the Executive Order itself; by temporarily enjoining enforcement only of specific sections of the Executive Order, the January 24 memorandum, and other directives concerning the blanket pause of congressionally appropriated funds; and by declining to issue any specific commands to Defendants regarding personnel decisions or operational details. *AIDS Vaccine*, ECF No. 17 at 13–14.

taking actions with respect to agreements based on “exercise of authorities under statutes, regulations, and other legal authorities,” consistent with the court’s order in *New York v. Trump*, No. 25-cv-00039, ECF No. 107, at 3 (D.R.I. Feb. 12, 2025) (confirming that the court’s temporary restraining order did not prevent the defendants from terminating funding “based on actual authority in the applicable statutory, regulatory, or grant terms” (emphasis omitted)). *AIDS Vaccine*, ECF No. 22 ¶ 14. They ask the Court to modify the TRO if necessary or, if the TRO restrains them from making grant decisions based on other legal authorities, to convert the TRO into a preliminary injunction to permit an immediate appeal. *Id.* ¶ 18.

As in the case Defendants point to, *New York v. Trump*, the Court’s TRO in this case does not restrain Defendants from taking action with respect to agreements based on their “exercise of authorities under statutes, regulations, and other legal authorities.” While the Court made clear that the agencies may take action on particular contracts pursuant to their contractual terms, it did so because Defendants had specifically raised that as a concern and in the interest of ensuring its temporary injunction was as tailored as possible to the irreparable harm and reliance interests that had been shown. However, nothing in the TRO limits the agencies from conducting an individualized review of agreements and taking action as to a particular agreement where the agency determines that it has lawful authority to do so. Having confirmed that the TRO does not restrain the agencies in this respect, the Court denies Defendants’ request to convert the TRO into a preliminary injunction as moot.²

² As in *New York v. Trump*, the Court emphasizes that Defendants are not required “to seek ‘preclearance’ from the Court before acting to terminate funding when that decision is based on actual authority in the applicable statutory, regulatory, or grant terms.” *New York*, ECF No. 107, at 3 (emphasis omitted). In that case, for example, the court saw no need for clarification of its order where the defendants represented that they “intend[ed] to provide notice to [a funding recipient] regarding the funding pause and will provide the information and process required by

At the same time, of course, the Court's TRO does not permit Defendants to simply continue their blanket suspension of congressionally appropriated foreign aid pending a review of the agreements for whether they should be continued or terminated. That is the very action that the Court temporarily enjoined because Plaintiffs had shown that blanket suspension pending review would cause irreparable harm and was likely arbitrary and capricious under the APA for failing to consider the massive reliance interests. *AIDS Vaccine*, ECF No. 17 at 5–13. By doing so, and by enjoining Defendants and their agents from implementing any directives to undertake such blanket suspension, the Court was not inviting Defendants to continue the suspension while they reviewed contracts and legal authorities to come up with a new, post-hoc rationalization for the *en masse* suspension. The Court notes that Defendants do not make any argument that the authorities they are examining bear on the Court's analysis of the TRO factors. To date, Defendants have not offered any evidence to rebut the showing of irreparable harm or that Defendants failed to consider the immense reliance interests in undertaking the blanket suspension. The Court stands prepared to consider such arguments and evidence at the preliminary injunction stage, on the briefing schedule the parties requested. In the meantime, however, to the extent Defendants have continued the blanket suspension, they are ordered to immediately cease it and to take all necessary steps to honor the terms of contracts, grants, cooperative agreements, loans, and other federal foreign assistance awards that were in existence as of January 19, 2025, including but not limited to disbursing all funds payable under those terms.

As the TRO states and the Court reiterates, Defendants may not simply replace their earlier implementations with "other directives" to their agencies to "suspend[], paus[e], or otherwise

regulation and the terms and conditions of the award." *Id.* (internal quotation marks and citation omitted).

prevent[] the obligation or disbursement of appropriated foreign-assistance funds” or “issu[e], implement[], enforc[e], or otherwise giv[e] effect to terminations, suspensions, or stop-work orders” as to programs in existence as of January 19, 2025. *Id.* at 14. The TRO does not preclude Defendants from undertaking a good-faith, individualized assessment of a contract or grant and, where the terms or authority under law allows, taking action with respect to that particular agreement consistent with any procedures required (including, for example, notice to contracting parties). But a new directive for the agencies to suspend or terminate contracts and grants is not consistent with the terms of the TRO and is appropriately enjoined for all the same reasons stated in the TRO.³


Plaintiffs’ motion to enforce the TRO is therefore granted to the extent Defendants have not complied with the terms of the TRO, as confirmed above. However, the Court finds contempt is not warranted on the current record and given Defendants’ explicit recognition that “prompt compliance with the order” is required. *AIDS Vaccine*, ECF No. 28 at 8.

Understandably given the early, emergency posture of these cases, the record and the parties’ arguments have been evolving quickly. The Court held a hearing within one day of being assigned to the cases and issued an order resolving the motions for a temporary restraining order the next day. As the Court emphasized throughout its earlier order, the parties’ arguments are still developing, and Defendants in particular have not yet offered refutations of Plaintiffs’ evidence or fully developed their arguments at this early stage. *See, e.g., AIDS Vaccine*, ECF No. 17 at 9 n.3,

³ The Court notes that while case-by-case action taken as to particular agreements based on their terms or other authorities might not give rise to the same problems under the APA because it would better account for reliance interests, it may have implications for Plaintiffs’ constitutional arguments, such as the failure to spend congressionally appropriated funds. As the Court explained in its TRO order, it expects those arguments to be developed further in the parties’ forthcoming preliminary injunction briefing. *AIDS Vaccine*, ECF No. 17 at 11 n.4.

11 n.4. The Court adopted in large part the parties' proposed briefing schedule for the preliminary injunction motions, giving Defendants until February 21, 2025, to brief those motions as they had requested, and shortening Plaintiffs' proposed reply deadline to noon on February 27, 2025, in the interest of proceeding as expeditiously as possible. The Court is prepared to hold a hearing on the preliminary injunction motions in both cases by March 4, 2025, and issue an opinion considering the full record and arguments before it with full dispatch. To facilitate this expedited schedule, and for the reasons stated in the Court's TRO order, the Court will set the expiration date for the TRO at 11:59 p.m. on March 10, 2025, or the date the Court resolves the preliminary injunction motions, whichever is sooner.

SO ORDERED.



AMIR H. ALI
United States District Judge

Date: February 20, 2025

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AIDS VACCINE ADVOCACY
COALITION, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
STATE, *et al.*,

Defendants.

Civil Action No. 25-00400 (AHA)

GLOBAL HEALTH COUNCIL, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

Civil Action No. 25-00402 (AHA)

Order

Defendants have moved for clarification or a stay pending emergency appellate relief of the Court’s orders dated February 13 (granting in part Plaintiffs’ motion for a temporary restraining order) and February 20, 2025 (granting in part the *AIDS Vaccine* Plaintiffs’ motion to enforce that order). *AIDS Vaccine*, ECF No. 32; *Glob. Health*, ECF No. 33. Specifically, Defendants state that they require clarification as to whether the Court’s orders “(1) prohibit Defendants from relying on existing statutory or contractual bases for suspending or terminating contracts or grants, under the terms of the award or under other authorities, (2) treat all contractual and grant terms as enforceable by contempt, and/or (3) prohibit Defendants from conducting a payment integrity

review process (including pursuant to statutorily or contractually conferred authority to suspend or terminate contracts or grants).” *Glob. Health*, ECF No. 33 at 1–2.

To begin with, and as the Court has already reiterated once, “to the extent Defendants have continued the blanket suspension [of funds], they are ordered to immediately cease it and to take all necessary steps to honor the terms of contracts, grants, cooperative agreements, loans, and other federal foreign assistance awards that were in existence as of January 19, 2025, including but not limited to disbursing all funds payable under those terms.” *Glob. Health*, ECF No. 28 at 5. That temporary emergency relief was to restore the status quo as it existed before Defendants’ blanket suspension of congressionally appropriated funds pending a comprehensive review, given Plaintiffs’ strong showing of irreparable harm and that Defendants’ blanket suspension of funds was likely arbitrary and capricious under the Administrative Procedure Act (APA). *See id.* at 2; *Glob. Health*, ECF No. 21 at 5–13. Defendants’ instant motion does not contest or rebut Plaintiffs’ irreparable harm showing and does not contest or rebut the Court’s finding that the agency action here was arbitrary and capricious under the APA.¹

The Court has also already reiterated that while “of course, the TRO does not permit Defendants to simply search for and invoke new legal authorities as a post-hoc rationalization for the enjoined agency action,” it “does not preclude Defendants from undertaking a good-faith, individualized assessment of a contract or grant and, where the terms or authority under law allows, taking action with respect to that particular agreement consistent with any procedures required.” *Glob. Health*, ECF No. 28 at 2, 6. The line here is unambiguous. Defendants cannot continue to

¹ Defendants have now filed their brief opposing a preliminary injunction, which appears to offer more developed arguments relating to the issues before the Court. *Glob. Health*, ECF No. 34. As the Court has noted, it has agreed to consider those arguments on the briefing schedule proposed by the parties and will hold a hearing by March 4, 2025, and rule with dispatch thereafter. *See Glob. Health*, ECF No. 28 at 7 (setting forth a schedule).

suspend programs or disbursements based on the blanket suspension that was temporarily enjoined. And Defendants cannot simply come up with a new post-hoc rationalization in an attempt to justify the action that was temporarily enjoined as likely arbitrary and capricious for what it failed to consider. However, if since January 19, 2025, Defendants have suspended or terminated an agreement based on wholly independent legal authority and justification, rather than deriving from a general directive to suspend aid, then they are not acting in violation of the TRO. Under the terms of the TRO, any such agreement that was in effect as of January 19, 2025, must be given effect and promptly receive disbursements only up until a suspension or termination taken pursuant to independent legal authority and justification. If, on the other hand, suspensions or terminations since January 19, 2025, stemmed from a general directive to suspend all aid—the very agency action temporarily enjoined—those terminations would violate the TRO and cannot be given effect. The line here is one that is well-worn and should be familiar in litigation—the line between good faith and pretext to justify otherwise unlawful conduct. *See Dep’t of Com. v. New York*, 588 U.S. 752, 780 (2019).

Contrary to Defendants’ instant motion, the Court has been clear the TRO does not mean that “all contractual and grant terms [are] enforceable by contempt” or that Defendants must “litigate every arguable breach of contract in a contempt posture.” *Glob. Health*, ECF No. 33 at 2, 6. The Court has been explicit that the TRO does not place this Court in the position of supervising Defendants’ determinations as to whether to continue or terminate individual grants based on their terms. *See Glob. Health*, ECF No. 28 at 4 & n.2. While agency determinations based on wholly independent legal authority and justification such as the terms of particular agreements or sets of agreements, rather than deriving from a general directive to suspend aid, may be subject to some

other legal challenge, whether it be under the APA, separation of powers, individual breach of contract cases, or otherwise, such determinations do not violate the present TRO.

Defendants' remaining arguments in the instant motion show how quickly the ground is shifting in this matter and the importance of the Court having the opportunity to consider and expeditiously resolve the parties' arguments at the preliminary injunction phase. For example, Defendants assert that an injunction would raise "serious constitutional concerns" given "the Executive Branch's extensive foreign-relations powers." *Glob. Health*, ECF No. 33 at 2. However, they do not explain how this argument bears on likely violation of the APA, the authority on which the TRO was based and whose constitutional validity has not been challenged. Moreover, the argument seems to simply presume that Defendants will prevail on the separation of powers questions that Plaintiffs have raised, without nearly enough analytical depth. *See, e.g., Zivotofsky ex rel. Zivotofsky v. Kerry*, 576 U.S. 1, 21 (2015) ("The Executive is not free from the ordinary controls and checks of Congress merely because foreign affairs are at issue."); *id.* at 62 (Roberts, C.J., dissenting) (recognizing that "[t]he Constitution allocates some foreign policy powers to the Executive, grants some to the Legislature, and enjoins the President to 'take Care that the Laws be faithfully executed'"). The parties requested a briefing schedule to develop these arguments for the preliminary injunction phase, which the Court has adopted and is still in progress.

Similarly, Defendants argue for the first time that disbursing congressionally appropriated aid pursuant to existing agreements could result in "waste, fraud, abuse, and even illegal payments" and cite the need to "protect the integrity of [their] payment systems." *Glob. Health*, ECF No. 33 at 5 (citation omitted). But the blanket suspension of congressionally appropriated funding that has been challenged and temporarily enjoined was the result of a categorical order, not any specific finding of possible waste, fraud, or abuse. In defending the challenged action at the Court's TRO

hearing, Defendants did not even attempt to argue that the action was or could be justified based on waste, fraud, or abuse. And, to date, Defendants have not adduced any evidence of waste, fraud, or abuse aside from conclusory statements from a declarant who has “serious questions” about these topics. *Glob. Health*, ECF No. 25-1 at 2. Even in asserting the argument now, Defendants do not explain how it would bear on the reasons for granting the TRO, including Plaintiffs’ showing of irreparable harm and their likelihood of success in showing that the blanket suspension violated the APA.²

For the foregoing reasons, to the extent Defendants’ motion to clarify is not mooted by the above, it is denied, and Defendants’ motion to stay the Court’s TRO pending an emergency appeal is also denied.

The Court reiterates once more:

[T]he Court’s TRO does not permit Defendants to simply continue their blanket suspension of congressionally appropriated foreign aid pending a review of the agreements for whether they should be continued or terminated. That is the very action that the Court temporarily enjoined because Plaintiffs had shown that blanket suspension pending review would cause irreparable harm and was likely arbitrary and capricious under the APA for failing to consider the massive reliance interests. . . . [T]o the extent Defendants have continued the blanket suspension, they are ordered to immediately cease it and to take all necessary steps to honor the terms of contracts, grants, cooperative agreements, loans, and other federal foreign assistance awards that were in existence as of January 19, 2025, including but not limited to disbursing all funds payable under those terms.

Glob. Health, ECF No. 28 at 5.

² To demonstrate the degree to which the ground is shifting: within the past four days, Defendants submitted multiple filings addressing compliance with the TRO. While each filing cited the declaration for other points, none mentioned the statements about waste, fraud, or abuse or “payment integrity.” See *Glob. Health*, ECF No. 25; *AIDS Vaccine*, ECF Nos. 22, 28. To the extent the assertion of possible fraud or payment integrity issues is intended to create grounds for an emergency appeal before the Court has had the opportunity to resolve the preliminary injunction motions, it is worth noting that Defendants’ preliminary injunction briefing, filed alongside the instant motion, does not appear to even mention fraud or payment integrity in its APA or separation of powers merits analyses. See *Glob. Health*, ECF No. 34.

The parties' joint status report addressing compliance is due on February 26, 2025, at 12:00 p.m. To the extent there is any dispute between the parties as to compliance, the parties shall identify:

1. Agency officials or employees who have personal knowledge to provide sworn, live testimony as to the relevant disputes as to compliance, such as what agency directives have been given and what funds have been disbursed in response to the Court's TRO and order enforcing it.
2. Any expedited discovery that would assist the parties and the Court in assessing compliance with the TRO and order enforcing it.

SO ORDERED.



AMIR H. ALI
United States District Judge

Date: February 22, 2025

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AIDS VACCINE ADVOCACY	.	
COALITION, et al.,	.	
	.	
Plaintiffs,	.	
	.	CA No. 25-0400 (AHA)
v.	.	
	.	
UNITED STATES DEPARTMENT OF	.	
STATE, et al.,	.	
	.	
Defendants.	.	
.....	.	
	.	
GLOBAL HEALTH COUNCIL,	.	
et al.,	.	
	.	
Plaintiffs,	.	CA No. 25-0402 (AHA)
	.	
v.	.	
	.	
DONALD J. TRUMP, et al.,	.	Washington, D.C.
	.	Tuesday, February 25, 2025
Defendants.	.	11:00 a.m.
.....	.	

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE AMIR H. ALI
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For Plaintiffs	LAUREN BATEMAN, ESQ.
Case No. 25-0400:	Public Citizen Litigation Group
	1600 20th Street NW
	Washington, DC 20009
For Plaintiffs	STEPHEN K. WIRTH, ESQ.
Case No. 25-0402:	Arnold & Porter Kaye Scholer LLP
	601 Massachusetts Ave. NW
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For Defendants:	INDRANEEL SUR, ESQ.
	U.S. Department of Justice
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Court Reporter:

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U.S. Courthouse, Room 4704-A
333 Constitution Avenue NW
Washington, DC 20001

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1 P R O C E E D I N G S

2 (Via Telephone Conference)

3 THE DEPUTY CLERK: We're here today for a motion
4 hearing in civil action 25-400, Aids Vaccine Advocacy
5 Coalition, et al., versus the United States Department of
6 State, et al., as well as civil action 25-402, Global Health
7 Council, et al., versus Donald Trump, et al.

8 Beginning with counsel for the plaintiff in case 25-400,
9 please state your name for the record.

10 MS. BATEMAN: Hi. My name is Lauren Bateman with
11 Public Citizen Litigation Group. I represent plaintiffs in
12 case 400.

13 THE DEPUTY CLERK: And defense?

14 MR. SUR: Good morning. This is Indraneel Sur at
15 the United States Department of Justice for the defendants.

16 THE DEPUTY CLERK: Thank you. And counsel for
17 plaintiffs in case 402?

18 MR. WIRTH: Good morning. This is Stephen Wirth
19 from Arnold & Porter on behalf of all plaintiffs in case 402.

20 THE DEPUTY CLERK: And counsel for defense.

21 MR. SUR: In case 402, this is Indraneel Sur for the
22 United States Department of Justice for the defendant.

23 THE DEPUTY CLERK: Thank you all.

24 THE COURT: All right. Thanks, everyone. Good
25 morning. We've got two cases here called. The Court has

1 received the new emergency motion to enforce in the Global
2 Health Council case, No. 402. Called this hearing quickly
3 in the interest of hearing from the parties on it. And given
4 the overlap in the AIDS vaccine case, which is the 400 case,
5 I'll hear from plaintiffs in that case too.

6 I understand, Mr. Sur, you'll be representing the
7 defendants in both of those cases.

8 Couple of things at the outset. In terms of protocol
9 today, I'm going to start by hearing from plaintiffs in the
10 Global Health 402 case, given they have the pending motion.

11 Counsel for plaintiffs in 400, the AIDS vaccine case, I do
12 anticipate hearing from you briefly only to the extent that
13 you have a difference with or something to supplement what
14 you've heard from counsel in 402 in the interest of not just
15 having repetitive argument.

16 I'll then hear from counsel for the defendant, Mr. Sur,
17 and if I have questions after that, I'll let you all know.

18 You know, probably clear, but my main interest here is
19 what's happening on the ground as it relates to the pending
20 motion to enforce my temporary restraining order. This is not
21 an opportunity to relitigate the TRO itself, which remains in
22 effect, has not been stayed, and must be followed by the
23 parties.

24 If I can, I'll resolve the pending motion orally today
25 so that the parties in the case can move forward. But the

1 parties do remain under the obligation to file the joint
2 status report I've asked for tomorrow. And if there's more I
3 want included in that, at the end of this hearing I'll let you
4 know that too.

5 All right. With that, counsel for plaintiffs in the Global
6 Health Council case, 402, you've got the floor.

7 MR. WIRTH: Good morning, Your Honor. Stephen Wirth
8 from Arnold & Porter. To begin, I just want to thank the
9 Court for promptly convening this hearing. As we said in our
10 motion, we don't make this request lightly, and we deeply
11 appreciate the Court's continued attention to this case.

12 I'd like to start briefly by addressing the harms at
13 issue here. You have our briefing and the declarations that
14 we filed yesterday. I think you can tell from those that the
15 harms here are extremely immediate and need to be remedied
16 within hours, days at the most, or else my clients will face
17 truly irreparable harms to their businesses. They're in the
18 midst of shuttering -- they're about to sign usurious loan
19 documents. This is truly an emergency, and that is why we
20 filed this motion.

21 But I also wanted to raise to the Court's attention the
22 fact that our named plaintiffs are not the only plaintiffs
23 here who are suffering. We represent two associations and the
24 members of those associations are suffering very similar harms
25 as our named individual organizational plaintiffs. I'll just

1 give one example for the Court's attention.

2 I was recently given a message from one of the
3 organizations who's a member of SBAIC, and this woman owns a
4 small business. She's owed almost a million dollars from the
5 government. And she wrote to me: "The impact on me is that
6 my business will not only close, but at 60 years old I will
7 have to go and keep working into old age to make up for that
8 \$1 million loss which is backed by my personal wealth. And I
9 will have almost no assets on which to live."

10 These are real harms to real people, and they go very deep.
11 And so I want to make sure that the Court is aware of them.
12 Not to mention, though, the truly disastrous humanitarian
13 effects that are happening right now all around the world.
14 So unless the Court has specific questions about the harms,
15 I would like to turn to what we understand is happening on
16 the ground with respect to payments.

17 THE COURT: This may connect, and you can feel free
18 to tell me you're going to explain it in the context of
19 discussing what's going on on the ground, that's fine, but I
20 do have a question. Obviously, it does seem like these harms
21 are very much the same type of harms that were briefed and
22 evidence was provided at the TRO consideration phase. So
23 it's concerning that they've continued.

24 I just want to clarify, the harms you referred to, whether
25 it be the example you just gave or really hopefully all of

1 them, are you speaking specifically and exclusively as to
2 nonpayment for work that has already been completed or that
3 had already been completed before the TRO, for instance, or
4 are you speaking of money owed under, you know, agreements
5 projecting them into the future?

6 MR. WIRTH: Yes, Your Honor. Again, Stephen Wirth.
7 We are speaking about money owed for work that was completed
8 prior to the TRO. There are also harms related to failure to
9 release money that is obligated going forward, and some of my
10 clients were unable to draw down money from funds that have
11 already been obligated.

12 But we're primarily talking today, the examples that we
13 gave in our declarations, for example, this is all for money
14 that is presently owed for past work and that our clients need
15 access to immediately in order to continue surviving as
16 ongoing concerns. So we are talking about primarily past
17 work.

18 THE COURT: Got it. All right. Why don't you go ahead
19 and continue where you were headed, and I'm sure I'll have
20 some clarification questions.

21 MR. WIRTH: Absolutely. So what we understand, and
22 what I know from my clients, is that they are not being paid
23 for all of this work that's already been done. Since the
24 government has -- since the Court entered the TRO and
25 repeatedly reaffirmed it over the last few days, there have

1 been -- payments have essentially slowed to, from our
2 understanding, complete standstill. The government said last
3 week in the -- in its status report that some \$250 million had
4 been slated to be disbursed last week. We've seen no evidence
5 of that. Certainly, to the extent there have been any
6 payments at all, they've been a very, very, very small
7 fraction of that.

8 And it's our understanding that those payments are being
9 stopped by new procedures that these defendants have begun
10 imposing on the approval process at these agencies, at USAID
11 and at the State Department.

12 And our understanding is they're requiring new
13 justifications for invoices that have already been approved,
14 that have already gone through the entire approval process,
15 and that they have added a new level of approval at the very
16 top that requires the sign-off of a single person; and they're
17 at the point now where that person needs to individually approve
18 every single line item, and there are so many line items that
19 it's simply impossible.

20 I'll be very interested to hear what the government
21 represents as to what's happening on the ground, but these
22 representations that I'm making today are based on
23 conversations that I've had with numerous people at all levels
24 within both agencies, and my understanding is that this is a
25 policy choice that has been made at the highest levels, that

1 it is in furtherance of the same policy choices that were made
2 pursuant to the executive order that this Court has already
3 temporarily restrained. And we believe that the government
4 has taken essentially no action to make prompt payments under
5 the TRO.

6 THE COURT: Mr. Wirth, can I ask you, you referred to a
7 new level of approval at the top requiring the sign-off of a
8 single person. Is that at one of the agencies in particular
9 that you're speaking or is that at both?

10 MR. WIRTH: So my understanding, Your Honor, is that
11 the State Department has essentially subsumed many of the
12 functions of USAID, and several people are functioning in
13 roles at both agencies.

14 I'm sorry to sort of interrupt this colloquy, but I'm
15 getting word from my client that the public line is not --

16 THE DEPUTY CLERK: Your Honor, this is the courtroom
17 deputy.

18 (Simultaneous speaking.)

19 THE DEPUTY CLERK: Good morning. This is the courtroom
20 deputy. We are aware of the issues with the public line.
21 There is nothing that I can do about it at this moment, but
22 the IT staff is aware and they're about to come up here and
23 try to work on it. But there is nothing that the Court can do
24 at this moment. It's up to His Honor if he wants to continue
25 or wait until they can try to fix it. Thank you.

1 THE COURT: Okay. Do you have an ETA on what the
2 timeline would be to fix it?

3 THE DEPUTY CLERK: Your Honor, I do not. I'm sorry.
4 I just called them about two minutes ago.

5 THE COURT: Okay. Do the parties have a position on
6 whether they'd like to pause for a moment?

7 MR. WIRTH: Your Honor, we're happy to proceed if the
8 Court is comfortable proceeding, but we're also happy to take
9 a brief recess if you would like.

10 THE COURT: Mr. Sur?

11 MR. SUR: Same for us, Your Honor. At your discretion.
12 Thank you.

13 THE COURT: Yeah. Why don't we go ahead, then, if
14 both parties, at least on the instant motion, are comfortable
15 proceeding. I appreciate you letting me know about the issue,
16 and I appreciate the work the courtroom deputy and the IT
17 staff are doing to get the public line up.

18 So can you continue your answer to my question. You were
19 saying that the State Department under your understanding has
20 subsumed, but I guess I'm wondering -- it sounds like the
21 answer to my question is yes, that there is a single person as
22 to both the State Department and as to USAID?

23 MR. WIRTH: I believe that's true. I'm not a hundred
24 percent certain who that person is or whether it's the same
25 person. But my understanding is -- and the government

1 obviously has far more visibility into the agency than I do.
2 But my understanding is that Ken Jackson at USAID is in charge
3 of all approvals coming up through the agency. And I'm not
4 sure if he's also in charge of the approvals out of the State
5 Department, but that would potentially also be Pete Marocco,
6 who submitted the declaration in support of the government's
7 status report last week.

8 THE COURT: All right. Mr. Sur, I'll expect you to
9 clarify that, but for the moment, that's helpful.

10 Did you have more you wanted to offer before I get to my
11 questions, Mr. Wirth?

12 MR. WIRTH: No, Your Honor. Happy to answer any
13 questions that you have.

14 THE COURT: Okay. So I know at the past hearing
15 which took place just a day after the TRO motion itself, you,
16 and I think the government also, wasn't able to provide much
17 specificity on the details of how these payments actually
18 work. I take it some time has passed, and based on the
19 motions, that you all maybe know a lot more about that.

20 So could you walk me through that? I mean, your motion
21 refers to invoices, reimbursement requests, access to letter
22 of credit facilities and I think drawdowns of those, and then
23 other payment management systems for grants. It would just be
24 helpful to hear your understanding of the differences between
25 these things and how they all apply to the pending motion you

1 filed and to the TRO.

2 MR. WIRTH: Yes, Your Honor. So the way that these
3 agencies operate is largely through two different -- two
4 different large sort of categories: Their acquisition funds,
5 their acquisition contracts, which operate sort of like a
6 normal government contract. These are essentially, you know,
7 payments for specific services. That is generally done
8 through a contract and then the contractors submit vouchers
9 for payment for services rendered.

10 And that is submitted to lower-level agency staff who are
11 responsible for processing the vouchers, ensuring that the
12 work was in fact completed, that all other, you know, aspects
13 of the contract have been honored. And then the -- that goes
14 into a payment management system at USAID, it's called
15 Phoenix.

16 Once all the approvals are taken care of and the agency
17 has assured itself that the payment is proper, then it is
18 processed and funds are disbursed from the Treasury. That's
19 sort of the typical process.

20 The other type of general category is assistance
21 agreements. And these are in the form of grants or
22 cooperative agreements. And oftentimes these sorts of awards
23 are managed through a letter of credit facility. And so the
24 funds are made available, and then the awardee can draw down
25 funds from the award to pay for expenses on an ongoing basis.

1 And it's generally important in a variety of circumstances,
2 but oftentimes these implementing partners need to have
3 immediate access to funds, so within certain parameters
4 they're able to access funds immediately. And then those
5 drawdowns are subject to a variety of audits.

6 And so my understanding is that on sort of both sides of
7 the equation, things have been broken. The Phoenix payment
8 system for vouchers, generally for past work, has been --
9 access to that by staff, by agency personnel, has been
10 severely limited, and so -- I'm sorry. Am I still on the
11 line?

12 THE COURT: I can still hear you.

13 MR. WIRTH: Okay. Good. I'm sorry. I heard a noise,
14 and I thought I might have been disconnected.

15 All right. So as I was saying, my understanding is that
16 agency staff no longer have the access that they used to to
17 the system, which means that approvals are being done by only
18 a very small group of people, at sort of the lower and mid
19 levels, and then everything is being funneled up to a single
20 approver, and this has created a huge backlog for past
21 vouchers and the like.

22 On the other side of the equation, so letter of credit and
23 other payment management systems --

24 THE COURT: I think we're getting the public line
25 connected, so let's pause and I'll ask the deputy to let us

1 know when we should restart.

2 THE DEPUTY CLERK: Apologies, Your Honor. We're trying
3 to get it connected again now.

4 (Pause.)

5 THE DEPUTY CLERK: Okay. Your Honor, we're reconnected
6 again. I'm going to have to test it out on my cell phone. If
7 you guys can continue speaking. You can hear me? OIT says
8 they can hear me. They're testing it out. So hopefully now
9 it'll work.

10 THE COURT: Okay, great. Mr. Wirth, you were just in
11 the middle of discussing how in practice things have, on your
12 understanding, have been frozen in the context of both the
13 acquisition contracts and the assistance agreements. So
14 please continue.

15 MR. WIRTH: Absolutely, Your Honor. So with respect to
16 the assistance agreements, my understanding is that access to
17 the payment management systems and letter of credit facilities
18 was shut off sometime the week of January 20, and it has not
19 been -- access has not been resumed since then.

20 Just a few days ago -- and this is in an attachment to the
21 Northrip declaration that we filed on Monday -- we had a email
22 from a government official that said USAID facilities -- or
23 payments are not going out from the agency. And that's
24 consistent with our experience. From what we can tell --

25 THE COURT: Let me clarify that. Mr. Wirth, when you

1 say that access was shut off and has not been restored, is
2 that on the agency's side, meaning it's not been restored
3 to the people on the agency who would ordinarily access the
4 system? Or is it in some way shut down on the receiver's
5 side? Or tell me if that question doesn't make sense.

6 MR. WIRTH: I think that question makes sense.

7 My understanding is that on the receiver side, everything has
8 been shut down and they're not able to access funds. Normally
9 what happens is when a person wants to draw on one of these
10 letter of credit facilities, they go into the payment management
11 system or the facility that they use to make these types of
12 draws, they put in a request for a specific amount. So long as
13 it meets parameters, it is disbursed generally within 24 hours.

14 And what my clients have been seeing on the ground is that
15 when they make these requests, the disbursement date -- it says
16 that the request has been processed but then the disbursement
17 date is set for almost a year from now, which makes no sense.

18 And so when they have inquired with agency personnel as to
19 what's happening, the answer is that no payments are going out
20 from the agency right now.

21 I'm not sure to what extent the agency personnel themselves
22 have lost access to these systems. My understanding is that for
23 some time period potentially there was access to Phoenix that
24 was shut off. I think that some personnel currently have access
25 to Phoenix, and in fact, have made all of the normal approvals

1 through the system that is -- that they normally do, and that
2 right now the thing that is stopping the payments from going out
3 is this final level of approval.

4 THE COURT: Okay. Understood. And just to make sure
5 I'm still clear on this, obviously the invoices that are being
6 submitted on the side of the acquisition contracts is for work
7 that has already been completed, and the focus right now is on
8 work that was completed prior to February 13, the date of the
9 Court's TRO. And the same in the context of the assistance
10 agreements and the letter of credit facilities as you
11 described them.

12 In other words, the drawdown, when it comes to the letter
13 of credit, is not a drawdown for something that happened
14 yesterday or today, but at least the focus right now is a
15 drawdown for something that happened prior to February 13.
16 Is that right?

17 MR. WIRTH: Yes. That's the focus right now.

18 THE COURT: Okay. So I'm looking at your proposed
19 order. Do you have that in front of you, counsel?

20 MR. WIRTH: I do, Your Honor.

21 THE COURT: Can you walk me through the first two
22 components of that and just connect it to what you were
23 saying? It may be obvious, but I want to make sure I fully
24 understand --

25 (Simultaneous speaking.)

1 THE COURT: -- pay all invoices, and then permit and
2 promptly pay. I just want to understand exactly what those
3 two are getting at.

4 MR. WIRTH: Absolutely, Your Honor. I don't think
5 these are obvious. These are complicated, and I will admit
6 I'm not a government contracts expert, so I've been learning
7 this very quickly over the last couple of weeks as well.

8 So my understanding is that currently my clients have
9 numerous invoices that they've already submitted and that
10 they believe have already been approved through the normal
11 processes at USAID and potentially also at the State
12 Department, though I think State Department normally operates
13 on grants, not on contracts, but I can't make any specific
14 representations as to that.

15 So take the first of these instances, the pay all invoices
16 and letter of credit drawdown request, this would be for
17 acquisition contracts and specifically mentions work completed
18 prior to the entry of the Court's TRO. So this would be sort
19 of typical government contracts type payments.

20 I understand that in like a small number of cases these are
21 not done through invoices but they're done through letter of
22 credit drawdown requests, which I think is unusual, but my
23 clients say that both of them need to be represented.

24 With respect to the second prong, so this is for grants and
25 assistance agreements, and these agreements permit drawdowns

1 on an ongoing basis and also, you know, for both past work and
2 for future work. And in order to continue to do work under
3 the contracts that are currently in operation, the grants and
4 agreements that are currently in operation, they need to make
5 drawdowns on an ongoing and regular basis. And so this is to
6 ensure that they are permitted to access those letter of
7 credit facilities and other payment management systems.

8 THE DEPUTY CLERK: Are the parties still here?

9 Testing one, two, three. Can you hear us?

10 MR. WIRTH: I'm here.

11 THE DEPUTY CLERK: Okay.

12 MR. SUR: This is counsel for the government.

13 THE DEPUTY CLERK: I think we lost --

14 THE COURT: My apologies. Judge Ali is here, and I
15 was asking a question but I was on mute.

16 THE DEPUTY CLERK: Oh, okay. My apologies, Your Honor.
17 Thank you.

18 THE COURT: Thank you. Mr. Wirth, because we're here
19 on a motion to enforce the TRO, can you make the connection,
20 then -- connect the dots as you see it between the relief
21 you're asking for -- and I'm really focused on the first two
22 points for now because I think the other ones are self-
23 explanatory about just following the order -- connect those
24 first two to the TRO itself for me.

25 MR. WIRTH: So the TRO specifically ordered the

1 government to not take any actions to pause the disbursement
2 of foreign assistance funds, and these two components of
3 the proposed order go directly to the government's -- to
4 the temporary restraining order insofar as it orders the
5 government to stop any pause of disbursement of foreign
6 assistance funds.

7 THE COURT: Right. And is one way to look at how you
8 drafted here the first point we were talking about that begins
9 "Pay out all invoices and letter of credit," that's looking at
10 funds from before February 13, before the date of the TRO, and
11 the second one is looking at drawdowns in the future? Tell me
12 if I'm --

13 MR. WIRTH: No, not necessarily --

14 THE COURT: -- oversimplifying.

15 MR. WIRTH: I'm sorry. No, Your Honor, it's not that
16 simple. So my understanding is that these drawdown requests
17 can also be for past work. So it's not as simple as saying
18 that it's only for past or only for future. It depends on the
19 specific language of the grants and the assistance agreements
20 and what those funds are going to be used for.

21 THE COURT: Okay. So try again. Tell me again what
22 that second point adds that's not already in the first point.

23 MR. WIRTH: Well, the first point is specific to
24 acquisition contracts, and the second point is with respect to
25 grants and assistance agreements. These are all the -- these

1 are all the --

2 THE COURT: I see. I see. Okay. Thank you. That's
3 helpful. I'm sorry to interrupt you. So the key difference
4 is later in the sentence where it says "on contracts for work"
5 in the first one, and in the second one it says "for
6 reimbursement on grants and assistance agreements." That's
7 the focus?

8 MR. WIRTH: Yes. Exactly, Your Honor. And I think the
9 distinction is important because, with respect to sort of
10 vouchers that are submitted for work on contracts, I think my
11 understanding is those are all sort of retrospective for past
12 work, but that on grants and assistance agreements, draw-down
13 requests can be both retrospective and prospective, and so
14 this covers the waterfront, so to speak.

15 THE COURT: Understood. When it came to the meaning of
16 the second one, at least again as to the focus of your motion
17 which is for, you know, I don't think a significant amount but
18 it's for work completed prior to the entry of the TRO, if the
19 second paragraph included that qualification at the end, in
20 other words that the focus is for work completed prior to the
21 entry of the Court's TRO?

22 MR. WIRTH: I -- I do worry that that would
23 unnecessarily limit the scope of the Court's TRO which
24 specifically refers to all disbursements of foreign assistance
25 funds. Some of my clients receive drawdowns on an ongoing

1 basis, and I do worry that this would cut them off from credit
2 in a way that would perpetuate the irreparable harms they are
3 currently facing.

4 THE COURT: Understood. Fair point. I think that
5 would be narrower than the TRO itself. I'm just trying to
6 understand exactly the narrow focus -- or at least the highest
7 priority if that makes sense, of what's been enjoined.

8 Let me ask you a different question: Can you give me
9 plaintiffs' position on the main regulation that defendants
10 have cited as authorizing suspension and termination? And I'm
11 not trying to get ahead and hear your argument on the PI
12 necessarily. I know you all still have time to get your brief
13 on file under the briefing schedule that's been entered, but
14 specifically as it relates to the present motion to enforce
15 the TRO, what is the place that the regulation that -- I think
16 it's 2 C.F.R. § 700.14 -- how does that relate to the present
17 TRO and your motion to enforce?

18 MR. WIRTH: So my answer to that is that the Court has
19 already ordered the government to make payments and to stop
20 pausing the disbursement of foreign assistance funds. Whether
21 the government can terminate contracts really is not relevant
22 to that specific question that we are seeking the Court --
23 seeking to enforce right now.

24 As the Court is aware, we are preparing our reply brief
25 which directly deals with the sort of subject matter question,

1 subject matter jurisdiction question the government has
2 raised. We believe that we have strong arguments that there
3 is jurisdiction under the APA and that we absolutely can bring
4 exactly these types of claims because they are based on --

5 THE COURT: Understood. I'm sorry, counsel, this is
6 probably my fault. I don't want to push you ahead to your PI
7 arguments. I think the first part of your answer does the
8 trick for me.

9 And then I guess -- again, jumping ahead a little bit, and
10 this may be jumping into the PI, might be jumping ahead to
11 beyond the PI, but not in terms of merits argument. I guess
12 I'm just interested, Counsel, in, for lack of a better way to
13 put it, what do you see as the ultimate end game here
14 realistically?

15 And let's just posit that it seems like -- and this does
16 not go to necessarily the compliance with the TRO, which is
17 the question before the Court right now, but clearly the
18 administration is signalling that it does not want to contract
19 with your clients, and you all satisfied your burden to show
20 irreparable harm and a likelihood of success on the merits was
21 done, and the government needs to comply with the Court's
22 order -- and I'm going to talk to the government soon -- and
23 that includes unfreezing payments, as I've said and
24 reiterated, and I'll come to that, but I guess I'm just -- do
25 you see a path to this actually leading to the reinstatement

1 of long-term contracts with your clients?

2 MR. WIRTH: Yes, Your Honor. So first of all, just to
3 be very clear, what we're here today for is so that we can
4 even get to the PI hearing. The clients need to get to the PI
5 hearing in order to then be able to craft an order that will
6 be able to protect them going forward, a preliminary
7 injunction that protects their rights.

8 But we do see a path forward here. The government has said
9 that they have the authority to cancel all these contracts.
10 If that's in fact true, then they will have to go through the
11 proper processes to cancel contracts. What they can't do is
12 do what they've done here. So, you know, our understanding is
13 that many of these contracts do serve the national interest,
14 and if they were actually going through these contracts and
15 evaluating them, that they would not cancel these contracts,
16 even if they had the ultimate authority to do so.

17 And beyond that, I think there's a couple of other issues
18 at issue here. We're not saying the government has to spend
19 these foreign assistance funds to operate specific contracts.
20 But we are saying that the government can't unlawfully impound
21 all of these funds and make no foreign assistance obligations
22 going forward.

23 So what we would want going forward is not necessarily that
24 our clients' specific contracts will be kept in perpetuity.
25 That may not be possible. And in fact, the government may

1 have the ability to cancel some of them. But they can't do
2 this wholesale cancelation of all of their contracts all at
3 once. They have to actually follow the law when canceling or
4 terminating agreements or grants. And they actually have to
5 spend these foreign assistance funds that have been
6 appropriated by Congress, that have specific statements as to
7 how they are to be spent. And the Executive Branch --

8 THE COURT: Thank you. I think that answers my
9 question. I promised I wouldn't force you to argue the PI on
10 the spot. That's helpful enough as you've answered it. I
11 appreciate that.

12 So why don't I hear from counsel for the plaintiffs in the
13 AIDS vaccine case, 400. Again, my interest would be anything
14 in your position based on your clients that differs from what
15 I've just heard from Mr. Wirth, or anything you can offer that
16 would supplement that, what I've just heard.

17 MS. BATEMAN: Thank you so much, Your Honor. This is
18 Lauren Bateman for plaintiffs in 25-cv-400. I'm grateful for
19 the opportunity to speak and will remain mindful of this
20 Court's direction to only note areas where plaintiffs'
21 positions are different and to provide only additive
22 information.

23 We agree entirely with plaintiffs in 25-cv-402 about the
24 extent of noncompliance, but as we see it, the question before
25 the Court is not whether to enforce one part of the TRO; the

1 question is whether defendants are complying or violating the
2 TRO. And they appear to be violating it in all respects.

3 So plaintiffs in 25-cv-400 would renew their motion to
4 enforce and motion for civil contempt, seeking enforcement of
5 the entire TRO, and we urge the Court not to enter relief that
6 would narrow the relief that the Court has already now thrice
7 granted.

8 I have a couple of factual additions that I'd like to add
9 to supplement Mr. Wirth's portrayal of the situation: First,
10 we know that defendants have initiated new terminations in the
11 last couple of days explicitly on the bases forbidden by the
12 TRO. On February 23 --

13 THE DEPUTY CLERK: Counsel, the court reporter needs
14 you to slow down a moment. And also, Your Honor, we're going
15 to attempt to reconnect the system one more time.

16 THE COURT: Okay. Apologies, Ms. Bateman. We'll go
17 ahead and pause until the deputy confirms that we're
18 reconnected.

19 MS. BATEMAN: Thank you, Your Honor. My apologies.

20 THE DEPUTY CLERK: Okay. Pause for one moment. We're
21 going to try this again.

22 Okay, Your Honor. Back on the record.

23 THE COURT: Okay. Go ahead, Ms. Bateman.

24 MS. BATEMAN: Thank you. I was just indicating that
25 our understanding is that defendants have initiated new

1 terminations explicitly on the bases forbidden by the TRO in
2 the last couple of days. On February 23 a notice was issued
3 to contracting officers to terminate a new tranche of awards.
4 And that notice made clear that the authority to do so came
5 from Secretary Rubio with the explicit instruction that those
6 terminations were implementing the executive order.

7 And then subsequently, at approximately 4:30 p.m.
8 yesterday, contracting officers received an email from Adam
9 Cox, whose title is acting deputy director of foreign
10 operations. That email indicated that they were instructed by
11 DOGE to terminate several awards that same night, and also
12 indicated that many -- and "many" is capitalized in that
13 email -- more terminations are coming and that Foreign Service
14 officers were authorized for overtime to effectuate those
15 terminations.

16 We understand that the government now says oh, it was a
17 mistake for us to say that the executive order was the basis
18 for those terminations, but -- and that emails with the agency
19 claim that Secretary Rubio individually reviewed all of the
20 terminations and decided on his own to terminate those awards,
21 but that's frankly a fantastical claim. Given the number and
22 complexity of the awards at issue, it's implausible on its
23 face, and it's also worth considering the implausibility of
24 that claim given Secretary Rubio's travel schedule from
25 February 13 to 19. He was in Germany, then Israel, and then

1 Saudi Arabia and the United Arab Emirates.

2 So the key in plaintiffs' view is not whether defendants
3 can conjure some alternative pretextual basis for their
4 actions. And the Supreme Court has been very clear about
5 this. In *Department of Commerce v. New York*, that's the
6 census case before the Supreme Court, Chief Justice Roberts
7 wrote for the Court and said that when a court receives an
8 explanation for agency action that is incongruent with what
9 the record reveals about the agency's priorities and
10 decisionmaking process --

11 (Simultaneous speaking.)

12 THE DEPUTY CLERK: Counsel, please watch your speed.
13 Counsel, please watch your speed for the benefit of the court
14 reporter. Thank you.

15 MS. BATEMAN: My apologies. Thank you.

16 In closing on that point, courts are not required to
17 exhibit a naïveté from which ordinary --

18 THE COURT: Understood. Yeah, I certainly have that
19 point, and it's been something I've reiterated each time any
20 sort of clarification has been sought. That this is not
21 about, you know, continuing to suspend funds while the
22 government can come up with post hoc rationalization or a
23 pretextual basis for the action that I think I deemed likely
24 to be arbitrary and capricious in the first place.

25 And I'm familiar with the *Department of Commerce* case,

1 which I think was cited in the Court's last order.

2 Tell me anything else that you would supplement the prior
3 argument on or differ from.

4 MS. BATEMAN: Thank you, Your Honor. Two other points,
5 and I'll make them briefly. On the subject of personnel
6 access to payment processing systems, on February 23, USAID
7 began to implement reductions of force that likewise appeared
8 tailored to circumvent the Court's orders. Our understanding
9 is that those RIFs include financial management staffers, so
10 those are the people who would actually do the disbursement of
11 awards to implementing partners.

12 Our understanding is that before February 23 defendants
13 blocked those staffers from access to payment systems, but
14 after February 23, there's hardly anyone at the agency who has
15 those jobs. And without those people, the funds can't move,
16 so there can't be compliance with the Court's order.

17 Defendants either know that or they're acting with such
18 ignorance and haste that they don't know what they're breaking
19 as they're breaking it.

20 Also included in that RIF were employees who interact on a
21 day-to-day basis with recipients of foreign aid assistance.
22 Those are the people who would theoretically get these
23 programs back up and running after a suspension is lifted.
24 And those people likewise have largely been terminated or
25 placed on administrative leave.

1 One other point for Your Honor's consideration. To add
2 supplemental information to Mr. Wirth's discussion of the
3 problem of bottleneck at individual approval -- for individual
4 approval of line items, I wanted to call this court's
5 attention to reporting in *The Washington Post* in the last
6 couple of days. That reporting details how Elon Musk and two
7 DOGE employees took over the USAID payment processing system,
8 stopping payments entirely and making the supposed waivers
9 issued by Secretary Rubio completely ineffectual.

10 That reporting indicates that USAID managers prepared
11 packages of payments that should have ostensibly been covered
12 by waivers and got the agency's interim leaders to sign off on
13 those packages, but each time Musk and one or two other
14 employees of DOGE would veto the payments.

15 That reporting is consistent with what I've gleaned in
16 speaking to people from within the agency. My understanding
17 is that bureaus have flagged that they don't have access to
18 payment systems to effectuate the TRO, but the agency just has
19 not responded to those requests.

20 Just to take one example, nobody in the entire Global
21 Health Bureau, which among other things drives PEPFAR
22 programs, has access to the payment systems at all. It's just
23 two 20-somethings and Elon Musk. So essentially no funds are
24 being distributed.

25 THE COURT: Can you clarify that statement? The

1 systems you're referring to, are those USAID systems to
2 approve and put the payments forward, or are they
3 Treasury-side systems?

4 MS. BATEMAN: Our understanding is that Phoenix is a
5 USAID-side system through which USAID employees can actually
6 approve disbursement of payments.

7 THE COURT: And that's the system you're saying DOGE is
8 now controlling?

9 MS. BATEMAN: That's right.

10 THE COURT: Okay. Understood.

11 MS. BATEMAN: Thank you, Your Honor.

12 THE COURT: Anything else?

13 MS. BATEMAN: Nothing else. We'd just conclude by
14 reiterating that we seek enforcement of the TRO in its
15 entirety. Thank you.

16 THE COURT: Okay. Mr. Sur, I'll hear from you on
17 behalf of the defendants in both cases now.

18 MR. SUR: Good morning, Your Honor. Indraneel Sur from
19 the Department of Justice for the defendants.

20 I guess I will begin by noting that the defendants have
21 been focusing their efforts on preparation of the submissions
22 for the compliance and joint status report, working under the
23 Court's order with the due date for tomorrow, and that has
24 been the focus of the significant energy.

25 So when the plaintiffs in No. 402 early yesterday morning

1 raised this prospect of a renewed motion, there was failure of
2 time essentially for me to find anything. I did -- and the
3 defendants do now have -- received plaintiffs' invoices and
4 are analyzing them. But as for much of the assertions about
5 the facts, insofar as any of them are in the record at all,
6 we've not had the opportunity to respond to that.

7 And so at the outset, the Court noted the submissions for
8 tomorrow, and I think the Court also suggested that it might
9 provide guidance on what might be the appropriate content of
10 that submission. So in that respect I might respectfully
11 submit that it would be appropriate to give the defendants an
12 opportunity to address some of what's been asserted here about
13 the facts.

14 But -- Mr. Wirth made certain assertions. He did have the
15 benefit of pointing to the record on the previous motion, but
16 the dilemma is that the previous motion was denied, right,
17 albeit without prejudice for its renewal, but the renewal
18 papers didn't --

19 THE COURT: Mr. Sur, let me maybe direct you to
20 something --

21 MR. SUR: Sure.

22 THE COURT: -- that would be helpful at this point.
23 I take your point that a motion was filed while the joint
24 status report was pending, but I'll remind you the government
25 also filed Friday, around midnight if I recall, its own

1 version of that after the joint status report was ordered as
2 well.

3 And so, you know, right now the Court has before it a
4 motion to enforce. I've been clear that this is not going to
5 become -- well, certainly not intended to ever become a review
6 of individual contract determinations. You're bringing it
7 down to that level right now, and I don't want to as the
8 court.

9 I think there are some basic questions that have been
10 posed here, and while you may not have reviewed those specific
11 invoices, the TRO has been in effect for now 12 days, since
12 February 13, and there are some just basic questions.

13 So let me just ask you, you know, the TRO was clear and the
14 Court has said it was clear that defendants could not continue
15 the blanket suspension of foreign aid funds pending a review.
16 And that was based on a finding that the plaintiffs had shown
17 irreparable harm. It sounds like there's evidence right now
18 that it's deepened.

19 And to be honest -- obviously there's the PI motion pending
20 and briefing which the Court will consider, but at the TRO
21 phase I don't take the government really to have ever rebutted
22 that irreparable harm. And there was a likelihood of success
23 that at least under the APA, for failing to consider that
24 irreparable harm, that the plaintiffs were likely to prevail.

25 And so the plaintiffs seem to be saying that the blanket

1 pause was not lifted in any meaningful sense. I'd like you
2 to tell me in simple terms what action you are aware of that
3 the agency has lifted the blanket pause.

4 MR. SUR: So to begin with, I think that after the
5 TRO -- and this was provided in the February 18 status report,
6 that after the TRO, the agencies gave instructions about the
7 TRO and notice to the funding recipients and to the officers
8 who managed the grants. And the Court heard this morning
9 assertions about subsequent terminations, but -- and actually,
10 we had an exchange with plaintiffs Sunday night about that.

11 But the subsequent terminations have been, as I understand
12 it, grounded in individualized review which was consistent
13 with clauses in the Court's TRO distinguishing the blanket
14 from the individualized review.

15 THE COURT: Let's just break this down a little bit.
16 So why don't we focus on two different periods. Let's focus
17 on before February 13, the date of my TRO, and after February
18 13 separately. So let's just focus on the period before
19 February 13.

20 There were suspensions pursuant to the EO in the
21 implementing orders that were enjoined by my TRO, and there
22 may have even been a series of suspensions and terminations
23 communicated during that window between January 19 and
24 February 13.

25 Are you contending that those suspensions and terminations

1 that would have occurred during that period remain valid and
2 should be given effect?

3 MR. SUR: No, we understand the TRO to foreclose those.
4 I think that's clear.

5 THE COURT: So that's helpful. I appreciate that. And
6 I appreciate you being candid about that.

7 So then, are you aware of steps that the agencies here have
8 taken to actually unpause the disbursement of funds as to
9 agreements that fall within that category or work done before
10 February 13?

11 MR. SUR: So let me focus on that last point, if I
12 might, about the work done before February 13.

13 THE COURT: Well, I actually want to focus on my
14 question, which is -- you just said to me that you understand
15 that any of the suspensions and terminations that took place
16 before February 13 are invalid and can't be given effect under
17 the TRO. I do want to hear your full answer, but has the
18 government began -- has the government unfrozen disbursements
19 as to those contracts or assistance agreements for those --
20 for at least that period?

21 MR. SUR: So for the -- the period before the TRO --
22 this is going back to February 18 joint status report, the
23 plaintiffs' characterization of some of those decisions --
24 and there's a wide variety, right, of grants and foreign
25 assistance arrangements, contracts -- was that all of them

1 were under the same challenged authority, and the government
2 explained in the status report that there were
3 contract-specific categories.

4 So where there were contracts that resumed and they had
5 claims for work done, there actually was a process for that.
6 The Secretary of State's memorandum, which was published at
7 page 2586828 [sic] of paragraph 12(d) provided for legitimate
8 expenses incurred prior to the date of that -- it's called an
9 ALDAC -- under existing awards or legitimate expenses
10 associated with stop-work orders.

11 So there was a process -- the legitimate expense waivers.
12 And that hasn't been disputed in the complaint, that that is
13 there for the work that has been done.

14 THE COURT: Hey. I guess I'm not sure why I can't
15 get a straight answer from you on this. Are you aware of an
16 unfreezing of the disbursement of funds for those contracts
17 and agreements that were frozen before February 13? And
18 you've acknowledged that under the TRO any of the terminations
19 or suspensions that took place before February 13 are
20 foreclosed, they're invalid and shouldn't be given effect.
21 Are you aware of steps taken to actually release those funds?

22 MR. SUR: I'm not in a position to answer that. I
23 think we will be in a position to answer that in the joint
24 status report.

25 THE COURT: Well, we're 12 days into the TRO, and

1 you're here representing the government. You had represented
2 in the initial February -- it wasn't a joint status report,
3 to be clear, to correct you, it was a status report from the
4 government, from the defendant, and, you know, made issue of
5 that it had been five days and there had been a holiday
6 weekend, but we're now 12 days in and you can't answer me
7 whether any funds that you've kind of acknowledged are covered
8 by the Court's order have been unfrozen?

9 MR. SUR: All I can do really is say that the
10 preparations are underway for the joint status report on
11 compliance due tomorrow, and --

12 THE COURT: It's not really [indiscernible] to a joint
13 status report, right? The joint status report was something
14 I asked for. And I'm asking you right now what you are aware
15 of. Sounds like the answer is no. If the answer's no, you
16 can say no, that you're not aware of any actions to unfreeze.

17 MR. SUR: As I said, there was a legitimate expense
18 waiver process that is in place. Beyond its presence, I can't
19 really go beyond that.

20 THE COURT: But that's not referred to the TRO. You're
21 citing back to the implementing regulation that's a part of
22 it, of the same implementing regulation that the TRO enjoins.
23 But I'm asking you -- this hearing is about enforcing the TRO
24 and compliance with the TRO.

25 MR. SUR: So I do understand that. I do also

1 understand the motion before the Court, the motion to enforce
2 to actually seek relief that is somewhat different in
3 character and is explicitly monetary. And if the Court would
4 allow, I would appreciate the chance to elaborate a little bit
5 on that part of it.

6 THE COURT: On which part of it?

7 MR. SUR: That the relief before the Court as requested
8 in the present motion to enforce actually goes beyond the TRO
9 in that it is even more expressly of a monetary character and
10 therefore raises a serious problem of sovereign immunity.

11 THE COURT: Well, yeah. We can come to that. I mean,
12 I don't understand the argument. It seems like what you're
13 saying is instead of unfreezing or unpausing the funds, as the
14 TRO required, you just won't because of immunity. If you want
15 to brief that at the PI stage, I suppose you can. It's not an
16 argument that you all raised at the TRO phase.

17 Let me just ask you, though, here, because I think this is
18 important: I have from you an acknowledgement that
19 suspensions or terminations from before February 13 are
20 invalid under the TRO. And I appreciate that. I just want to
21 be clear here --

22 MR. SUR: I'm sorry --

23 THE COURT: Let me just finish my question. I just
24 want to be clear here. So I understand that there is a review
25 of the agency's legal authorities and contractual terms, but I

1 assume then that you understand that it's not enough to just
2 go ahead and come up with a legal authority or contractual
3 term that would have justified a termination before February
4 13. So an agency could be free to do that with independent
5 justification and legal authority in the future, but that
6 wouldn't justify or give effect to the terminations that
7 actually were communicated before February 13.

8 I assume you would agree with that given that you agreed
9 that it would violate the TRO to give those effect.

10 MR. SUR: Where I'm having difficulty is that I think
11 as the February 18 report explained, the authorities for the
12 terminations and suspensions were up -- as best as we know,
13 part of these various contracts, grants and cooperative
14 agreements all along.

15 THE COURT: Yeah. I mean, I think that's kind of the
16 point, Counsel, right? The TRO didn't say that there's no
17 underlying authority; that the agency is, you know, not acting
18 pursuant to the scope of its typical authority. The TRO very
19 clearly, and it now has been reiterated, that the plaintiffs
20 were likely to succeed, at least for now, under the APA.

21 And so it wasn't about whether there was an underlying
22 authority. For example, the Court didn't get to the
23 separation of powers problem. The question was about the
24 failure to consider the irreparable harm here and the massive
25 reliance interest. And finding new authorities does nothing

1 to do that, to address that.

2 So, you know, I think that it's explicit in the TRO but
3 it's also just illogical to say, well, we found some
4 authorities. Again, the government has its authorities going
5 forward, but I think the point I'm trying to make, and this is
6 the point about not just coming up with a pretextual basis for
7 what has been held to likely be arbitrary and capricious and
8 enjoined -- I guess I'm not understanding where there is any
9 confusion here. It seems kind of clear as day to me.

10 MR. SUR: So, Your Honor, I think I would only be
11 reiterating what we've said in our previous filings, which is
12 that the Court's TRO we think appropriately recognized that
13 there were authorities that were located in contracts and
14 grants, and that the enforcement of those agreements at the
15 agreement-specific level was appropriate. So -- and that I --

16 (Simultaneous speaking.)

17 THE COURT: I take your point -- I understand the
18 government's position that it was appropriate. I'm sorry,
19 counsel. You're saying that -- I guess I'm hearing you say
20 two things. One, it sounds like you're saying that the
21 termination of grants was appropriate. Clearly, you prefer
22 not to have been enjoined. But I also heard you say that you
23 understand that terminations and suspensions prior to February
24 13 were in fact enjoined. I think the language you used was
25 foreclosed by the Court's TRO.

1 MR. SUR: I think to that point insofar as -- I'm sorry
2 to interrupt. But as I understood it to be insofar as it was
3 a blanket, I thought I was responding -- I'm sorry if I wasn't
4 clear. I thought I was responding to the Court's question
5 about the concept of a blanket.

6 THE COURT: Well, before February 13, everything was
7 proceeding pursuant to the blanket directive to terminate and
8 suspend. That's what the directive was, implementing the
9 executive order.

10 MR. SUR: So this is in the February 18 status report
11 as well, that following the TRO the agencies reviewed and
12 concluded that those suspensions and terminations were
13 consistent with terms of the contracts or grants or
14 cooperative agreements. So maybe that's where I'm having
15 the -- in that --

16 THE COURT: How is that different from just being a
17 post hoc rationalization kind of piece by piece of the kind of
18 en masse suspension that was deemed arbitrary and capricious?
19 I guess I can't tell whether you're just restating a position
20 that you want to preserve because you disagree with the TRO,
21 or there's actually some degree of confusion to begin with.
22 It seems clear to me, plaintiffs have articulated here in a
23 clear way as well.

24 So to the extent it's just a policy disagreement in terms
25 of the outcome of the TRO, that's fine, but I'd appreciate you

1 just being candid about that.

2 MR. SUR: Um, well, I'm not certain if I would use the
3 term "confusion" so much as that the Court we think in the
4 original TRO in some sense recognized that there are
5 contract-level authorities and didn't foreclose that. So --
6 you know, the government's subsequent filings I think have
7 sought to explain how those contract-level authorities have
8 been working.

9 THE COURT: Okay. All right. We're going to move on
10 from that. Why don't we focus on -- I'm not sure I understand
11 that point insofar as it deals with anything before February
12 13, because at that time, and I made clear that it's not just
13 about finding a contract term or a legal authority that
14 applies, but it cannot be taking place pursuant to the same
15 action here, which was a general directive to pause. And so
16 everything before February 13 clearly was under that general
17 directive.

18 Let me turn you to the other period I mentioned, post
19 February 13, so after the TRO. I want you to tell me again
20 what actions you understand have been taken -- aside from
21 mailing the notice, mailing a copy of the TRO and saying
22 further guidance would be provided, I want to know what
23 actions have been taken, including whether funds have been
24 unfrozen based on the TRO, and if so, what funds have and what
25 funds have not.

1 MR. SUR: These would be I think the logical subjects
2 of the joint status report that is underway. I don't have the
3 ability to recite those particular facts at this hearing.

4 THE COURT: Twelve days into the TRO, you can't give me
5 any facts about funds being unfrozen based on the TRO?

6 MR. SUR: I can -- I mean, there is this waiver
7 process. And --

8 THE COURT: Which was part of -- my TRO didn't have a
9 waiver process in it. I'm asking about in response to my TRO.

10 MR. SUR: Right. So the TRO didn't enjoin paragraph
11 12(d) of the memorandum we were talking about, so that process
12 for approval of waivers of the pause --

13 THE COURT: Counsel, is your answer then that the only
14 funds that have been reinstated are the ones that could have
15 been reinstated under the initial implementation of the TRO,
16 meaning only if they went through the waiver process? That
17 sounds to me like you're just operating under the procedures
18 of the implementation.

19 MR. SUR: So I'm offering that as one example.

20 THE COURT: Can you give me other examples?

21 MR. SUR: So in the joint status report -- I'm sorry.
22 I have incorrectly referred to it as the joint status report.
23 This is actually the February 18th status report -- there are
24 additional examples in that report and the supporting
25 declaration.

1 THE COURT: Of funds being unfrozen in response to the
2 TRO?

3 MR. SUR: I can only give you what the description here
4 is, authorization and requested disbursement of foreign
5 assistance funding.

6 THE COURT: Okay. All right. Can you tell me -- look,
7 I'm interested in what the general directives have been since
8 the TRO. So your clients, the heads of these agencies, issued
9 directives before the TRO. These are the ones that were
10 restrained by the TRO that implemented the blanket suspension
11 of funds pending their review. So that was enjoined. After
12 the TRO, did they issue new directives walking that back?

13 MR. SUR: Some of -- my understanding is we described
14 that in the February 18th status report.

15 THE COURT: Can you describe it for me now, because I
16 didn't see that.

17 (Pause.)

18 Are you aware of directives from your clients or other
19 senior officials at the agencies that walked back the initial
20 general directive to suspend and terminate funds?

21 MR. SUR: When you say "walked back," I think there
22 were notices of the TRO. This is -- they stated -- if I
23 may --

24 THE COURT: Go ahead.

25 MR. SUR: -- for example, in the declaration that

1 supported the February 18th status report, paragraph 5, the
2 notice to the acquisition and assistance staff at USAID stated
3 that until further notice the contracting and agreement
4 officers should not enforce any agency directive issued under
5 Executive Order 14169 and the Secretary's implementing
6 memorandum that requires the generalized stop-work, suspension
7 or pause of agency contracts, grants or other federal
8 assistance awards.

9 That was exhibit -- sorry, this was paragraph 5 of the
10 declaration, and then it pointed to Exhibit C.

11 THE COURT: Counsel, I hope you understand why this
12 is important as the attorney who's presumably advising your
13 clients and you're here representing them. The Court's been
14 clear and, you know, as recent as when the government came on
15 Friday night and asked for further clarification, the Court
16 said that the qualification about when there are terms in the
17 contract or other legal authorities which allow termination
18 applies, but not when the terminations are still deriving from
19 a general directive to suspend aid. That's repeated
20 throughout the document we filed. I haven't seen the
21 emergency appeal you had referred to in that document be
22 filed, and the TRO is still in effect.

23 So if I were you, you know, I would think it would be
24 very important to point to some sort of directive that --
25 or something that indicates that the suspensions that are

1 happening under lawful authority, whether it be a regulation
2 or the terms of the contract or otherwise, is not still just
3 deriving from a general direction to suspend aid from the
4 agency, because that, again, is the very action that was held
5 to be likely arbitrary and capricious, that general directive.
6 And I don't even take the defendants to have ever disputed
7 that at the TRO stage. Maybe I'll -- you know, I'll look
8 closely at your PI briefing.

9 So I'll leave it at that, but I would think it would be
10 important for you to be able to explain that to your clients
11 and to point to that.

12 MR. SUR: I realize I've said this before, but if I may
13 say it one more time, I do think that the submissions that are
14 underway now offered for tomorrow will help.

15 THE COURT: Okay. I appreciate that. I'm going to
16 take that to mean that you're still in conversations with your
17 clients, and that's what your inability to give a clear answer
18 to the Court is today. You can correct me if I'm wrong on
19 that.

20 MR. SUR: Yeah, I would have to go back to the clients.

21 THE COURT: Yeah. Understood. Okay.

22 So let me just see if I have any other questions for you,
23 Mr. Sur.

24 MR. SUR: May I ask, would the Court permit me to
25 briefly address some of the points that are specific to the

1 monetary character of the relief sought on this particular
2 motion?

3 THE COURT: Well, maybe. Yes, but to this extent:
4 I said at the outset that the purpose of this hearing is to
5 understand and to hear arguments on the motion to enforce the
6 TRO. It is not an opportunity to relitigate the TRO. So if
7 there are arguments that you want to make that limit the scope
8 of injunctive relief, the place for that would have been in
9 your PI briefing.

10 So I hope any argument you're going to make about that is
11 in your PI briefing. But if you want to make arguments about
12 what the scope of the TRO actually was, then those arguments
13 are welcome.

14 MR. SUR: Right. So I mean, again, I'll try to be very
15 brief. But the sovereign immunity question is brought into
16 particular focus by the proposed order, including the clauses
17 that the Court discussed with counsel for plaintiffs in
18 No. 402 earlier this morning, because they have an explicitly
19 monetary character, demanding compensation for past work and
20 including relief that addresses the letters of credit.

21 As the Court notes, in the PI briefing we did address this
22 question of sovereign immunity, and the APA sovereign immunity
23 waiver not covering monetary claims premised on contracts.
24 But I do think it's helpful to understand in the particular
25 context of this morning's discussion that the particular

1 motion by the GHC plaintiffs is again framed in terms of
2 compensation for past work under contract and letters of
3 credit, very explicitly of a monetary character, the nature of
4 that relief. And sort of an even sharper focus than some of
5 the other elements of the preliminary injunction bringing this
6 question.

7 So here again, there would be, for contract by the
8 government, remedies that are described in our PI motion under
9 the Contract Dispute Act that would proceed maybe in the Court
10 of Federal Claims but not as part of the APA's waiver of
11 sovereign immunity which is for nonmonetary relief.

12 THE COURT: Understood. I appreciate that. I do have
13 that argument. I have it in your preliminary injunction
14 briefing. It's not something that's come up in your TRO
15 briefing until today, or TRO arguments or submissions until
16 today. And as I said, this is not an opportunity to
17 relitigate the TRO. The TRO is in effect, it hasn't been
18 stayed or overturned in any sort of way. I do want to make
19 that clear.

20 So let me ask you about some particular things in the
21 record following the TRO that stood out to me. I'm going to
22 give you one example. I'm looking at ECF 29-1. This is an
23 attachment to -- I'm sorry. I should clarify. This is in the
24 Global Health Council case, No. 402, the same case that has
25 the pending motion to enforce.

1 And as I understand it, ECF 29-1 is a declaration from
2 someone who describes an email from a State Department
3 official on February 18. So this is five days after the
4 Court's TRO. And the email apparently said, "Secretary Rubio
5 has implemented a 15-day disbursement pause on all 15.9
6 billion worth of grants at the State Department."

7 And apparently the same email directed personnel in a
8 particular bureau to undertake an assessment of all grants at
9 the post and then still said, "Review the President's
10 executive orders and recommend termination of grants that do
11 not comply with those orders."

12 So this is five days after the TRO. I understand that
13 Ms. Bateman, counsel in the 400 case, AIDS vaccine, referred
14 to other instances in which guidance sent after February 13,
15 after the emergency relief, also are referring to review
16 pauses of disbursements and reviews pursuant to the
17 implementation that's been enjoined by the Court.

18 Can you provide any context for me on that that might be
19 helpful?

20 MR. SUR: If I may just go back one step. So this is
21 in case No. 402, this is document 29-1, just to catch up to
22 where you were.

23 THE COURT: Yes.

24 MR. SUR: And was it a particular exhibit, or was it a
25 declaration matter?

1 THE COURT: Dunn-Georgiou declaration. It is paragraph
2 3 where it starts to --

3 MR. SUR: Okay. I might briefly be able to address
4 this point about the executive orders. And if I understand
5 that correctly -- I apologize for not seeing the quote here as
6 I'm scrolling through the PDF. But the reference to executive
7 orders I think does not encompass the order that is challenged
8 in this action. If there were a number of other executive
9 orders that announced various policies of the administration
10 including as to foreign assistance -- so I take the reference
11 to executive orders to be -- to those other, unchallenged for
12 purposes of this case, policies. But again, because I'm not
13 seeing the quote, I'm not able to put that in the proper
14 context.

15 THE COURT: Okay. I can tell you exactly where it is.
16 It's document 29-1. It's the first page.

17 MR. SUR: Uh-huh.

18 THE COURT: And you can see in paragraph 3 it quotes
19 the email from the State Department official that says
20 "Colleagues, Secretary Rubio has implemented" -- I won't read
21 it all again, but it should be right there in front of you.

22 MR. SUR: I'm sorry, yes. So I take the discussion to
23 be about the executive orders that I was talking about earlier
24 that are not the executive order that's challenged here. But
25 that is pointing out that some grants are not, you know,

1 consistent with some of the other executive orders.

2 THE COURT: Well, can you clarify the color on that
3 first sentence, that's again five days after the TRO, says
4 there's the implementation of a 15-day disbursement pause on
5 all 15 billion worth of grants at the State Department?

6 MR. SUR: I don't actually have anything further beyond
7 what's on the text here. I don't know the underlying --

8 THE COURT: Okay. Mr. Sur, I appreciate it. Is there
9 any other thing you'd like to clarify, particularly if you
10 have any information about the kind of on-the-ground how these
11 grants work? Mr. Wirth provided I think a helpful explanation
12 of the two categories, the contracts versus the assistance
13 agreements and the differences between invoices and lines of
14 credit.

15 No worries if that's clear, but I wanted to give you the
16 opportunity to clarify anything that he might have gotten
17 wrong about how that works.

18 MR. SUR: Beyond understanding the lines of credit to
19 be a particularly sharp instance of the monetary character of
20 the relief sought, I don't actually have a further
21 understanding of those. So I wouldn't be able to comment on
22 that.

23 I do in that respect just want to go back to another point,
24 which was that the legitimate expense provisions that we were
25 talking about earlier, they remain open, including to the

1 plaintiffs who are before the Court today. So there has been
2 no, you know, final decision on these particular plaintiffs'
3 claims as to those, you know, expenses. And I don't think it
4 would be arbitrary to make a determination on legitimate
5 expenses.

6 So again, just focusing on the particular motion that's
7 before the Court with that proposed order, the availability
8 of the legitimate expense provision, where it has not yet been
9 determined to be applied, I don't think would be --

10 THE COURT: Can you clarify what you mean by
11 "legitimate expense"? Is it kind of a repackaging of the
12 fraud argument that was raised in the Friday filing?

13 MR. SUR: I don't think so. I think it's a distinct
14 process that was built into the Secretary of State's
15 memorandum.

16 THE COURT: Okay. And is -- just a moment.

17 Okay. Actually, I don't have any more questions for you,
18 Mr. Sur.

19 Mr. Wirth, I'll give you the chance to respond briefly to
20 anything critical here.

21 MR. WIRTH: Yes, Your Honor. I'll be brief. I think
22 what the Court's colloquy with the government has revealed is
23 that the government has done nothing to make the flow of
24 payments happen, or at least that government counsel's is
25 aware of nothing the government has done, and certainly can't

1 contradict my clients' experiences that they've received no
2 payments that they are owed.

3 As far as we're aware, there's been zero directives from
4 the agency with respect to the unfreezing of funds. There
5 have been, you know, some statements with respect to
6 suspensions and terminations, which is a separate question
7 entirely. With respect to the unfreezing of funds, we're
8 aware of no directives from leadership whatsoever since the
9 Court's TRO over -- almost two weeks ago.

10 The government refers to the legitimate expense waiver, but
11 that was a waiver that was included in the -- a waiver to the
12 provisions that this court has already enjoined. And even if
13 the invoices at issue here were subject to that waiver, no
14 payments have been made. So the waiver is illusory. So the
15 government's invocation of the waiver makes no sense two times
16 over.

17 And I just want to be very clear, there was some discussion
18 of terminations. Terminations are a separate question. But
19 the key point here is that even on contracts that have been
20 terminated, whether or not those terminations remain in effect
21 or not or have been re-upped or not, the government still has
22 to make payments that are owed regardless of whether the
23 government decides to terminate contracts.

24 The government referred to contract-level authorities.
25 They've cited no contract-level authorities for the

1 proposition that the government can refuse to pay its debts,
2 much less refuse to give meaning to the Court's TRO. I do
3 want to focus very carefully on the language of the TRO here,
4 which specifically directed the government to stop suspending,
5 pausing or otherwise preventing the obligation or disbursement
6 of appropriated foreign assistance funds.

7 And I think what's crucial here and what's been
8 demonstrated by the government in this colloquy is that
9 they've done absolutely nothing to give meaning to that
10 provision of the TRO.

11 The government briefly mentioned the monetary nature of the
12 relief here. I want to be very clear, the order that we put
13 forward sets out relief that is necessary to give effect to
14 the TRO. We are going to fully brief the APA issues in our
15 reply brief. But to be clear, the APA permits injunctive
16 relief that has the effect of causing the government to make
17 out payments. There's case after case after case for that
18 proposition. There's nothing stopping the Court from ordering
19 the relief that we've requested. And to be clear, this is
20 relief that is necessary to give meaning to the TRO. This is
21 not separate relief.

22 Finally, I do want to correct some either misunderstandings
23 or misstatements from the government with respect to the
24 terminations here. The government has said that the
25 terminations prior to February 13 are currently invalid. Our

1 understanding is that the government has decided that every
2 single termination that it effected prior to the Court's TRO
3 remains in effect. They were never rescinded, they were never
4 taken off the books, they simply added a post hoc
5 rationalization for every single one of those. That includes
6 all four tranches of the terminations that occurred in the
7 days around when we filed our complaint.

8 But we're here right now primarily discussing the failure
9 of the government to do anything whatsoever with respect to
10 the freeze of foreign assistance funds. They still have done
11 nothing to stop the pause. And to be clear, they still owe
12 that money even on terminated contracts, even if those
13 terminations are ultimately deemed to be valid, which we do
14 not believe they are.

15 So that's all I have to say. Thank you.

16 THE COURT: Thanks, Mr. Wirth.

17 Okay. So the Court's going to take about a 15-minute
18 recess. And I'll honor that. If folks need to get up for 15
19 minutes and return to the phone in about 15 minutes, you have
20 my word I won't come back before that. I also don't
21 anticipate coming back much after that. But I do want to take
22 some time to consider the arguments and see what clarity I can
23 offer here orally.

24 So I will be back. Appreciate it.

25 THE DEPUTY CLERK: This honorable court is in a brief

1 recess.

2 (Recess from 12:31 p.m. to 1:01 p.m.)

3 THE DEPUTY CLERK: Good afternoon. Counsel for
4 plaintiffs in the 400 case, are you present?

5 MS. BATEMAN: Yes. Lauren Bateman for the plaintiffs
6 is present.

7 THE DEPUTY CLERK: Thank you. And defense?

8 MR. SUR: Yes, I am. This is Indraneel Sur for the
9 Department of Justice for the defendants.

10 THE DEPUTY CLERK. Thank you. And plaintiffs in the
11 402 case, are you present?

12 MR. WIRTH: Yes. This is Stephen Wirth on behalf of
13 plaintiffs.

14 THE DEPUTY CLERK: All right. Your Honor, we're ready.

15 THE COURT: All right. Thanks, everyone. I appreciate
16 your patience. And I wish I could say I'll give you that 15
17 minutes back, but I don't have a way of doing that.

18 The Court is prepared to rule on plaintiffs' written motion
19 to enforce in 402 and plaintiffs' oral motion to enforce in
20 400.

21 The Court makes clear at the outset that this ruling is
22 taking place in the context of enforcing specific aspects of
23 the Court's TRO, those that have been the focus of today's
24 hearing. And accordingly, I'm making clear that in enforcing
25 specific components of the TRO, the Court is in no way

1 limiting the scope of the TRO or modifying its terms.

2 In granting the temporary restraining order, the Court
3 made clear that the restrained defendants were enjoined from
4 "suspending, pausing, or otherwise preventing the obligation
5 or disbursement of appropriated foreign assistance funds in
6 connection with any contracts, grants, cooperative agreements,
7 loans, or other federal foreign assistance award that was in
8 existence as of January 19, 2025."

9 And in granting the subsequent motion to enforce, the Court
10 made clear that, "To the extent defendants have continued the
11 blanket suspension, they are ordered to immediately cease it
12 and to take all necessary steps to honor the terms of
13 contracts, grants, cooperative agreements, loans, and other
14 federal foreign assistance awards that were in existence as of
15 January 19, 2025, including but not limited to disbursing all
16 funds payable under those terms." That's the Court's February
17 20th order.

18 Counsel for defendants today have acknowledged that the
19 Court's TRO forecloses giving effect at least to any
20 suspension or termination which took place before the Court's
21 temporary restraining order on February 13, 2025.

22 Plaintiffs have submitted evidence that defendants have not
23 lifted the suspension or freeze of funds as the TRO required.
24 Defendants have not rebutted that evidence, and when asked
25 today, defendants were not able to provide any specific

1 examples of unfreezing funds pursuant to the Court's TRO.

2 At the hearing today, defendants did for the first time, at
3 least as it relates to the TRO, argue that monetary relief
4 cannot be a consequence of the TRO under the APA due to
5 sovereign immunity. The Court notes this is a further example
6 of the shifting ground that's taken place at the TRO phase and
7 that the argument's not sufficiently developed to be
8 considered today.

9 I do understand that defendants have included this argument
10 in their briefing at the preliminary injunction stage, and the
11 Court will of course give it due consideration at that stage.
12 And as the Court has noted several times, once the parties
13 complete their briefing schedule at the preliminary injunction
14 phase, the Court stands prepared to hold a hearing and resolve
15 the preliminary injunction as expeditiously as possible.

16 In the meantime, the motion to enforce the TRO is the issue
17 before the Court. And the very point of a TRO is to prevent
18 irreparable harms in the course of considering a preliminary
19 injunction.

20 So, for these reasons, the Court is going to grant
21 plaintiffs' motion to enforce and finds that the relief
22 requested by plaintiffs in their proposed order is
23 appropriate. So to be clear and to give effect to the Court's
24 TRO, the Court orders as follows:

25 By 11:59 p.m. on February 26, 2025, the restrained

1 defendants shall pay all invoices and letter of credit
2 drawdown requests on all contracts for work completed prior to
3 the entry of the Court's TRO on February 13.

4 They shall permit and promptly pay letter of credit
5 drawdown requests and requests for reimbursements on grants
6 and assistance agreements -- this is also for the purpose of
7 this motion to enforce, for work completed prior to the entry
8 of the Court's TRO on February 13.

9 And defendants shall take no actions to impede the prompt
10 payment of appropriated foreign assistance funds and shall
11 take all necessary action to ensure the prompt payment of
12 appropriated foreign assistance funds.

13 I'm reiterating that this relief takes place in the context
14 of a specific request to enforce the TRO. This in no way
15 narrows the scope of the TRO itself.

16 That's the Court's ruling.

17 I do want to turn to the joint status report on compliance
18 that -- I'll be clear that the parties remain under an order
19 to file that joint status report by noon tomorrow.

20 Obviously, the required disbursements pursuant to this
21 motion to enforce that the Court has granted may still be
22 underway when the status report is filed; however, the report
23 shall confirm what steps have been taken by that time and that
24 such disbursements will be made by 11:59 p.m. tomorrow.

25 And in the interest of ensuring compliance with the Court's

1 order, as I previously ordered, to the extent there remain any
2 disputes as to compliance -- and here I'm speaking of the
3 whole TRO, not just the present motion to enforce. To the
4 extent there remain disputes as to compliance, the parties
5 shall identify agency officials, employees, or other witnesses
6 who can testify under oath as to those disputes.

7 Finally, based on the discussion at today's hearing, I'm
8 also ordering defendants to provide the Court and plaintiffs
9 any directives or guidance that defendants or their agents
10 have sent since the Court's TRO on February 13 which pertain
11 to the implementation of the TRO or the suspension or
12 termination of agreement, and any directive or guidance after
13 the Court's TRO on February 13 which pertain to the
14 implementation of the TRO or the suspension or termination
15 of agreement. And I want those by noon tomorrow as well.

16 And just in the interest of being clear, that would include
17 any directives or guidance that defendants or their agents
18 send through tomorrow, up until -- so even if it follows the
19 discussions we've had at the hearing today. And I want those
20 documents by noon tomorrow.

21 With that, we can adjourn for the day. I appreciate
22 everyone's time.

23 THE DEPUTY CLERK: All right. Thank you all. This
24 honorable court is adjourned.

25 (Proceedings adjourned at 1:09 p.m.)

* * * * *

CERTIFICATE

I, BRYAN A. WAYNE, Official Court Reporter, certify that the foregoing pages are a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Bryan A. Wayne
Bryan A. Wayne

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AIDS VACCINE ADVOCACY
COALITION, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
STATE, *et al.*,

Defendants.

Civil Action No. 25-00400 (AHA)

GLOBAL HEALTH COUNCIL, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

Civil Action No. 25-00402 (AHA)

Order Denying Motion To Stay Pending Appeal

On February 13, 2025, this Court granted a temporary restraining order (“TRO”), finding Plaintiffs had shown that Defendants’ blanket suspension of congressionally appropriated foreign aid funds would cause them irreparable harm and was likely arbitrary and capricious under the Administrative Procedure Act (“APA”) for failing to consider the immense reliance interests at stake. *Glob. Health*, ECF No. 21; *AIDS Vaccine*, ECF No. 17. While the Court did not grant Plaintiffs the full scope of emergency relief they sought, it enjoined Defendants from continuing a blanket freeze of the congressionally appropriated funds. Over the nearly two weeks since, Plaintiffs have moved multiple times to enforce the Court’s TRO and hold Defendants in contempt,

each time attaching evidence that Defendants have continued their funding freeze and evidence of the irreparable harm to businesses and organizations across the country that justified the TRO. In response to those motions, the Court declined to hold Defendants in contempt and reaffirmed certain flexibility and authority Defendants reserved, consistent with the TRO. *AIDS Vaccine*, ECF No. 30; *AIDS Vaccine*, Feb. 25, 2025, Min. Entry; *see also AIDS Vaccine*, ECF No. 34 (addressing Defendants' motion for clarification). However, the Court twice reiterated in its orders: "[T]o the extent Defendants have continued the blanket suspension, they are ordered to immediately cease it and to take all necessary steps to honor the terms of contracts, grants, cooperative agreements, loans, and other federal foreign assistance awards that were in existence as of January 19, 2025, including but not limited to disbursing all funds payable under those terms." *AIDS Vaccine*, ECF No. 34 at 5; *AIDS Vaccine*, ECF No. 30 at 5. The Court's TRO and these subsequent orders remain in effect and unchallenged. Neither Defendants' recent notice of appeal nor the instant motion to stay pending appeal challenges the terms of the TRO or these prior orders.

Defendants have filed the instant motion to stay the Court's order granting Plaintiffs' latest motions to enforce the TRO. In those motions, Plaintiffs again provided evidence that Defendants have simply continued their blanket funding freeze and further documentation of the irreparable harm they are suffering, including attestations of severe harm that will manifest before the end of the week. Plaintiffs explained that they tailored their motion to enforce to address only the most acute irreparable harm, seeking compliance with the TRO by unfreezing the congressionally appropriated funds *at least* for all work completed prior to February 13, the date of the Court's TRO. Upon receiving the motion, and now twelve days since the TRO had been granted, the Court held a prompt hearing to hear from all parties in both cases on the state of compliance. At the hearing, counsel for Defendants acknowledged that the Court's TRO foreclosed Defendants from

giving any effect to suspensions or terminations that were issued before February 13. *AIDS Vaccine*, ECF No. 35 at 33–34. The Court asked counsel for Defendants if he was “aware of steps taken to actually release those funds,” consistent with the TRO and subsequent orders. *Id.* at 35. Counsel responded that he was “not in a position to answer that.” *Id.* For this and additional reasons stated on the record, the Court orally granted Plaintiffs’ second round of motions to enforce the TRO. The Court ordered Defendants 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. The Court made clear that, although it was focusing on this specific aspect of the TRO that was the subject of Plaintiffs’ motion to enforce and which was a consequence of the TRO’s injunctive relief, the Court was “in no way limiting the scope of the TRO or modifying its terms.” *Id.* at 55–56. The Court further ordered the parties to provide a joint status report the next day, updating the Court on the circumstances and providing documentation necessary for the parties and Court to assess the state of compliance.

Defendants’ principal basis for staying the Court’s ruling pending appeal appears to be that they can only partially unfreeze funds within the additional 36 hours that the Court gave them, and that they need more time to unfreeze the funds at issue in Plaintiffs’ latest motion to enforce. *See AIDS Vaccine*, ECF No. 37 at 2–3 (stating it is “not possible for Defendants to comply” within 36 hours). This is not something that Defendants have previously raised in this Court, whether at the hearing or any time before filing their notice of appeal and seeking a stay pending appeal. That is so even though Plaintiffs’ motion to enforce explicitly proposed compliance on this time frame. If Defendants wanted to propose a different schedule for achieving compliance, that is something they could have proposed to this Court and that the Court could have considered alongside Plaintiffs’ showings. Any such schedule would have to take into account that Defendants have

already had nearly two weeks to come into compliance, apparently without taking any meaningful steps to unfreeze funds. Moreover, particularly given Defendants' delay and the imminent harm Plaintiffs have documented, it would require far greater specificity than has been provided in the motion to stay pending appeal, including significant, concrete steps in the immediate term toward reaching compliance. This is not nearly grounds for a stay pending appeal—to the contrary, a stay would directly contradict that purpose.

Defendants' remaining arguments in the motion for stay pending appeal demonstrate the shifting ground at this early stage and simply highlight the need for expeditious resolution of the preliminary injunction motions in these cases, which the Court has agreed to consider on the parties' proposed briefing schedule. Defendants state, for instance, that injunctive relief here "intrudes deeply into the prerogatives of the Executive Branch and the discretion committed to the President under Article II," asserting that "Executive Branch leadership harbors concerns about the possibility of waste and fraud and is in the process of developing revised payment processing systems to address those concerns." *AIDS Vaccine*, ECF No. 37 at 4. But the blanket suspension of congressionally appropriated funding that has been challenged and temporarily enjoined was the result of a categorical order, not any specific finding "about the possibility of waste and fraud." Indeed, in defending the challenged action at the 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. And, to date, Defendants have not adduced any evidence "about the possibility of waste and fraud" beyond conclusory statements like the one in their motion.

Moreover, although Defendants' motion to stay refers to "the prerogatives of the Executive Branch and the discretion committed to the President under Article II," it does so without offering meaningful depth to analyze the argument, including not identifying the particular constitutional

prerogatives they rely on. For instance, Defendants do not explain how the described prerogatives bear on likely violation of the APA, the statutory authority on which the TRO was based and whose constitutional validity has not been challenged. As written, the argument seems to simply presume that Defendants will prevail on the separation of powers questions that Plaintiffs have raised, without nearly enough analytical depth. *See, e.g., Zivotofsky ex rel. Zivotofsky v. Kerry*, 576 U.S. 1, 21 (2015) (“The Executive is not free from the ordinary controls and checks of Congress merely because foreign affairs are at issue.”); *id.* at 62 (Roberts, C.J., dissenting) (recognizing that “[t]he Constitution allocates some foreign policy powers to the Executive, grants some to the Legislature, and enjoins the President to ‘take Care that the Laws be faithfully executed’”).

Defendants’ arguments that injunctive relief under the APA runs into a sovereign immunity problem given the monetary consequences, and that remedies may be available under the Contract Disputes Act or the Tucker Act, are similarly undeveloped and an attempt to pretermitt the preliminary injunction stage. Defendants state that the Court has “refus[ed] to consider its own jurisdiction” before entering its TRO. That is not so. At the hearing on Plaintiffs’ motion to enforce, the Court simply noted that the purpose of the hearing was to understand Defendants’ compliance, not to relitigate the TRO. *See AIDS Vaccine*, ECF No. 35 at 47 (explaining that “this is not an opportunity to relitigate the TRO. The TRO is in effect, it hasn’t been stayed or overturned in any sort of way. I do want to make that clear.”). However, the Court has considered its jurisdiction at each stage of this case. Defendants’ undeveloped arguments on this point to date have not persuaded the Court that they would affect the Court’s prior likelihood of success analysis as it relates to the TRO. For example, Defendants’ instant motion does not meaningfully engage with the large body of precedent on this question. *See, e.g., Kidwell v. Dep’t of Army*, 56 F.3d 279, 285 (D.C. Cir. 1995) (reviewing this body of case law and recognizing that although “a victory for

the plaintiffs may well have required the government to pay them money, the Tucker Act was not implicated” because monetary benefits would not come “from the district court’s exercise of jurisdiction but from the structure of” statutory and regulatory requirements); *Am. ’s Cmty. Bankers v. FDIC*, 200 F.3d 822, 829 (D.C. Cir. 2000) (“Not all forms of monetary relief are money damages.”); *Robles v. Kerry*, 74 F. Supp. 3d 254, 260 (D.D.C. 2014) (noting that APA waives sovereign immunity for claims seeking “relief other than money damages” but that money damages “are categorically exclusive of *specific relief*—which includes monetary relief sought as a statutory entitlement”). Parties regularly raise jurisdictional arguments at the TRO phase—or, like here, well after a TRO has been granted—and the conclusion that such arguments do not alter the Court’s analysis is not a basis for staying the TRO pending appeal.

To be sure, the parties requested a briefing schedule to develop these arguments for the preliminary injunction phase, which the Court has adopted and is still in progress. Under that schedule, Defendants recently filed their preliminary injunction brief, and the Court shortened Plaintiffs’ deadline to reply to noon tomorrow, in the interest of proceeding as expeditiously as possible. The Court is prepared to hold a hearing on the preliminary injunction motions in both cases by March 4, 2025, and issue an opinion considering the full record and arguments before it with full dispatch. The Court has set the expiration date for the TRO at 11:59 p.m. on March 10, 2025, or the date the Court resolves the preliminary injunction motions, whichever is sooner.

The purpose of temporary emergency relief was to restore the status quo as it existed before Defendants’ blanket suspension of congressionally appropriated funds, given Plaintiffs’ strong showing of irreparable harm and that Defendants’ blanket suspension of funds was likely arbitrary and capricious. A stay pending appeal would run directly contrary to that purpose and, indeed,

would have the opposite effect of rendering the Court's TRO—unchallenged in the appeal or stay motion—a nullity. The Court accordingly denies Defendants' motion for a stay pending appeal.

SO ORDERED.



AMIR H. ALI
United States District Judge

Date: February 26, 2025

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AIDS VACCINE ADVOCACY
COALITION, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT
OF STATE, *et al.*,

Defendants.

Civil Action No. 25-00400 (AHA)

GLOBAL HEALTH COUNCIL, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

Civil Action No. 25-00402 (AHA)

I, Pete Marocco, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am over 18 years of age, of sound mind, and otherwise competent to make this declaration. This declaration is based on my personal knowledge and information provided to me in my official capacity by others.

2. Since Thursday, January 30, 2025, I have performed the duties and functions of both Deputy Administrators of the United States Agency for International Development (“USAID” or the “Agency”). I manage the day-to-day operations at USAID including personnel matters and operations. Since January 20, 2025, I have also served as the Director of Foreign Assistance at the Department of State. Previously, I served as a United States Marine and as a Deputy Assistant

Secretary at both the Department of State and the Department of Defense. Additionally, I served on a special assignment as the Senior Advisor for Intelligence and Security to the Secretary of Commerce and served as the Assistant to the Administrator at USAID, overseeing the Bureau for Conflict Prevention and Stabilization.

A. Payment Process

3. The Department of State and USAID are currently completing individualized review of contracts and grants. Determining the appropriate course for existing contracts and grants is a cumbersome, multi-step process. Once an initial decision is made concerning whether to lift a stop-work order or terminate a contract, under authority conferred by both the contracts/grants and independent legal authority, State and USAID began the process of lifting stop work orders and terminating others as quickly as possible with the resources they have.

4. The Court's latest order enforcing the TRO and requiring payments to issue by February 26 at 11:59pm will have drastic consequences. For USAID, I estimate the Court's order would require the payment of at a minimum **\$1.5 billion dollars** across approximately 2,000 outstanding and newly created payment requests. For State, I estimate the Court's order would require the payment of at a minimum **\$400 million** in outstanding payment requests. These payments cannot be accomplished in the time allotted by the Court and would instead take multiple weeks.

5. USAID led a rigorous multi-level review process that began with spreadsheets including each contract, grant, or funding instrument where each line of the spreadsheets reflected one such agreement and included information about the recipient, the amount of the award, the subject matter, and a description of the project that often included the location of the project. Policy staff first performed a first line review to determine whether the individual agreement was in line with foreign policy priorities (and therefore could potentially be continued) or not (and presumptively

could be terminated as inconsistent with Agency priorities and the national interest). Those recommendations were reviewed by a senior policy official to confirm that, for awards recommended for termination, that ending the program was consistent with the foreign policy of the United States and the operations and priorities of the Agency. The results of that review were routed to me for further review, including of institutional and diplomatic equities. As one example, a presumptively terminated agreement might be continued for a variety of foreign policy reasons, such as the location of the project or the general subject matter, or the judgment and foreign policy perspectives of the second line reviewer. Termination recommendations approved by me ultimately received the Secretary of State's review. The Secretary of State's personal involvement confirmed that termination decisions were taken with full visibility into the unique diplomatic, national security, and foreign policy interests at stake vis-à-vis foreign assistance programs.

6. At the Department of State, the review process for grants began with compiling a list of all the grants administered by the Department. This list was then sorted by the Department bureau responsible for each grant. The Senior Bureau Official (Assistant Secretary or equivalent) in each Bureau was tasked with reviewing each grant within his or her Bureau and providing a recommendation to the Office of the Secretary on whether to continue or terminate the grant. If the Bureau desired to continue the grant, a justification was required. Bureau responses were due at 12 noon on Friday, February 21st. Upon receipt, the Office of the Secretary would review the recommendations and made additional edits pursuant to the Secretary's instructions. As with USAID, this resulted in recommendations that receive the Secretary of State's ultimate review. The Secretary of State's personal involvement confirms that, for example, work of particular importance to the United States' relationships with particular foreign nations is not impaired. With respect to contracts, the Department of State ran a similar process. At both USAID and State, there

are also other lists of contracts and grants that were sent to the leadership at USAID for termination through a content search or other means and these were approved for termination.

7. USAID and State terminated instruments according to their terms and conditions, consistent with the provisions previously cited to the Court. *See 2/18 Morocco Decl.* (No. 25-cv-400 Dkt. 22-1) ¶¶ 9-11, 23 (citing the various authorities available for State and USAID to terminate agreements). The review processes described above is ongoing with respect to the ten plaintiffs' grants and contracts, and is also ongoing with respect to other grants and contracts.

8. With respect to the ten plaintiff entities, State and USAID identified the contracts, grants, or funding instruments to which they are counterparties. Each is subject to termination under the provisions cited previously as well as the terms of those agreements. The outcome of the case-by-case review with respect to the ten plaintiffs' agreements is still ongoing.

9. For terminated agreements of the Plaintiffs (and others)—as specified in Section 12(d) of the January 24, 2025 ALDAC, (a section that this Court did not enjoin), and the February 5, 2024 ALDAC, see Exhibit B, providing further guidance on Section 12—USAID and State will make payments for legitimate expenses incurred prior to January 24, 2025 as specified in that Guidance. In doing so, they will require only the same basic materials any rational counterparty would normally require—an invoice that documents verifiable work that the Government actually committed to fund in its contract, grant, or other instrument, payments entries that actually match said invoices, and receipts, vouchers or other supporting information that explains the purpose and amount of funds sought. For payments that meet those basic prerequisites, State and USAID are committed to payment of money owed under the relevant instrument. Further, a description of the steps related to initiating payments to counterparties is described in Part C.

10. Separately, terminated contracts, grants, and funding instruments of Plaintiffs (and others)

each have close-out procedures that the counterparty may utilize regarding any wind down payments related to the termination of these agreements. A description of these close-out procedures is described below in Part D.

B. Status of Payments

11. In Section 12 of his January 24, 2025 ALDAC, the Secretary of State approved a waiver of the pause for any “legitimate expenses incurred prior to the date of this ALDAC [January 24, 2025] under existing awards or legitimate expenses associated with stop-work orders”. Jan. 24, ALDAC, Exh. A at ¶ 12(d).

12. On February 5, 2025, Secretary Rubio issued an additional ALDAC to provide “Technical Guidance for Waivers Approved by the Secretary of State and the Director of Foreign Assistance.” Feb. 5, 2025 ALDAC, 25 STATE 10948, attached as Exh. B. As relevant to the pre-January 24, 2025, obligations under existing contracts and legitimate expenses associated with stop-work orders, “‘Legitimate expenses’ must include allowable and allocable costs under the terms and conditions of the applicable award or contract that are approved by the Director of Foreign Assistance after submission for consideration” *Id.* ¶ 9. The disbursement of obligated funds that are excepted under Paragraph 12(d) is addressed in Paragraph 13 of the February 5 ALDAC.

13. On February 25, 2025, amended FAQs were issued regarding the exception process. See State & USAID Foreign Assistance Pause Exception Process and Disbursement FAQs (Feb. 25, 2025), attached as Exh. C. Among other things, these FAQs, streamlined the clearance process, see *id.* ¶ 1, provided additional guidance regarding disbursements, *id.* ¶¶ 13-14, and explained what is required for authorized payments under Paragraph 12(d) of the January 24 ALDAC, *id.* ¶ 16, and explained what costs associated with stop-work orders may be incurred. *Id.* ¶¶ 17-18. While the payment of pre-January 24, 2025 obligations for “existing awards or legitimate expenses

associated with stop-work orders, bureaus/offices **do not** need to get approval of the Director of Foreign Assistance but should obtain approval from the Senior Bureau Official (SBO) of the relevant bureau. *Id.* ¶ 16. USAID expects to pay individual funding recipient Plaintiffs' invoices for legitimate expenses incurred under Paragraph 12(d). State expects to pay individual funding recipient Plaintiffs' invoices for legitimate expenses incurred under Paragraph 12(d).

C. Delays in Restarting Payments

14. Restarting funding related to terminated or suspended agreements is not as simple as turning on a switch or faucet. Rather, the payment systems of USAID and State are complicated and require various steps before payments are authorized to be disbursed by the U.S. Treasury, Department of Health and Human Services, and/or the Department of State, involving multiple agencies, which are not a party to this litigation. The approval process must comply with the Federal Managers Financial Integrity Act and the Federal Financial Management Improvement Act. At a high level, their payment system is: (1) working with vendors, (2) creating new payment requests, (3) getting them certified, (4) getting them re-certified, and (5) effectuating payments electronically through the Department of the Treasury, Health and Human Services or if overseas through the Department of State, or a combination thereof. The documentary evidence necessary to ensure compliance with policy added time to a process that already required the necessary controls, including appropriate separation of duties, to validate an invoice, review for compliance with appropriation law and accounting standards, and make the final payment. Adding an additional documentation step into an existing complex process, takes time to before it is fully efficient. Training for the staff, adjusting the system, and developing data management tools all resulted in a backlog of payments which is being addressed.

15. At times, both State and USAID could process several thousand payments each day. The

overseas mission adds further complexity with the use of 244 overseas banks and 133 different currencies. For payments, State and USAID rely on multiple methods depending on location on execution and the type of payment and/or agreement.

16. For State domestic payments, most contract payments are now run through Treasury's Invoice Processing Platform (IPP). For IPP, vendors submit invoices electronically into IPP, which are then routed through bureau/program defined approvals, including the contracting officer representative (COR). Once approved in IIP, State invoices are interfaced into State's Global Financial Management System (GFMS) for certification and payment. USAID domestic invoices are routed through the GLAAS contract management system and ultimately ported into the Phoenix accounting system. From Phoenix, payments are directed to GFMS or similar systems operated by Treasury or the Health and Human Services (HHS). Some payment packages, given certain complexities, continue to be submitted and routed manually.

17. For domestic grants, both State and USAID utilizes HHS' payment management system (PMS) to process grant payments. Bureau program personnel enter approvals and payment instruction into PMS and these activities are recorded into GFMS. State's Comptroller staff are now approving program office requests before final payment. For overseas, invoices for contracts and/or grants funded and executed at posts are received at post and either reviewed, certified, and paid by post or sent through State's Comptroller for centralized voucher examination, certification, and payment in dollars and foreign currency. As part of system of new controls, all overseas payments will be certified by this central unit. USAID payments are similarly being manually reviewed and approved by a specialized task-force of payments specialists, before receiving a final check to ensure the validity and completeness of supporting documentation. Restarting payments on the 10 plaintiffs' contracts and grants would be burdensome and take time to make sure they

are legitimate.

18. Moreover, at USAID, my understanding is that some payment requests are not supported by any documentation or, where there is documentation, inadequate documentation to show actual work performed, compliance with the terms of the relevant contract or award, and the like. In addition and for example, my understanding is that payments to associations have been submitted without the names of specific members who have done work or even the names of vendors associated with the awards or payments. Nor are payment requests all submitted in the same format—often they do not contain consistent numbers or consistent supporting documentation—and payments have been requested across multiple different payment systems, administered by partner agencies, which process payments differently and use different computer systems to identify and release payments. Payments have also been made across different timetables.

19. As a result, for a majority of the plaintiff requests, there are currently no payments prepared and sitting in the USAID system that can be readily sent to recipients. Making the payments the Court has ordered will generally require an entirely new process for each that includes the creation of a new payment, certification, approval at the accounting level, preparation in the payment computer, and recertification for disbursement.

20. At USAID, contractual counterparties and grant recipients frequently submit payment requests before they are due under the governing instruments. The Court's Order appears to now require early payment without any review of these payment requests. Additionally, many payments are submitted in batched payment requests that cannot be disentangled or paid separately. The Court's order thus appears to require payment of requests related to new work.

D. Closeout Procedures for Terminated Agreements and Counterparties Remedies

21. As described in the February 18 Marocco Declaration and described further below, when

a contract, grant, or funding instrument is terminated, the counterparty may utilize the closeout procedures regarding funds that they believe that they are owed under those agreements.

22. To the extent that counterparties believe they are entitled to reimbursement for past work or other remedies under their funding instruments, USAID is prepared to entertain such claims and seek resolution. Indeed, there is an established mechanism for counterparties to submit disputes for resolution to USAID. *See, e.g.*, ADS Chapter 303 MAB § M10(e) & M13 (disputes and appeals). If counterparties believe they have claims that resolution process does not vindicate, established mechanisms are available for them to pursue any claims, including through settlement and in certain cases through judicial review in the Civilian Board of Contract Appeals or the United States Court of Federal Claims. *See, e.g.*, 48 C.F.R. 49.201 (providing rules for settlement of certain contract claims); 2 C.F.R. 200.343 (effects of suspension and termination); cf. *Pennsylvania Dep't of Pub. Welfare v. United States*, 48 Fed. Cl. 785, 790 (2001) (discussing Tucker Act jurisdiction).

23. Similarly, to the extent that counterparties of State believe they are entitled to reimbursement for past work or other remedies under their particular funding instruments, State is prepared to entertain such claims and seek resolution. For contracts, the process is governed by the Contracts Disputes Act, 41 U.S.C. § 7101, *et seq.*, and begins with the submission of a written claim to the relevant contracting officer. The contracting officer must issue a written decision that “shall state the reasons for the decision reached and shall inform the contractor of the contractor’s rights as provided [by the Contract Disputes Act].” The contracting officer must issue his decision within 60 days for claims less than \$100,000 and within a reasonable time for larger claims (and for such claims, the contracting officer must notify the contractor of the timeframe for his decision will be made within 60 days). For grants and other federal assistance awards, 2 CFR 200.344 describes

the closeout process for awards following their termination or conclusion, including the process by which a recipient submits financial reports for payment. 2 CFR 200.343 and 200.403 further describe what costs are allowable under federal assistance awards, including specifically in the case of a suspension or termination. If counterparties believe these claims processes are not sufficient, mechanisms exist to pursue, settle, and in certain cases litigate such claims through judicial review in the Civilian Board of Contract Appeals or the United States Court of Federal Claims. *See, e.g.*, 48 C.F.R. 49.201 (providing rules for settlement of certain contract claims); 2 C.F.R. 200.343 (effects of suspension and termination); *cf. Pennsylvania Dep't of Pub. Welfare v. United States*, 48 Fed. Cl. 785, 790 (2001) (discussing Tucker Act jurisdiction).

24. Recouping any taxpayer dollars sent under the Court's order that we later determine to have been improperly billed or sent would be extremely difficult. Contractual counterparties and grant recipients are often overseas and once money leaves the Government's accounts, we cannot control what those counterparties and recipients will do with it. Since many USAID programs involve sub-awards, it is likely that any funds disbursed would soon be transferred to third-party sub-vendors and contractors.

25. Moreover, the plaintiffs have claimed that many grant recipients and contractual counterparties are insolvent or nearly so, raising the high likelihood that they will immediately spend any funds they receive—making it impossible for the Government to recover those funds as a practical matter.

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 25, 2025

A handwritten signature in black ink, appearing to read "Pete Marocco", written over a horizontal line.

Pete Marocco

EXHIBIT A

UNCLASSIFIED



MRN: [25 STATE 6828](#)
Date/DTG: Jan 24, 2025 / 241600Z JAN 25
From: SECSTATE WASHDC
Action: ALL DIPLOMATIC AND CONSULAR POSTS COLLECTIVE *Immediate*
E.O: 13526
TAGS: PREL, AID, EAID
Subject: Executive Order on Review of Foreign Assistance Programs

1. (U) Consistent with the President's Executive Order on Reevaluating and Realigning United States Foreign Aid, this ALDAC pauses all new obligations of funding, pending a review, for foreign assistance programs funded by or through the Department and USAID.

2. (U) Across the United States government, it is currently impossible to access sufficient information in one place to determine whether the foreign assistance policies and interests supported by appropriations are not duplicated, are effective, and are consistent with President Trump's foreign policy. The Department needs a centralized repository from which senior Department, USAID officials, Ambassadors, missions and others can draw sufficiently detailed information from which the Secretary can make judgments. Further guidance regarding a new or updated repository and mandatory bureau submissions to it will be forthcoming.

ACTIONS TO BE TAKEN

3. (U) Within thirty (30) days, the Director of the Policy Planning Staff (S/P) or its designate shall develop appropriate review standards and collaborate with the Director of the Office of Foreign Assistance (F), the Office of Budget and Planning (BP), the Office of Management and Budget (OMB), and/or other departments and agencies as appropriate to ensure that all foreign assistance is aligned with President Trump's foreign policy agenda and that data regarding all foreign assistance spending in the future is aggregated and inputted into a comprehensive internal Department repository.

4. (U) Within eighty-five (85) days of this ALDAC, the government-wide comprehensive review of all foreign assistance shall be completed, and a report shall be produced to the Secretary of State for his consideration and recommendation to the President.

5. (U) In keeping with one voice of American foreign policy, the United States government, through any department, agency or entity, shall not provide foreign assistance funded by or through the Department and USAID without the Secretary of State's authorization or the authorization of his designee.

6. (U) All U.S. foreign assistance shall be aligned under the Secretary of State's coordination, direction, and supervision, as appropriate, consistent with section 622(c) of the Foreign Assistance Act of 1961 and section 1523 of the Foreign Affairs Reform and Restructuring Act of 1998 (FARRA) within 180 days.

7. (U) Effective immediately, Assistant Secretaries and Senior Bureau Officials shall ensure that, to the maximum extent permitted by law, no new

obligations shall be made for foreign assistance until such time as the Secretary shall determine, following a review. For existing foreign assistance awards, contracting officers and grant officers shall immediately issue stop-work orders, consistent with the terms of the relevant award, until such time as the Secretary shall determine, following a review. Decisions whether to continue, modify, or terminate programs will be made following this review.

8. (U) Effective immediately, pending a review of foreign assistance programs: no new requests for proposals (RFPs), requests for application (RFAs), notices of funding opportunities (NOFOs), or any other kind of solicitation or request for foreign assistance funding shall be published or processed by the Department, USAID, or other agencies implementing programs funded by the Department or USAID until each has been reviewed and approved by F as consistent with the President's policy; no further technical evaluation committees shall be convened; and there shall be no further funding obligated to awards and contracts or indefinite delivery /indefinite quantity (IDIQ) contracts.

9. (U) Effective immediately, I am suspending the review process for proposals for new foreign assistance grants, subgrants, contracts, or subcontracts. No new funds shall be obligated for new awards or extensions of existing awards until each proposed new award or extension has been reviewed and approved by F as consistent with the President Trump's agenda.

10. (U) Within thirty (30) days of the issuance of the review standards in paragraph 4, every Bureau, agency office and entity providing any type of

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foreign assistance shall produce to F for review a list of all active, pending, or proposed grants, subcontracts, contracts, or subcontracts, and provide a clear and concise statement explaining if and how the current or proposed use of obligated funds advances President Trump's policy.

11. (U) The spokesperson will also release a public statement to this effect.

12. (U) The Secretary of State has approved waivers of the pause under the Executive Order and this ALDAC, subject to further review, with respect to:

(a) foreign military financing for Israel and Egypt and administrative expenses, including salaries, necessary to administer foreign military financing;

(b) emergency food assistance and administrative expenses, including salaries, necessary to administer such assistance;

(c) on a temporary basis, salaries and related administrative expenses, including travel, for U.S. direct hire employees, personal services contractors, and locally employed staff;

(d) legitimate expenses incurred prior to the date of this ALDAC under existing awards or legitimate expenses associated with stop-work orders; and

(e) exceptions to the pause approved by the Director of Foreign Assistance.

DEFINITIONS

13. (U) Only for purposes of this ALDAC, foreign assistance means assistance funded from accounts in titles III and IV and from International

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Organizations and Programs in the Department of State, Foreign Operations,
and Related Programs Appropriations Acts.

Signature: RUBIO

Drafted By: S/TT:Marocco, Peter

Cleared By: S/TT:Holler, Daniel

L:Visek, Richard

L:Dorosin, Joshua

S/TT:Anton, Michael

C:Needham, Michael

Approved By: S: Rubio, Marco

Released By: POEMS_P:Acker, Vanessa G

Info: IO COLLECTIVE *Immediate*

XMT: BASRAH, AMCONSUL; CARACAS, AMEMBASSY; CHENGDU, AMCONSUL;
KABUL, AMEMBASSY; MINSK, AMEMBASSY; SANAA, AMEMBASSY; ST
PETERSBURG, AMCONSUL; VLADIVOSTOK, AMCONSUL;
YEKATERINBURG, AMCONSUL

UNCLASSIFIED

EXHIBIT B

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UNCLASSIFIED

MRN: [25 STATE 10948](#)
Date/DTG: Feb 05, 2025 / 052237Z FEB 25
From: SECSTATE WASHDC
Action: ALL DIPLOMATIC AND CONSULAR POSTS COLLECTIVE *Immediate*
E.O: 13526
TAGS: ABUD, AFIN
Subject: (SBU) Department of State Foreign Assistance Review Technical Guidance for Waivers Approved by the Secretary of State and the Director of Foreign Assistance

1. (SBU) This ALDAC provides additional technical guidance consistent with Executive Order 14169 on [Reevaluating and Realigning United States Foreign Aid](#) and the Secretary's direction in ALDAC [25 STATE 6828](#), which paused all new obligations and disbursements of Department of State and USAID foreign assistance not covered by certain waivers, pending a review. As noted in the ALDAC, all bureaus, offices, and missions responsible for foreign assistance funding from accounts in titles III and IV and the International Organizations and Programs account (IO&P) of the annual appropriations acts must comply with this guidance. All relevant links related to the foreign assistance pause, including forms and templates, are available on the *F Managing for Results SharePoint* in the [2025 Foreign Assistance Review Guidance](#) folder.

(SBU) Executive Orders and Secretary of State Waivers

2. (SBU) President Trump has issued a series of executive orders to protect the American people and safeguard valuable taxpayer resources, including *Protecting the American People Against Invasion* (Jan. 20, 2025), *Reevaluating and Realigning United States Foreign Aid* (Jan. 20, 2025), *Putting America First in International Environmental Agreements* (Jan. 20, 2025), *Unleashing American Energy* (Jan. 20, 2025), *Ending Radical and Wasteful Government DEI Programs and Preferencing* (January 20, 2025), *Initial Rescissions of Harmful Executive Orders and Actions* (January 20, 2025), and *Ending Illegal Discrimination and Restoring Merit-Based Opportunity* (Jan. 21, 2025).

3. (SBU) On Friday, January 24, consistent with Executive Order 14169 on [Reevaluating and Realigning United States Foreign Aid](#), Secretary Rubio issued [ALDAC 25 STATE 6828](#). The ALDAC paused all new obligations of funding for foreign assistance programs funded by the Department and USAID and instructed that no new requests for proposals (RFPs), requests for application (RFAs), notices of funding opportunities (NOFOs), or any other kind of solicitation or request for foreign assistance funding shall be

published or processed by the Department, USAID, or other agencies implementing programs funded by the Department or USAID until each has been reviewed and approved by F as consistent with President Trump's policy. For existing foreign assistance awards, the Secretary directed contracting officers and grant officers to immediately issue stop-work orders, consistent with the terms of the relevant award, pending the review. No further technical evaluation committees shall be convened; and there shall be no further funding obligated to awards and contracts or indefinite delivery/indefinite quantity (IDIQ) contracts. The Secretary also instructed that no new funds shall be obligated for new awards or extensions of existing awards until each proposed new award or extension has been reviewed and approved by F as consistent with the President's agenda. Paragraph 12 of the ALDAC included specific waivers of the pause approved by the Secretary.

4. (SBU) The Secretary also issued an [Emergency Humanitarian Waiver](#) on January 28, which applies to life-saving humanitarian assistance (as described in the waiver). This waiver allows existing implementers to continue or resume work under existing awards subject to the following directions. No new contracts shall be entered into. This waiver for life saving humanitarian assistance applies to life-saving medicine, medical services, food, shelter, and subsistence assistance as well as supplies and reasonable administrative costs as necessary to deliver such assistance. The waiver does not apply to activities that involve abortions, family planning, conferences, administrative costs other than those covered as outlined, DEI or gender ideology programs, transgender surgeries, or other non-life saving assistance. Migration and Refugee Assistance (MRA) may only be used to support life-saving humanitarian assistance activities outlined in the waiver and repatriation of third country nationals to their country of origin or safe-third-country.

(SBU) Scope of Current Waivers

5. (SBU) For purposes of the ALDAC and related waivers, including the Emergency Humanitarian Waiver, foreign assistance means assistance funded from accounts in titles III and IV and from the IO&P account in the Department of State, Foreign Operations, and Related Programs Appropriations Acts.

- **Title III Accounts:** Development Assistance (DA), Global Health Programs (GHP), International Disaster Assistance (IDA), Transition Initiatives (TI), Complex Crises Fund (CCF), Economic Support Fund (ESF), Democracy Fund (DF), Assistance for Europe, Eurasia, and Central Asia (AEECA), Migration and Refugee Assistance (MRA), U.S. Emergency Refugee and Migration Assistance Fund (ERMA)
- **Title IV Accounts:** International Narcotics Control and Law Enforcement (INCLE), Nonproliferation, Anti-terrorism, Demining and Related Programs (NADR), Peacekeeping Operations (PKO), International Military Education and Training (IMET), Foreign Military Financing (FMF)
- International Organizations and Programs (IO&P)

6. (SBU) **Current Waivers:** The Secretary has approved waiver categories of the pause under the Executive Order and ALDAC 25 State 6828, subject to further review, with respect to:

- 12(a) - Foreign Military Financing for Israel and Egypt and administrative expenses, including salaries, necessary to administer Foreign Military Financing;
- 12(b) - emergency food assistance and administrative expenses, including salaries, necessary to administer such assistance;

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- 12(c) - on a temporary basis, salaries and related administrative expenses, including travel, for U.S. direct hire employees, personal services contractors, and locally employed staff;
- 12(d) - legitimate expenses incurred prior to the date of this ALDAC under existing awards or legitimate expenses associated with stop-work orders;
- 12(e) - exceptions to the pause approved by the Director of Foreign Assistance; and
- via separate waiver, life-saving humanitarian assistance that applies to core life-saving medicine, medical services, food, shelter, and subsistence assistance, such as supplies and reasonable administrative costs as necessary to deliver such assistance.

7. (SBU) Assistant Secretaries (A/S) (or Acting A/S) and Senior Bureau Officials (SBO) are **required** to fill out an [Obligation or Disbursement under Waiver of Foreign Assistance Pause form](#) for all waived categories (e.g., 12(a) - 12(e) and separate HA waiver) to confirm that approved costs fall within this waiver. This form and any 12(e) exception approvals (as outlined below) are required in all payment packages processed domestically and overseas. For domestic payments, these documents should be uploaded in the IPP system with the payment or included with manually submitted payment packages for certification and payment. For payments processed at posts, for the period of the pause, foreign assistance payments covered under approved waiver categories and exceptions must be submitted to the Post Support Unit (PSU) for certification and payment. Posts can still elect to partial pay any portion of a payment that does not contain foreign assistance funds and send the remaining portion to PSU. For now, system relationship edits in RFMS for foreign assistance funded payments will remain in effect for posts. For foreign assistance funded official travel, bureaus and posts are responsible for ensuring adequate controls A/S or SBO approval. This approval should be noted in the remarks section of the E2 travel authorization. For federal assistance payments that use the HHS Payment Management System, the approved form must be uploaded to the MyGrants system prior to the approval in the Payment Management System. The form must be uploaded as a Post Award Activity and then submitted to integrate into the award file.

(SBU) Additional information on administrative expenses under paragraph 12(c) of the ALDAC

8. (SBU) The waiver, on a temporary basis, for salaries and related administrative expenses, including travel, for U.S. direct hire (USDH) employees, personal services contractors (PSCs); and locally employed (LE) staff exemption in paragraph 12(c) of the ALDAC allows for operations related to salaries and administrative expenses to continue while the review of foreign assistance is taking place. These administrative expenses may include the following expenses where funded from foreign assistance: salaries and benefits for USDH, PSCs and LE Staff; approved official travel for USDH, PSCs, and LE Staff; insurance payments for USDH, PSCs, and LE Staff; USDH, PSC, and LE Staff work cell phone costs; PSC contract costs; ICASS costs; USDH and PSC housing leases; residential trash collection for USDH and PSC residences at post; utility expenses for USDH and PSC residences at post; security costs- (including security guard services, surveillance systems, and related security measures); communication costs for USDH and PSCs (including phone lines, internet access, and other communication infrastructure); potable water deliveries for USDH, PSC, and LE Staff; rent for leased spaced used for offices, equipment, utility, or data storage, security readiness and storage used by USDH, PSCs, and LE Staff; maintenance and repair of equipment used by USD, PSCs, and LE Staff; security, legal, accounting, and information technology professional services; contractor facilities, utilities, and fuel direct charged to the Department; costs related to eligible family members (EFMs); and payments to Citi Bank for government Purchase cards for expenses already incurred and approved.

(SBU) Additional information on "legitimate expenses" under paragraph 12(d) of the ALDAC

9. (SBU) "Legitimate expenses" must include allowable and allocable costs under the terms and conditions of the applicable award or contract that are approved by the Director of Foreign Assistance after submission for consideration through FAWaivers@State.gov.

(SBU) EXCEPTION PROCESS

10. (SBU) Bureaus and Offices that wish to continue critical obligations and/or disbursements for foreign assistance programs **not included** in existing waivers must seek an exception from the Director of Foreign Assistance (DFA) under paragraph 12(e) of the ALDAC or a waiver from the Secretary. Bureaus and Offices that wish to seek an exception under paragraph 12(e) for new obligations and/or disbursements must submit an Exception Action Memo to the DFA for approval. **There is a very high bar for such exceptions.** The memo should follow the linked template and clearly demonstrate how the program is aligned to President Trump's policy.

[25 STATE 6828 FA Review Exception Memo Template.docx](#)

11. (SBU) Illustrative high-bar examples of things that could be considered for exceptions by the Director of Foreign Assistance include, but are not limited to:

- (1) obligations or disbursements tied directly to a known Trump Administration priority,
- (2) significant risk of program breaks, work stoppage, or closures for programs where American lives and security would be at risk and that align to a known Trump Administration priority, or
- (3) third party contract staff salaries and other related contract costs required for the safety and security of Americans and/or U.S. property.

(SBU) DISBURSEMENT OF OBLIGATED FUNDS UNDER THE WAIVER IN PARAGRAPHS 12(a) - 12(c) OF THE ALDAC

12. (SBU) Any Bureau, Office, or post seeking to disburse funds that have already been obligated and are covered by a waiver specified in paragraphs 12(a)-(c) of the ALDAC, should have the applicable A/S or SBO fill out and sign an *Obligation or Disbursement under Waiver of Foreign Assistance Pause form* to confirm that the disbursement falls within an approved waiver. This form may not be signed by anyone other than those listed above.

(SBU) DISBURSEMENT OF OBLIGATED FUNDS THAT REQUIRE AN EXCEPTION UNDER PARAGRAPH 12(d)- 12(e) OF THE ALDAC

13. (SBU) Any Bureau, Office, or post seeking to disburse funds that have already been obligated, but currently on pause due to the Executive Order and ALDAC and require an exception approved by the Director of Foreign Assistance under paragraph 12(d)-(e) of the ALDAC, should submit the *FA Review Exception Memo template*. Drafters should include all relevant disbursement requirements related to the activity and/or program. Once the exception is approved, the [Obligation or Disbursement under Waiver of Foreign Assistance Pause form](#) signed by the applicable A/S or SBO, and the signed exception should be submitted with the invoice(s) for payment. Bureaus that have received an approved waiver for disbursements, should send the waiver to the program office and cognizant CO/GO/AO as well as the CGFS disbursement office.

(SBU) EXCEPTIONS TO OBLIGATE FUNDS AND/OR RESUME ACTIVITIES UNDER PARAGRAPH 12(e) OF THE ALDAC

14. (SBU) If a Bureau, Office, or post is seeking an exception for the obligation of foreign assistance funds or the resuming of activities funding by foreign assistance then they should use the [FA Review Exception Memo Template](#) and the [Exemption Excel Template](#) and add **an additional decision block for the exception request for each program.**

15. (SBU) Completed exception packages for approval will only be accepted with approval from A/S or SBOs. Requests not already provided to F as of the release of this guidance should be sent by email to Foreign Assistance Waiver (FAWaivers@state.gov), which is listed in the GAL. If you have previously submitted waiver requests that are still pending, please follow this format to expedite your request.

The Director of Foreign Assistance will either approve, disapprove, or request a discussion on each Bureau or Office request.

(SBU) OBLIGATION OR DISBURSEMENT OF FUNDS RECEIVED UNDER SECTION 635(D) OR SECTION 607 OF THE FOREIGN ASSISTANCE ACT (GIFT FUNDS AND SECTION 607 AUTHORITY)

16. (SBU) If a Bureau, Office, or post is seeking to obligate or disburse funds received via sections 635(d) or 607 of the Foreign Assistance Act, then they should use the FA Review Exception Memo Template and include a decision block for the exception request for each program which identifies the donor, the program, and the request as one for donor-received funds.

Signature: RUBIO

Drafted By: F/RA:Pulford, Lauren

Cleared By: F/RA:Williams, Rebecca

CGFS:Walsh, James

CGFS:Davidson, William

BP/RPBI:Crumbly, Angelique

F/FO:Dashtara, Abraham

F:Peterson, Kyle

A/FO:Gray, Matthew

A/GA/AP:Drabkin, Sarah

A/GA/AP:Urman, Anna

M:Inzerillo, Suzanne

S/TT:Orr, Caleb

C:Vepek, Andrew

L/BA:O'Connor, Elizabeth

L/M:Cracraft, Valerie

L/LFA:Pompian, Shawn

S/ES:Mennuti, Deborah

AF/EX:Hazel, Steven

EAP/EX:Johnson, Horace

EUR-IO/EX:Karber, Jon

NEA-SCA/EX:Landis, Rebecca

NEA/AC:Walters, Danika

SCA/STA:Briggs, Jason

WHA/PPC:Jilka, Lucy

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WHA/EX:Cavey, Michael
Approved By: S/TT:Marocco, Peter
Released By: RM_DCFO:Anderson, Veronique Z
XMT: BASRAH, AMCONSUL; CARACAS, AMEMBASSY; CHENGDU, AMCONSUL;
KABUL, AMEMBASSY; MINSK, AMEMBASSY; SANAA, AMEMBASSY; ST
PETERSBURG, AMCONSUL; VLADIVOSTOK, AMCONSUL;
YEKATERINBURG, AMCONSUL

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EXHIBIT C

(SBU) State and USAID Foreign Assistance Pause Exception Process and Disbursement FAQs

Issued February 24, 2025

Please note these FAQs also include new or clarifying guidance on procedures, processes, and approval flows.

1. Is the exception and payment process applicable to State and USAID?

Yes. [ALDAC 25 State 10948](#) technical guidance applies to State and USAID unless otherwise noted below. There are USAID applicable sections below. Additional information on the USAID internal waiver process and other requirements may be found on USAID's [Executive Secretariat internal website](#).

Exception Request Approver Updates

- Effective February 24, 2025, John A. Zadrozny is the Deputy Director of the Office of Foreign Assistance. All requests for exceptions must now be addressed to Mr. Zadrozny.

Clearance process updates

- Effective February 24, 2025, C and P clearances are no longer required on 12(d) or 12(e) Waiver Memos to the Director of Foreign Assistance (DFA).

Expenses and disbursements under the Secretary's 12(c) waiver

- 2. Do 12(c) direct bi-weekly payroll payments require Senior Bureau Official (SBO) approval?**
No.

- 3. Do 12(c) expenses require a "Obligation or Disbursement under Waiver of Foreign Assistance Pause" form?**

No. To facilitate timely and essential critical payments supporting mission operations related to 12(c) waived expenses, posts may proceed processing through the Post Support Unit (PSU) and obligating these expenses at post without obtaining Senior Bureau Officer (SBO) approvals for waived 12(c) related expenses. The PSU will verify these 12(c) expenses as expenditures related to the 1000-2000 budget object classes (BOC), which by definition are administrative costs and related 4160 BOC for Value Added Tax on those expenses. Please refer to [ALDAC 25 STATE 14458](#) for additional information. USAID also issued a message to the agency reinforcing the ALDAC and communicating that 12(c) expenses paid with Operating Expense (OE) funds also no longer require additional steps. USAID Controllers will ensure OE payments that fall outside 12(c) administrative expenses (e.g. Free Russia Foundation) will be flagged for further analysis and sent to the SBO for approval.

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4. **Does the 12(c) waiver “on a temporary basis, salaries, and related administrative expenses, including travel, for U.S. direct hire employees, personal services contractors, and locally employed staff” cover new obligations for not-yet-issued PSC contracts or do bureaus need to submit an AM to the Director of Foreign Assistance?**

The Department and USAID currently have a hiring freeze in place. In general, no new obligations for such purposes should occur; however, if an SBO determines such new obligations are necessary an exception should be sought under 12(e).

5. **Please clarify SBO approval requirements for new travel authorizations and vouchers.**

In line with current travel guidance, all official travel, international and domestic, must be approved by the SBO. Approval for travel that originates abroad is to be approved by the relevant COM. For COMs, their travel should be approved by the relevant Bureau SBO. Proof of the SBO's/COM's approval of the travel should be noted in E2 in the remarks section and supplemental documentation may be attached to the travel authorization. Bureau SBOs approve travel payment by signing the Obligation and Disbursement waiver form.

Interagency Agreements (IAAs) and Transfers

6. **Are U.S. Direct Hire (USDH) and Locally Employed Staff (LES) at the IAA servicing agency (recipient agency) considered USDH within the context of the waiver? i.e. some IAA agency partners are asking whether their USDH and LES that charge the IAA to cover the staff's salaries fall under 12(c).**

Per 25 STATE 14458, the 12(c) waiver includes administrative expenses for all USDH, personal services contractors (PSCs) and LES staff funded from foreign assistance. Regardless of the mechanism used to fund the positions, these costs are covered by the waiver. For program staff, they should only work on programs that have an approved waiver/exception. However, if a PSC contract is terminated during the pause, it will not be paid further.

7. **If State and USAID bureaus have entered into a 632(a) or 632(b) agreement with another U.S. agency to implement a program, is the SBO for the originating/requesting State/USAID bureau/office responsible for approving the "Obligation or Disbursement under Waiver of Foreign Assistance Pause" form for disbursements made by the interagency partner (servicing/recipient agency)?**

No. The State or USAID SBO is only responsible for certifying and approving the “Obligation or Disbursement under Waiver of Foreign Assistance Pause” form for disbursements when their agency is the disbursing agency.

Payments and new obligations

8. **What should be included when submitting payment requests for processing?**

In addition to regularly provided information, bureaus/offices should attach: 1) The SBO signed “Obligation or Disbursement under Waiver of Foreign Assistance Pause” form (including information requested on page 2 of that form). Disbursements under 12(c) do not require this form and bureaus and posts should refer to [ALDAC 25 STATE 14458](#) and the message to the USAID workforce on 12(c) expenses (for USAID OE expenses).

9. Is the “Obligation or Disbursement under Waiver of Foreign Assistance Pause” form required for all mechanisms (contracts, grants, IAAs, etc.)?

Yes. The form is required for all mechanisms and should be uploaded as supporting documentation with the payment request or new obligation action.

- a. For State bureaus submitting payments, you should upload the “Obligation or Disbursement under Waiver of Foreign Assistance Pause” form, which should include recipient and invoice information as requested on page 2 of the form. Multiple invoices may be attached to one payment form for SBO review. Approved payment memos and forms should also be submitted to CGFSWaiver_Intake@state.gov with the subject line denoting PMS or IPP payment for approval to ensure CGFS is tracking all necessary details to help facilitate payments.*
- b. For USAID Operating Units submitting payments in Phoenix, you should attach the “Obligation or Disbursement under Waiver of Foreign Assistance Pause” form.*

10. Do you need recipient/vendor information on the “Obligation or Disbursement under Waiver of Foreign Assistance Pause” form?

Yes. When “Obligation or Disbursement under Waiver of Foreign Assistance Pause” forms are submitted with payments, the bureau/office should attach additional identifying information utilizing the fields provided on page 2 of the form.

11. Can I advance costs to a grantee to execute activities approved under a waiver/exception?

Yes, but only for the time period agreed to as part of the waiver/exception approval. If no specific time period was provided, then funds should only be advanced for the period of the foreign assistance review, that is until April 19, 2025. Additional guidance will be provided following the conclusion of the foreign assistance review.

12. Does the pause extend to no cost extensions (NCEs) or the execution of contract option years?

Yes. Bureaus seeking to continue any program with existing funding must seek an exception from the Director of Foreign Assistance (DFA) for that program to continue during the 90-day pause.

13. Do the restrictions on disbursements under the 12(d) waiver apply for payments to third-party contractors for contract staff and regular contract payments?

Yes. The Secretary has issued a waiver for legitimate expenses incurred prior to the date of ALDAC 25 STATE 6828 under existing awards or legitimate expenses associated with stop-work orders. The ALDAC was issued January 24, 2025, therefore legitimate expenses incurred through January 23, 2025 will need a 12(d) waiver.

14. Is explicit approval required by the Director of Foreign Assistance to disburse funds under the Secretary’s 12(d) waiver?

Yes, 25 STATE 10948, outlines in paragraphs 9 and 13 that legitimate expenses that are not covered by an additional current waiver/exception (e.g., a specific exception issued under 12(e)) are subject to a policy review and must be approved by the Director of Foreign Assistance. Therefore, the appropriate SBO should complete a waiver memo and submit it along with all relevant disbursement requirements related to the activity and/or program for consideration

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through FAWaivers@State.gov or aid.estaskermaillistusaid@usaid.gov, copying fundingapprovalrequest@usaid.gov if it is a USAID activity per the instructions in 25 State 10948 so legitimate expenses may be paid. Any legitimate expenses for stop-work orders should get your contracting/grant officers clearance. If bureaus/offices are seeking to cover expenses incurred after January 23, they should seek an exception from the Director of Foreign Assistance.

15. If you have an approved exception for activities under 12(e), do you need separate approval for prior expenses incurred, etc.?

No, if the program, project, or activity was approved by the Director of Foreign Assistance to continue by a 12(e) exception, legitimate expenses incurred prior to the issuance of [25 STATE 6828](#) that are part of that same program or project may be paid with SBO confirmation on the "Obligation or Disbursement under Waiver of Foreign Assistance Pause" form. The ALDAC was issued January 24, 2025, therefore legitimate expenses incurred through January 23, 2025 are covered by the waiver.

16. What is required for 12(d) payments?

For legitimate expenses incurred prior to the January 24 release of 25 STATE 6828 under existing awards or legitimate expenses associated with stop-work orders, bureaus/offices **do not** need to get DFA approval but should obtain SBO approval on the "Obligation or Disbursement under Waiver of Foreign Assistance Pause" form, checking the 12(d) category on the form. This form should be submitted along with the payment request.

In submitting 12(d) payment requests, bureaus/offices and SBOs will also be confirming that these payments are aligned to existing Executive Orders and policy guidance from this Administration, e.g., DEIA, climate activism, or gender ideology. If there are 12(d) payments that may be misaligned to existing Executive Orders and policy guidance from this Administration, bureaus/offices should consult with F and L prior to submitting the payment requests.

17. What costs associated with stop work orders may be incurred? Are organizations that receive funds for a program that is on pause, but not terminated, allowed to continue to pay operational costs to keep personnel, leases, etc.?

As a starting point, bureaus and offices should first consult with their contracting or grants / agreement (USAID) officer regarding the terms and conditions governing their agreements. For contracts with a FAR 52.242-15 Stop-Work Order clause, there will be FAR guidance and a normal procedure by which the CO decides which costs would typically be allowable. For contracts where a stop-work order clause (or similar) was not included, COs were directed to negotiate bilateral modifications providing for work stoppages. Which costs would be allowable will depend on what the contract says (and what type of contract it is) and what those bilateral modifications say.

When this initial assessment is completed, bureaus and offices should apply to the Director of Foreign Assistance for a waiver under 12(d) as soon as possible. Please note ALDAC 25 STATE 6828 outlines that the Secretary has approved a waiver for 12(d), "legitimate expenses incurred

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prior to the date of this ALDAC under existing awards or legitimate expenses associated with stop work orders". Subsequently, 25 STATE 10948, paragraph 13, outlines that "Any bureau, office, or post seeking to disburse funds that have already been obligated, but currently on pause due to the Executive Order and ALDAC and **require an exception approved by the Director of Foreign Assistance** under paragraph 12(d)-(e) of the ALDAC should submit the FA Review Exception memo template." You must include a detailed explanation of what the expenses were for.

18. If we have non-admin costs that need to be paid at post, for which there is a waiver or approved exception, who is the SBO that approves disbursement of those funds?

For State Department wholly-owned accounts (e.g. INCLE, MRA, etc.) the accountable Senior Bureau Official (SBO) for those funds/that manages those funds must approve the SBO obligation and waiver disbursement form (not the regional bureau SBO). So, in this case, the INL SBO would approve.

19. Who are the Senior Bureau Officials (SBOs) that are the accountable official for each functional foreign assistance account or other foreign assistance accounts?

- a. For USAID, all payment requests for USAID SBO approval should be sent to aid.estaskermaillistusaid@usaid.gov, copying FundingApprovalRequest@USAID.gov. Depending on the account/program, the USAID/FO will route the request to the appropriate SBO.**

For State Bureaus and Offices:

- b. Assistance for Europe, Eurasia, and Central Asia (AEECA):** EUR - Assistant Secretary of State (European and Eurasian Affairs): Louis Bono (Senior Bureau Official) will approve EUR-related items. For SCA-related items, Assistant Secretary of State (South and Central Asian Affairs): Eric Meyer (Senior Bureau Official) will approve.
- c. Democracy Fund (DF):** DRL - Assistant Secretary of State for Democracy, Human Rights, and Labor: Jonathan Mennuti (Acting)
- d. International Narcotics Control and Law Enforcement (INCLE):** INL - Assistant Secretary of State: F. Cartwright Weiland (Senior Bureau Official). For INCLE funds implemented by J/GCJ, J/TIP or NEA (i.e. for Syria), the respective bureau/office SBO should approve those funds.
- i. Please send requests for INCLE allotted to posts that require SBO approval to: INL-SBO-12C-REQUESTS@state.gov.**
- e. International Organizations and Programs (IO&P):** IO - Assistant Secretary of State: McCoy Pitt (Senior Bureau Official)
- f. Foreign Military Financing (FMF), Peacekeeping Operations (PKO), and International Military Education and Training (IMET):** PM: James Holtsnider (Senior Bureau Official)
- i. NOTE: The "Obligation or Disbursement under Waiver of Foreign Assistance Pause" form is not required for funds managed by DSCA.**
- g. Global Health Programs (GHP-State):** GHSD - Ambassador at Large and Coordinator of United States Government Activities to Combat HIV/AIDS Globally (S/GAC): Jeffrey D. Graham (Senior Bureau Official)

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- h. **Migration and Refugee Assistance (MRA):** PRM - Assistant Secretary of State: Adam Zerbinopoulos (Senior Bureau Official)
 - i. Please send requests for PRM funding allotted to posts that require SBO approval to PRM-EX-Budget@state.gov.
- i. **Nonproliferation, Anti-terrorism, Demining and Related Programs (NADR) funds/subaccounts:**
 - i. **Arms Control, Deterrence, and Stability (ADS), Contributions to the Comprehensive Test Ban Treaty International Monitoring System (CTBT IMS) and the Organization's Preparatory Commission (CTBTO PrepComm):** ADS - Assistant Secretary of State: Paul B. Dean (Acting)
 - ii. **Anti-Terrorism Assistance (ATA):**
 - 1. **CT - Coordinator for Counterterrorism:** Gregory D. LoGerfo (Acting) For requests related to CT funding that need SBO approval, please send to ct_ex_budget-fa@state.gov.
 - 2. **DS - Carlos Matus (acting).** For requests related to DS ATA funding that need SBO approval, please send to Dscfoatainvoices@state.gov
 - iii. **Export Control and Border Security (EXBS), Global Threat Reduction (GTR), International Atomic Energy Agency (IAEA), Nonproliferation and Disarmament Fund (NDF), Nonproliferation Cooperation (NPTCoop), and Weapons of Mass Destruction Terrorism (WMDT):** ISN - Assistant Secretary of State: Ann Ganzer (Acting)
 - iv. **Conventional Weapons Destruction/Humanitarian Demining (CWD):** PM - James Holtsnider (Senior Bureau Official)
- j. **Other function 150 international accounts and agencies, such as DFC, MCC, CDC and other relevant agencies, non-function 150 accounts:** Guidance is being working through a separate track for interagency partners such as DFC, USTDA, DEA, CBP, MCC, CDC and others that implement foreign assistance. **F will share additional details when they are available.**

For State, for Economic Support Funds (ESF), and other accounts not specified, the regional or functional bureau SBO for the bureau managing the program is responsible for certifying the obligation or implementation of those funds.

20. Do you have additional guidance on the life-saving humanitarian assistance? What costs are included? What accounts are included in this particular waiver?

The S waiver for life-saving humanitarian assistance applies to core life-saving medicine, medical services, food, shelter, and subsistence assistance, as well as supplies and reasonable administrative costs as necessary to deliver such assistance.

The intended Humanitarian Assistance FA accounts that fall under the S waiver are: International Disaster Assistance (IDA), Migration and Refugee Assistance (MRA), Emergency Refugee and Migration Assistance (ERMA), and Title II Food For Peace (FFP). Additionally, the DFA approved an exception for specific life-saving assistance through PEPFAR — life-saving HIV care/treatment services, testing, and commodities/drugs; prevention only for mother-to-child transmission services and commodities/drugs (e.g., PrEP); and reasonable admin costs necessary to deliver this assistance — through the Global Health

Programs (GHP-State and GHP-USAID for HIV/AIDS assistance) accounts. All activities consistent with the waiver definition and PEPFAR exception funded by these accounts may continue unless they are prohibited by other guidance (e.g., DEI EO). Any non-HA accounts, such as Economic Support (ESF) and Development accounts (DA, DF) where medical services, food, subsistence assistance programs are funded will need to seek an exception consistent with 12(e) of ALDAC 25 STATE 6828.

For life-saving humanitarian assistance reasonable administrative costs, 12(c) “salaries and related administrative expenses” as paragraph 8 in ALDAC 25 STATE 10948 lists most benefits that are applicable to HA; other HA specific expenses that are included in 12(c) are medevac payments for USDH, tuition payments for minor children of employees posted overseas, and education allowances for FTEs.

For any other HA activities funded from any other accounts that SBOs determine may fit under the definition of the life-saving assistance waiver, a bureau would need to seek an exception from the Director of Foreign Assistance (DFA) consistent with 12(e) in the ALDAC 25 STATE 6828.

22. Do gift funds or 607 funds, which are not foreign assistance, require DFA approval?

*Gift funds or section 607 funds received from other countries that are added to US contracts, grants, and/or transferred to other foreign assistance accounts **do not** require DFA approval but do require SBO approval. Bureaus documenting their SBO approval for these activities should clear the associated memo with F. Once gift funds hit the financial systems, they are managed in a similar manner to other foreign assistance. Bureaus should fill out the “Notes” section in the “Obligation or Disbursement under Waiver of Foreign Assistance Pause” form and specifically note that these are gift funds.*

23. Where can I locate the ALDACs, templates, and forms related to the waiver/exception and payment process?

State/MfR SharePoint: [2025 Foreign Assistance Review Guidance](#)

USAID Executive Secretariat FA Blanket Waiver and Exceptions Guidance may be found [here](#).

USAID/FA Bureau USAID Pages: <https://my.usaid.gov/node/43304>

24. Where can I go if I have additional questions?

Questions on Waivers or Exceptions, including Director of Foreign Assistance approval for 12(d) legitimate expenses may be directed to State/F at fawaivers@state.gov. Please CC your relevant F POC.

Questions on State Department disbursements may be directed to: State/CGFS at gfsclubureauinvoiceinquirymailbox1@state.gov.

FAQs on State Department grants and contracts may be found here:

<https://usdos.sharepoint.com/sites/A-OPE/PO/SitePages/nk2aafgo.aspx>

Questions on USAID disbursements from USAID staff may be directed to: aid.estaskermaillistusaid@usaid.gov, copying fundingapprovalrequest@usaid.gov.

Questions on USAID contracts / agreements from USAID staff may be directed to: [A&A via the Transition and Executive Order form](#).

Questions from USAID implementers may be directed to industryliason@usaid.gov

Department/Agency Notice Text:

State and USAID Foreign Assistance Pause Exception Process and Disbursement FAQs

The Office of Foreign Assistance (F) has issued Frequently Asked Questions (FAQs) to provide additional information for State and USAID bureaus, offices, and missions regarding the foreign assistance waiver process and disbursement process. The FAQs may be found on the State Department [Managing for Results Budgeting Guidance SharePoint](#) and F's [USAID pages site](#).

Please refer additional questions to your F POC or the F/Resources and Appropriations team at F-RA-Execution@state.gov.

Approved: F - Pete Marocco [PM]

Clearances:

CGFS/FO: Jim Walsh (ok)
CGFS: Butch Davisson (ok)
C: Matt Rhodes (ok)
M: Andy Hay (ok)
P: No Response
S/P: Wesam Hassanein (ok)
F/LEA: James Kennedy (ok)
F/RA: Becky Williams (ok)
F/RG: Kyle Peterson (ok)
F/RG/GP: Heather Harms (ok)
F/FO: Abraham Dashtara (ok)
A/GA/APD/FA: Sarah Drabkin (ok)
A/GA/AMD: Vincent Sanchez (ok)
L/BA: Elizabeth O'Connor (ok)
L/M: Valerie Cracraft (ok)
L/LFA: Shawn Pompian (ok)
USAID/FO: Aiyong (Paul) Seong (ok)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AIDS VACCINE ADVOCACY
COALITION, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
STATE, *et al.*,

Defendants.

Civil Action No. 25-cv-400 (AHA)

GLOBAL HEALTH COUNCIL, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

Civil Action No. 25-cv-402 (AHA)

JOINT STATUS REPORT

The parties respectfully submit this joint status report pursuant to the Court's orders issued February 22 and February 25, 2025. The parties jointly report that they were unable to come to an agreement with regard to the facts at issue or the discovery necessary to resolve any factual disputes, so they have set out their individual statements below.

PLAINTIFFS' STATEMENT

Defendants provided their statement for incorporation into this Joint Status Report at 12:04 pm. Noncompliance with the Court's deadline is not due to any delay on Plaintiffs' part.

I. Plaintiffs' Statement of the Facts

Plaintiffs' Complaints (*GHC* ECF No. 30-1; *AVAC* ECF No. 1) and motions to enforce set forth the facts as alleged in this litigation, and Plaintiffs reaffirm those facts here. In this section, Plaintiffs set forth additional facts and supporting evidence related to Defendants' persistent noncompliance with the provisions of the Court's TRO and its subsequent orders enforcing the TRO. To Plaintiffs' knowledge, in the 13 days since the Court entered its TRO, Defendants have undertaken no meaningful efforts whatsoever to comply, either with it or the with the Court's subsequent orders with respect to enforcement. Instead, Defendants have erected numerous new barriers to compliance at every turn. This conduct cannot be explained as anything other than willful defiance of the Court's orders.

A. Defendants implement the Executive Order by terminating contracts, suspending grants and cooperative agreements, issuing stop-work orders, and pausing disbursement of all foreign-assistance funds.

On January 20, 2025, President Trump issued Executive Order 14,160, entitled "Reevaluating and Realigning United States Foreign Aid." 90 Fed. Reg. 8619. The Executive Order, *inter alia*, implemented a 90-day spending "pause," *id.* § 3(a), directed "[r]eviews of each foreign assistance program . . . under guidelines provided by the Secretary of State," *id.* § 3(b), and ordered "[t]he responsible department and agency head[]," to "make determinations within 90 days of this order on whether to continue, modify, or cease each foreign assistance program . . . with the concurrence of the Secretary of State," *id.* § 3(c).

Over the following weeks, Defendants set about implementing the Executive Order through a series of memoranda and directives issued by USAID and State Department leadership. *See GHC* Compl. ¶¶ 41–57; Resp. to Court Order at 1–3 (*GHC* ECF No. 19); Jessica Doe Decl. ¶¶ 2–33 (*AVAC* ECF No. 26-3). Over the course of four days—from February 9 to 13—Defendants issued four "tranches" of contracts, grants, cooperative agreements, and awards that had been

selected by State Department leadership for immediate termination. Resp. to Court Order at 1–3 (*GHC* ECF No. 19); Jessica Doe Decl. ¶¶ 2–33 (*AVAC* ECF No. 26-3). These tranches included hundreds of contracts, grants, cooperative agreements, and awards. *See* Jessica Doe Decl. ¶¶ 2–33 (*AVAC* ECF No. 26-3); First Morocco Decl. ¶ 12 (*GHC* ECF No. 25-1).

In an email sent February 11, Senior Procurement Executive (SPE) Jami Rodgers directed agency personnel—namely, the Contracting and Agreement Officers (COs) who manage contracts and awards—to terminate the contracts and awards *en masse*, without engaging in any individualized review, in order to quickly implement “the President’s Executive Order on Reevaluating and Realigning United States Foreign Aid.” Jessica Doe Decl. ¶ 29 (*AVAC* ECF No. 26-3). Senior Procurement Executive Jami Rodgers further stated that “[a]n Action Memorandum for each tranche of awards was reviewed and cleared through the State Department’s Director of Foreign Assistance and approved by the Secretary. These action memos will be filed in a shared drive. This documentation along with this email can be used to support the terminations.” *Id.* Those action memos were never shared with COs. *Id.* ¶ 30.

During the same period, Defendants halted outgoing disbursements from USAID and the State Department pursuant to the Executive Order. On January 27, Certifying Officers worldwide reported that certified payments were not being processed through USAID’s accounting system (Phoenix) to the U.S. Treasury for disbursement. Della Doe Decl. ¶ 6. On February 3, Certifying Officers lost the ability to certify payments in Phoenix. *Id.* On February 5, all USAID controllers received a diplomatic cable stating that USAID personnel could no longer process payments themselves but must request approval from a State Department official. *Id.*, Ex. 1 (Walter Doe Decl. ¶ 10). And on February 11, COs were notified that Phoenix was closed and that “the Agency has temporarily restricted access to Phoenix until further notice.” Jessical Doe Decl. ¶ 32 (*AVAC*

ECF No. 26-3). During this period all disbursements from USAID and the State Department to implementing partners stopped. *See id.*; Decls. in Support of TRO Mot. (*GHC* ECF No. 7).

B. The Court enjoins the Restrained Defendants from implementing the Executive Order.

On February 13, 2025, the Court enjoined all Defendants aside from President Trump (the “Restrained Defendants”) from enforcing or giving effect to Sections 1, 5, 7, 8, and 9 of Dep’t of State, Memorandum, 25 STATE 6828 (Jan. 24, 2025), and any other directives that implement Sections 3(a) and 3(c) of Executive Order Number 14,169, “Reevaluating and Realigning United States Foreign Aid” (Jan. 20, 2025). TRO at 14 (ECF No. 21). The Court’s order has two primary components: It enjoins the Restrained Defendants 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.” *Id.* And it enjoins the Restrained Defendants from “issuing, implementing, enforcing, or otherwise giving effect to terminations, suspensions, or stop-work orders in connection with any contracts, grants, cooperative agreements, loans, or other federal foreign assistance award that was in existence as of January 19, 2025.” *Id.*

C. Defendants are not complying with the Court’s order with respect to “the obligation or disbursement of appropriated foreign-assistance funds”

Since the Court issued the TRO, Defendants have taken no meaningful steps to comply with the TRO’s injunction of the spending pause.

First, Defendants have maintained the Executive Order’s pause of all foreign-assistance funds. *See* Second Morocco Decl. ¶¶ 11–20 & Ex. C (*GHC* ECF 39-1). To Plaintiffs’ knowledge, Defendants have made no or almost no disbursements of foreign-assistance funds since the Court issued the TRO or since the Court’s order granting Plaintiffs’ motion to enforce yesterday. Notably, the most recent Morocco Declaration does not identify a single payment issued since the

Court entered the TRO; nor does it describe any specific actions undertaken by Defendants or agency personnel to restart payments in the past 13 days. The Marocco Declaration also does not dispute that even after the Court entered the TRO, “Secretary Rubio ... implemented a [new] 15-day disbursement pause on all **\$15.9B worth of grants** at the State Department.” Dunn-Georgiou Decl. ¶ 3 (*GHC* ECF No. 29-1).

Second, Defendants have issued no guidance on how agency personnel should implement the TRO’s injunction of the spending pause. *See* Della Doe Decl. ¶¶ 8–9. In the 13 days since the TRO was issued, there has been no official (or unofficial) guidance released to USAID’s Certifying Officers concerning how the TRO’s injunction of the spending pause should be implemented. *Id.* The only new official guidance USAID issued to Certifying Officers since the TRO was on February 20 and concerned the Agency’s own administrative payments, such as staff salaries and benefits, rent, utilities, and security services. *Id.* And notably, the only guidance cited by the Marocco Declaration concerns a FAQ dated February 24 regarding the implementation of exceptions and waivers *under the blanket spending pause*, which confirms that the pause remains in effect. Second Marocco Decl., Ex. C (*GHC* ECF 39-1).

Third, Defendants have added new layers of review to all disbursements of foreign-assistance funds, including requiring line-by-line policy justifications for payments for past work that has already been approved through normal approval processes. *See* Ellie Doe Decl. ¶¶ 9–15; Della Doe Decl. ¶¶ 8–11; Clara Doe Decl. ¶¶ 11–15; *see also* Mot. to Enforce at 7 (*GHC* ECF No. 29) (describing artificial bottleneck). And because Defendants are treating the foreign-assistance pause as still in effect, they are requiring all approvals of disbursements of funds for work prior to January 24 to be approved under the waiver categories set out in 25 STATE 6828, which imposes additional significant approval and documentation requirements. *See* Second Marocco Decl., Ex. C (*GHC* ECF 39-1); Ellie Doe Decl. ¶¶ 9–15; Della Doe Decl. ¶¶ 10–11.

Fourth, approvals for all payments are being routed through a single (or a small number of) political appointees, who are refusing to authorize essentially any payments. *See* Della Doe Decl. ¶¶ 7, 9; Northrip Decl. ¶ 8 (*GHC* ECF No. 29-6); *see also* Second Marocco Decl., Ex. C (*GHC* ECF 39-1). Public reporting also indicates that “DOGE” employees acting at the direction of Elon Musk have “veto[ed]” payments that make it through that authorization process.¹

Fifth, USAID’s and the State Department’s payments mechanisms were operating effectively prior to January 20 until Defendants introduced the technical problems that they now say make it difficult to comply with the TRO. Specifically, the most recent Marocco Declaration states that “both State and USAID” previously could process “several thousand payments each day.” Second Marocco Decl. ¶ 15 (*GHC* ECF 39-1). But now Defendants complain that it will take “multiple weeks” for USAID to process only “2,000 outstanding and newly created payment requests.” *Id.* ¶ 4. It should come as no surprise that Defendants cannot timely process the volume of payments needed when they have disrupted access to the agencies’ payment systems, added additional unnecessary processes and procedures into the systems, and funneled all payments through an artificial bottleneck of just a few political appointees who are not familiar with the underlying contracts and awards. *See* Clara Doe Decl. ¶¶ 12–15. That said, if Defendants had begun complying with the Court’s order 13 days ago, they would surely now be able point to *some* progress in that time. *Cf.* Second Marocco Decl. ¶ 4 (*GHC* ECF 39-1). But Defendants have not even identified any steps taken to comply.

¹ Matt Bai, *The blinding contempt of the DOGE bros*, Wash. Post (Feb. 24, 2025), <https://www.washingtonpost.com/opinions/2025/02/24/musk-doge-usaid-cuts-dc/>.

Sixth, Defendants’ asserted interest in combatting fraud is pretextual, and the additional processes are unnecessary to prevent overpayments. *See* Clara Doe Decl. ¶¶ 9–21; Zahra Decl. ¶¶ 11, 16–21; Mot. to Enforce at 10 & n.7 (*GHC* ECF No. 29) (citing sources).

Seventh, if Defendants abandoned their untested and unnecessary new policies, procedures, and approvals, USAID and the State Department would be able to process payments in a timely manner. *See* Clara Doe Decl. ¶¶ 12–15. Contrary to Mr. Marocco’s statement in his declaration filed last night that “there are currently no payments prepared and sitting in the USAID system that can be readily sent to the recipients,” (*GHC* ECF 39-1, ¶ 19), Plaintiffs became aware less than three hours before the filing of this joint status report of specific information showing that that is not the case. Multiple Contracting and Award Officer Representatives have indicated to Plaintiffs—including through screenshots of USAID’s payment system and memos to file—that there are, in fact, vouchers and invoices that have been fully reviewed and cleared for payment and therefore can and should be paid promptly.²

D. Defendants are not complying with the Court’s order with respect to “terminations, suspensions, or stop-work orders.”

Since the Court issued the TRO, Defendants have also taken no meaningful steps to comply with the TRO’s provision with respect to terminations, suspensions, or stop-work orders.

First, to Plaintiffs’ knowledge, Defendants have continued to treat all terminations issued prior to the issuance of the TRO as continuing in full force and effect. *See* First Marocco Decl. ¶¶ 12, 16. In fact, Defendants issued guidance that the TRO had “[n]o effect on terminated awards.” Zahra Doe Decl. ¶ 13.

² Given when they learned this information, Plaintiffs were not able to present this information in a citable form at the time of filing this joint status report. Plaintiffs stand ready to present this information to the Court through declarations at the Court’s request.

Second, a small number of suspensions and stop-work orders with respect to grants and cooperative agreements have been lifted. *See, e.g.*, Dunn-Georgiou Decl., Exs. A–C (GHC ECF No. 29-1). But, in Plaintiffs’ and their members’ experiences, the overwhelming majority of suspensions and stop-work orders remain in effect. *See* Zahra Doe Decl. ¶¶ 10–17.

Third, the terminations issued prior to the Court’s TRO (none of which have been rescinded) are being maintained for pretextual reasons. Senior agency officials have stated that Secretary Rubio has individually reviewed all of the prior terminations and determined that they were allowable under the terms of the individual awards, and that the terminations are in the national interest and consistent with priorities. But, as explained below, it would be impossible for one person or even a group of people to meaningfully review all of these contracts and awards in such a short period. *See also* Zahra Doe Decl. ¶¶ 36–37. Nor is it plausible that every single contract or award originally terminated under a blanket ban of hundreds of contracts would—on subsequent review, applying different criteria—each individually be terminated.

Fourth, since the Court issued the TRO, Defendants have continued issuing new tranches of terminations, re-sending prior tranches (which had been originally issued *before* the TRO), and directing COs to terminate all of the awards as quickly as possible without any further individual review. On February 23, SPE Rodgers circulated a fifth tranche of contract terminations and directed COs to an FAQ dated February 20, 2025, which did not discuss the TRO but rather continued to refer to the Executive Order. *See* Zahra Doe Decl. ¶ 24. Specifically, the FAQ stated: “The termination authority is delegated to the Senior Procurement Executive from the Acting USAID Administrator, Secretary Rubio, who has instructed USAID to terminate these awards as part of the President’s Executive Order on Reevaluating and Realigning United States Foreign Aid. Please refer to the M/OAA Director’s email to A&A staff dated February 10, 2025.” *Id.*

Undersigned counsel for Plaintiffs in Case 25-cv-402 immediately alerted counsel for the

Defendants of Defendants' noncompliance with the TRO. An hour later, USAID Industry Liaison Matthew Johnson sent an email stating that the FAQ had been retracted: "The Q&A document sent around earlier has been withdrawn and will be updated. That document reflected an outdated and now inaccurate version with several citations that indicated that President Trump's Executive Orders were the basis for termination actions." *Id.* ¶ 26. The email continued: "For the avoidance of doubt, Tranche 5 termination authority has no relationship to any Executive Order. These awards were individually reviewed by Secretary Rubio and the USAID Front Office and were determined to be inconsistent with the national interest and Agency priorities." *Id.* ¶ 27. The email continued: "Accordingly, USAID has elected to enforce termination authorities in the relevant instruments. Similarly, Secretary Rubio has individually reviewed Tranches 1-4 and made similar determinations in his capacity as Acting Administrator of USAID." *Id.* ¶ 28.

Similarly, on February 24, Senior Technical Advisor (STA) Adam Cox, sent an email stating that he and remaining COs in Washington had "been instructed by DOGE and [SPE] Jami [Rodgers] to terminate several awards tonight, so you may see some awards of yours that have been terminated. You should be CC'd on any emails that are going out. This of course will have to be officially done later in time through a GLAAS action from someone [else] in the Mission/Region covering that portfolio, but I wanted to give you a heads up." *Id.* ¶ 33. The email continued: "There are MANY more terminations coming, so please gear up!" STA Cox also stated in private messages that "DOGE" had originally planned to call COs around the world "in the middle of the night" and force them to terminate the awards. *Id.* ¶ 34. This was considered but rejected as not "feasible." *Id.* He also stated, "Supposedly these [new terminations] do not violate the TRO because they were individually reviewed by Rubio and this was overseen by DOJ." *Id.* He further stated, "Rubio reviewed and wants action." *Id.*

Fifth, leadership within the agencies have circulated no memorandums or legal opinions

justifying their actions, either before or after the Court issued the TRO. *Id.* ¶ 35; Jessica Doe Decl. ¶¶ 29–30 (*AVAC* ECF No. 26-3).

Sixth, it is implausible that the Secretary himself or even a group of political appointees engaged in a meaningful individualized review of the hundreds of contracts and awards terminated prior to the Court’s TRO or after the Court’s TRO in the past two weeks. Contracts, grants, cooperative agreements, and other awards are lengthy, technical, and complicated documents. Zahra Doe Decl. ¶ 36. They often include technical specifications that are dozens of pages long, as well as lengthy technical appendices. *Id.* It would take a single person many weeks of work to substantively review hundreds of contracts and awards, especially if that person was not already familiar with the programs at issue. *Id.* Beyond that, without consulting the COs and CORs/AORs who manage a specific contract or award, it would be impossible in most cases to understand whether a specific award could be terminated, effective immediately, without incurring even greater termination costs or causing even greater harms to the national interest or agency priorities. *Id.* ¶ 37. For example, the COs and CORs/AORs have specific information about the status of ongoing work, whether immediate termination would incur sunk costs (for example, by allowing already-purchased food and medicine to expire), whether immediate termination would risk the health or safety of Agency personnel or implementing partners, among many other award-specific factors. *Id.*

E. Defendants have terminated the overwhelming majority of USAID personnel in a manner that make compliance with the Court’s order extremely difficult, if not impossible.

Finally, the government has dramatically reduced USAID’s workforce in recent days in a matter that will have the predictable effect of making compliance with the TRO extremely difficult, if not impossible, going forward. There are insufficient remaining employees to effect payments

or manage contracts, grants, cooperative agreements, and other awards going forward. Della Doe Decl. ¶ 12; Sandra Doe Dec. ¶¶ 13–14; Mot. to Enforce at 9 (*GHC ECF No. 29*) (citing sources).

II. Plaintiffs’ Proposed Discovery Plan

Plaintiffs met and conferred with the government at 9:00 am this morning, February 26, 2025—the earliest time that Defendants stated they would be able to meaningfully confer—to seek to discern the government’s position on the factual contentions set forth above. The government stated that it was not in a position to respond to any of Plaintiffs’ contentions. Plaintiffs therefore have identified witnesses and documents that bear on the disputes regarding the government’s compliance with the TRO and the Court’s orders.

A. Witnesses

1. Pete Marocco

Pete Marocco has submitted several extensive declarations in this matter attesting to the government’s purported compliance with the TRO. The government represented to Plaintiffs that they consider that Mr. Marocco is competent and the most appropriate witness to speak to these issues. Plaintiffs agree that Mr. Marocco’s testimony may be necessary to evaluate Defendants’ compliance with the TRO, but it is not sufficient. As noted above, in just the last few hours, Plaintiffs have received specific information from career USAID personnel contradicting statements made in the declaration Mr. Marocco filed last night. And this case is not the first time career USAID staff have questioned Marocco’s statements and competence. In 2020, a dissent channel memo stated that Marocco “leveraged once-routine administrative processes to reopen previously-approved plans, interrogate and redirect country programs, halt movement on programs, procurements, and people, and inject uncertainty into daily operations and office planning.” USAID, Dissent Channel Memo (Sept. 17, 2020), *available at* <https://static.politico.com/02/1a/e19abea24ed0afd7ec69eada8d24/oti-dissent-channel-memo->

91720.pdf. “He has eschewed providing direction in writing or through other formal channels, and rarely sent guidance to teams directly implicated. Instead, he has conveyed orders and decisions, sometimes only orally, to individual staff ... who then must attempt to relay this information as best they can to colleagues. This has inevitably generated significant confusion over intent and expectations, and made it difficult to confirm decisions or maintain adequate records.” *Id.*

2. Marco Rubio

Defendants indicated that they would resist Secretary Rubio being called as a witness under the apex doctrine. However, Defendants have represented to this Court that Secretary Rubio had “personal involvement” in decisions to terminate contracts and grants. Second Marocco Decl. ¶¶ 5, 6. Communications from senior agency officials have also stated that Secretary Marocco “individually” reviewed hundreds of contracts and awards and determined to terminate them. Zahra Doe Decl. ¶¶ 27–28, 34.

3. Jami Rodgers

Mr Jami Rodgers is a senior bureau official at USAID. He has been delegated termination authority by Secretary Rubio and has been responsible for issuing guidance to agency personnel about terminations of contracts. Zahra Doe Decl. ¶ 24.

4. Senior Bureau Official at State Department

Plaintiffs consider that it would be useful to hear live testimony from a career senior bureau official at the State Department who has firsthand knowledge about terminations.

5. Career officials competent to testify about payment

It would be useful to hear live testimony from career, nonpolitical agency personnel, both at USAID and at the State Department—potentially from in the office of the Chief Financial Officer of USAID and the office of the Under Secretary for Management (M) at the State

Department—who have firsthand knowledge about decisions and processes relating to payments and disbursements.

B. Documents

Discovery of documents in the following categories would assist the parties and the Court in assessing the government’s compliance with the Court’s orders. Plaintiffs’ proposals are not intended to be unduly burdensome or vexatious; Plaintiffs are necessarily limited in their knowledge of what documents exist, how voluminous they are, and how difficult they would be to locate and produce. In the limited time in which the government was available to meet and confer, the government did not offer any views on potential document requests or on ways to narrow them. Plaintiffs remain open to tailoring or narrowing document requests with the Court’s guidance and further input from Defendants.

Terminations

1. All documents reflecting the rescission or lifting of terminations of contracts issued between January 20, 2025 and February 13, 2025.
2. For contracts terminated between January 20, 2025 and February 13, 2025:
 - a. The administrative record for the original termination, including but not limited to the “Action Memoranda” referred to in Special Procurement Executive Jami Rodgers’ communication of February 11, 2025, instructing contracting officers to terminate awards in Tranches 1-3. *See AVAC* ECF No. 26-3, ¶ 29.
 - b. All documents memorializing the reasons for maintaining the termination in effect after February 13, 2025.
3. A list of all contracts terminated after the issuance of the TRO, specifying (1) the date of each termination and (2) the reason for each termination.

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4. The administrative record for the termination of any contract after the issuance of the TRO.
5. The spreadsheets referred to in paragraph 5 of the Second Marocco Declaration (*GHC ECF 39-1*), reflecting (1) policy staff's "first line review," (2) the "senior policy official's recommendations", (3) Mr Marocco's determinations, and (4) the review of the Secretary of State.
6. The list referred to in paragraph 6 of the Second Marocco Declaration (*GHC ECF 39-1*), reflecting (1) the review, recommendations, and justifications of the Senior Bureau Official, and (2) the edits made by the Office of the Secretary pursuant to the Secretary's instructions.
7. The "other lists of contracts and grants that were sent to the leadership at USAID for termination through a content search or other means and these were approved for termination," referred to in paragraph 6 of the Second Marocco declaration.

Suspensions/stop-work orders

8. A list of all suspensions/stop-work orders issued between January 20, 2025 and February 13, 2025.
9. A list of all suspensions or stop-work orders issued between January 20, 2025 and February 13, 2025 that have been rescinded, listed by date, specifying the reason for each rescission (including but not limited to whether the activities covered were subject to a waiver).
10. The administrative record for the issuance of any stop-work or suspension order since the issuance of the TRO.

Payments

11. A list of all payments made to implementing partners since February 13, 2025, by date, amount, and specifying whether each payment was for activities subject to a waiver.
12. Documents reflecting or describing the procedures and systems used to process payments prior to January 20, 2025.
13. To the extent not already provided to the Court and to Plaintiffs, copies of all directives and instructions issued to contracting officers and agreement officers about the processing of payments, dated after February 13, 2025.
14. The administrative record for the decision to implement new payment systems and processes.
15. A list of all pending payment requests since February 13, 2025 that have not yet been approved.
16. All evidence relating to DOGE employees' oversight of payments.
17. All evidence that any payment to any Plaintiffs or their members for work completed prior to January 20, 2025 would present a risk of waste, fraud, or abuse.

DEFENDANTS' STATEMENT

1. After the Court issued a TRO on February 13, 2025, the Department of State and USAID issued both public notice, via the sam.gov website, and notice to the counterparties to their various agreements that the TRO was in effect that quoted the operative terms of that Order. No. 1:25cv400, ECF 22-2 & 22-3. Separately, the Department of State and USAID issued directives to contracting officers and grant officers to comply with the TRO, again quoting the operative terms of the TRO. *Id.* ECF 22-4 & 22-5. For example, USAID's Chief Acquisition Officer and Senior Procurement Executive instructed, "Accordingly, until further notice, all Contracting and

Agreement Officers should not enforce any Agency directive issued under Executive Order 14169 and the Secretary's implementing memorandum that requires the generalized stop work, suspension, or pause of Agency contracts, grants, or other federal assistance awards."

2. Given the Court's order restraining the generalized pause, Defendants moved quickly to conduct "a good-faith, individualized assessment of [each] contract or grant and, where the terms or authority under law allows, taking action with respect to that particular agreement consistent with any procedures required." *Glob. Health*, ECF No. 28 at 2, 6. More specifically, in order to comply with the TRO, Defendants have been expeditiously examining each USAID and State foreign assistance award on an individual basis and through a multi-step process to determine whether, beyond the directives to the contract and grants officers to comply with the TRO, USAID and State will either lift the particular stop work orders or terminate the funding instrument under authority conferred by both the contracts/grants and independent legal authority. 2/25 Morocco Decl. ¶ 3.

3. As of this morning, that process has been completed for USAID and State Department. 2/26 Morocco Decl. ¶¶ 1-2. Secretary Rubio has now made a final decision with respect to each award, on an individualized basis, affirmatively electing to either retain the award or terminate it pursuant to the terms of the instrument or independent legal authority as inconsistent with the national interests and foreign policy of the United States. *See id.* USAID is in the process of processing termination letters with the goal to reach substantial completion within the next 24-48 hours. As a result, no USAID or State obligations remain in a suspended or paused state. In total, nearly 5800 USAID awards were terminated, and more than 500 USAID awards were retained. The total ceiling value of the retained awards is approximately \$57 billion. In total, approximately 4,100 State awards were terminated, and approximately 2,700 State awards were retained. Defendants are committed to fully moving forward with the remaining awards and

programs that USAID and Secretary Rubio have determined to retain.

4. As to past-due payments on work completed before January 24, 2025, Secretary of State Rubio has directed that invoices identified by the Plaintiffs be processed and expedited for payment without the ordinary vetting procedures, in a good-faith effort to comply with the Court's order of February 25, 2025. Those payments from State, in the amount of approximately \$4 million, are expected to be issued today. With respect to USAID, however, even with this expedition and the bypassing of ordinary payment protocols, USAID expects it could take up to two weeks for the payments to issue to the Plaintiffs due to the larger volume of payments requested and the need to manually identify, review, and pull each invoice. *See* 2/26 Morocco Declaration ¶¶5-7 (explaining why time is needed). Nevertheless, certain funds, exceeding \$11 million, have been released for transfer to certain of the Plaintiffs this morning. 2/26 Morocco Declaration ¶¶3-4. This process has already begun and is being prioritized by the agency. For this and other reasons, Defendants have sought an emergency stay of the Court's order from this Court and the Court of Appeals.

5. As to parties not before the Court, it is not technically possible for Defendants to process all payments by February 26 at 11:59pm. For USAID, it is estimated that the Court's order would require the payment of at a minimum \$1.5 billion dollars across approximately 2,000 payment requests, including many that need to be newly created. For State, it is estimated that the Court's order would require the payment of at a minimum \$400 million in outstanding payment requests. These payments cannot be accomplished in the time allotted by the Court and would instead take multiple weeks. 2/25 Morocco Decl. ¶ 4. Again, for this reason among others, Defendants have sought emergency relief from this Court and the Court of Appeals.

6. Additional time is required because restarting funding related to terminated or suspended agreements is not as simple as turning on a switch or faucet. Rather, the payment

systems of USAID and State are complicated and require various steps before payments are authorized to be disbursed by the U.S. Treasury, Department of Health and Human Services, and/or the Department of State, involving multiple agencies, which are not a party to this litigation. The approval process must comply with the Federal Managers Financial Integrity Act and the Federal Financial Management Improvement Act. At a high level, their payment system requires: (1) working with vendors, (2) creating new payment requests, (3) getting them certified, (4) getting them re-certified, and (5) effectuating payments electronically through the Department of the Treasury, Health and Human Services or if overseas through the Department of State, or a combination thereof. The documentary evidence necessary to ensure compliance with policy added time to a process that already required certain controls, including appropriate separation of duties, to validate an invoice, review for compliance with appropriation law and accounting standards, and make the final payment. Adding an additional documentation step into an existing complex process, takes time to before it is fully efficient. Training for the staff, adjusting the system, and developing data management tools all resulted in a backlog of payments which is being addressed. *Id.* ¶ 14. Again, as described above, the Secretary has directed that payments to the plaintiffs be expedited pursuant to this Court's order, including by bypassing these important checks and protocols, but even then, full payment cannot feasibly be accomplished by midnight tonight.

7. Defendants have provided substantial information regarding their compliance with the Court's order, including multiple declarations. Discovery is thus unnecessary. Rather, the parties should proceed in the ordinary course, beginning with the resolution of the preliminary injunction motion on which the Court has stated it will rule with expedition.

8. Nevertheless, Plaintiffs through their submission today propose to seek expansive discovery to support their characterizations of Defendants' TRO compliance, including contract-

specific documents and testimony from both high-level and subordinate officials in USAID and State. Plaintiffs' requests are inconsistent with this Court's most recent order, which noted "that the TRO does not place this Court in the position of supervising Defendants' determinations as to whether to continue or terminate individual grants based on their terms." ECF 34 at 3.

9. Plaintiffs' proposal is particularly inappropriate given that they press claims under the Administrative Procedure Act, where the "focal point for judicial review" is "the administrative record already in existence, not some new record made initially in the reviewing court." *Camp v. Pitts*, 411 U.S. 138, 142 (1973).

10. The issues on which Plaintiffs now demanding discovery also far exceed the scope of the TRO-phase of these actions. They concern distinct policy decisions, personnel decisions, and individual contract-specific decisions, none of which even bears on TRO compliance, and much of which would only be appropriately considered in an individual breach of contract action that would be governed by distinct statutory, regulatory, and administrative processes. Plaintiffs' misguided effort to use the TRO phase of these actions as a platform for seeking sweeping judicial oversight of two entire agencies and every aspect of their operations is properly rejected.

11. To the extent that the Court requires testimony on Defendants' compliance efforts, Pete Marocco "manage[s] the day-to-day operations at USAID" and also serves as Director of Foreign Assistance at the Department, and has provided the declarations previously submitted in this case. *Id.* ¶ 2.

12. In that regard, any effort to seek testimony from Secretary Rubio should be rejected. "[T]op executive department officials should not, absent extraordinary circumstances, be called to testify regarding their reasons for taking official actions." *Simplex Time Recorder Co. v. Sec'y of Labor*, 766 F.2d 575, 586 (D.C. Cir. 1985) (citing *United States v. Morgan*, 313 U.S. 409, 422 (1941) (*Morgan II*)); see also *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252,

268 (1977); *cf. In re Dep't of Com.*, 139 S. Ct. 16, 17 (2018) (mem.) (opinion of Gorsuch, J., joined by Thomas, J.) (agreeing with order staying deposition of Cabinet secretary). Hence, the D.C. Circuit and other circuits have issued writs of mandamus to prevent compulsion of testimony from high-level Government officials. *In re Cheney*, 544 F.3d 311, 314 (D.C. Cir. 2008) (*per curiam*) (Vice President's Chief of Staff); *accord In re McCarthy*, 636 F. App'x 142 (4th Cir. 2015) (EPA Administrator); *In re United States (Jackson)*, 624 F.3d at 1372-73 (same); *In re United States (Reno & Holder)*, 197 F.3d 310, 313-14 (8th Cir. 1999) (Attorney General and Deputy Attorney General); *In re United States (Kessler)*, 985 F.2d 510, 512-13 (11th Cir. 1993) (*per curiam*) (FDA Commissioner). Simply put, “[t]he duties of high-ranking executive officers should not be interrupted by judicial demands for information that could be obtained elsewhere.” *In re Cheney*, 544 F.3d at 314. Hence, testimony from Secretary Rubio because of his role in the decisional process concerning the contracts and grants at issue in these cases would not be justified by the necessary “exceptional” circumstances, given the availability of Marocco. Requiring Secretary Rubio’s testimony by contrast “would constitute an ‘unwarranted impairment’ of the functioning of” the Department. *In re Cheney*, 544 F.3d at 314 (quoting *Cheney*, 542 U.S. at 390).

13. Per the Court’s oral ruling on February 25, Defendants attach guidance issued by USAID and State since the TRO.

* * *

Dated: February 26, 2025

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DEFENDANTS' EXHIBIT B
FOR FEBRUARY 26, 2025

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AIDS VACCINE ADVOCACY COALITION,
et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT
OF STATE, *et al.*,

Defendants.

Civil Action No. 25-00400 (AHA)

GLOBAL HEALTH COUNCIL, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

Civil Action No. 25-00402 (AHA)

SUPPLEMENTAL DECLARATION OF PETE MAROCCO

I, Pete Marocco, pursuant to 28 U.S.C. § 1746, hereby declare and say as follows:

1. Since last night when I executed a declaration, the process for individually reviewing each outstanding USAID obligation has concluded. Secretary Rubio has now made a final decision with respect to each award, affirmatively electing to either retain the award or terminate as inconsistent with the national interests and foreign policy of the United States. USAID is processing termination letters with the goal to reach substantial completion within the next 24-48 hours. Notification letters will be distributed for retained awards by the end of this week. As a result, no USAID obligations will remain in a suspended state. In total, nearly 5800 awards were terminated, and more than 500 awards were retained. Defendants are committed to fully moving forward with the remaining awards and programs that USAID and Secretary Rubio has determined to retain.

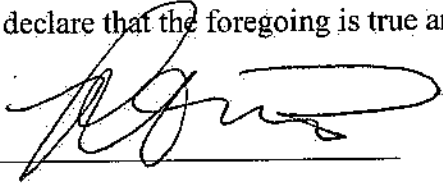
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2. Since last night when I executed a declaration, the process for individually reviewing each outstanding State Department grant and federal assistance award obligation has concluded. Secretary Rubio has now made a final decision with respect to each such award, affirmatively electing to either retain the award or terminate as inconsistent with the national interests and foreign policy of the United States. State is processing termination letters with the goal to reach substantial completion within the next 24-48 hours. Notification letters will be distributed for retained awards within 2 weeks to take account of overseas lag. In total, approximately 4,100 awards were terminated, and approximately 2,700 awards were retained. Of approximately 711 contracts originally paused, approximately 297 still need to be reviewed; the remainder have either been terminated or resumed. Defendants are committed to fully moving forward with the remaining awards and programs that Secretary Rubio has determined to retain.
3. Secretary Rubio authorized a bypass of normal payment processing procedures within the USAID to pay the ten Plaintiffs' outstanding invoices from work performed before January 24, 2025. It is estimated that it will take two weeks for those payments to fully issue, but I have been advised that certain funds, exceeding \$11 million, have been released for transfer to certain of the Plaintiffs this morning.
4. The State Department will, today, pay a total of \$4 million to two of the Plaintiffs HIAS and the American Bar Association for work performed prior to January 24. The payments will take approximately two days to process.
5. As to USAID, and for the plaintiffs specifically, my understanding is that many of the payments they have requested lack complete invoices with all relevant information about the invoiced work, vouchers, or other supporting information. This has made it difficult to understand and verify the requested amounts.
6. As to USAID and for the plaintiffs specifically, my understanding is that many payments are intermixed with other charges from the same vendor and are accordingly difficult for to understand and pay separately.
7. As to USAID and for the plaintiffs specifically, my understanding is that some plaintiffs submitted association requests without the names of the specific members/vendors associated with the awards or payments, which again makes it difficult to understand and verify the requested amounts.
8. As to USAID and for the plaintiffs specifically, my understanding is that plaintiffs are requesting, approximately and based on the information available to me right now, more than \$250 million across 200 separate payments to more than 10 individual entities. Creating new payments and verifying this information would not be possible today.

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9. The State Department has expended approximately \$21 million in foreign assistance funding since February 13, 2025.

I declare that the foregoing is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Pete Marocco", written over a horizontal line.

Pete Marocco

Date: February 26, 2025