No. 24A831

In the Supreme Court of the United States

UNITED STATES DEPARTMENT OF STATE, ET AL., APPLICANTS

v.

AIDS VACCINE ADVOCACY COALITION, ET AL.

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

v.

GLOBAL HEALTH COUNCIL, ET AL.

REPLY IN SUPPORT OF APPLICATION TO VACATE THE ORDER ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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When a district court orders the United States to pay nearly $2 billion in foreign-aid funding for pending payment requests within 36 hours or face judicial consequences, that is an immediately appealable injunction. And the order in these two cases manifestly warrants vacatur. Ordering the United States to pay all pending requests under foreign-aid instruments on a timeline of the district court's choosing—without regard to whether the requests are legitimate, or even due yet—intrudes on the President's broad foreign-affairs powers and upends the systems the Executive Branch has established to disburse aid. Compounding the problem, the district court lacks any jurisdiction to resolve this dispute; Congress has given the Court of Federal Claims exclusive jurisdiction over this type of dispute concerning

the payment of government contracts and grants. The February 26, 2025 administrative stay relieved the government of the 36-hour deadline. Vacatur is warranted to prevent reinstatement of a new, short-fused deadline that would unlawfully commandeer federal payment processes anew.

Respondents downplay (Opp. 1-2, 9-12, 16-17) the district court's 36-hour pay-or-else order as a non-appealable continuation of the original temporary restraining order (TRO) that "preserve[s] the status quo" and ensures compliance. And respondents call (Opp. 1) the government's inability to comply a problem of the government's "own making." But the original TRO—while objectionable in many other respects—did not require any specific payments by any specific time. It said only that the agencies could not enforce the new administration's blanket pause by "preventing the obligation or disbursement" of funds in connection with pre-existing contracts. App. 14a. That TRO at least permitted federal agencies to "enforc[e] the terms of contracts or grants" on an individualized basis, including by deciding to terminate them going forward. App. 14a, 19a.

Far from "refus[ing] to comply," Opp. 12, the agencies "issued directives to contracting officers and grant officers to comply" with the TRO, App. 144a, then expended significant resources to swiftly review thousands of awards—resulting in decisions to retain over 500 USAID awards, worth up to $57 billion, as well as about 2700 State awards. App. 145a. Meanwhile, the agencies developed and began implementing procedures for processing payment requests for already-completed work, to better guard against fraudulent or improper payments (among other things). See D. Ct. Doc. 22-1, at 7-8 (D.D.C. Feb. 18, 2025); App. 146a.

The 36-hour pay-or-else order instead arose from respondents' contentions, on the evening of February 24, about a new emergency. They insisted that the opera-

tions of several respondents and their members would not survive the week unless the government paid the amounts purportedly owed under grants or contracts for work, then demanded immediate payment on *all* pending requests for *all* aid recipients. 25-cv-402 D. Ct. Doc. 36, at 1, 3 (D.D.C. Feb. 24, 2025). Without asking for additional briefing or any evidence, the district court held an emergency hearing, granted that sweeping relief from the bench, and set a 36-hour clock for the government to "pay all invoices and letter of credit drawdown requests on all contracts for work completed prior to the entry of the Court's TRO on February 13." App. 86a. Unlike the TRO, this new order does not permit the government to review the payment requests individually, or even limit itself to requests that were actually due or overdue as of February 26 at 11:59 p.m. Nor would such a review even be possible on the district court's invented timeline. Nonetheless, the State Department expedited millions of dollars in identified payments to two respondents, and USAID prioritized the processing of additional payments to other respondents. App. 146a. But the government cannot just press a button and disburse funds in response to any request that fits the district court's description. Instead, the government must undertake a multi-step process that complies with federal statutes before payments are authorized for disbursement. See App. 101a. The government thus sought immediate relief to avoid noncompliance with an impossible order. See D. Ct. Doc. 37 (Feb. 25, 2025).

The district court now stands on the brink of placing USAID into a court-run receivership. On February 27, respondents expanded the scope of their request for a preliminary injunction, asking the court to "revoke all terminations" of grants and contracts since January 20 (no matter that the original TRO permitted individualized terminations and regardless of whether the instruments expressly authorized termination); to "restor[e] the fund approval processes that existed before January 20,"

which the agencies have determined were inadequate to prevent fraud and abuse; and to require the agencies to give the court an "individualized statement of reasons" for each payment denial or termination decision going forward. 25-cv-402 D. Ct. Doc. 46-6, at 2-4 (D.D.C. Feb. 27, 2025). This Court should prevent what began as a putative APA challenge to policy memoranda from further escalating into a vehicle for disabling the Executive Branch's lawful means of making decisions about foreign aid. The Constitution vests the Executive Branch, not the Judiciary, with the power to control foreign policy. See Appl. 21; *American Ins. Ass'n* v. *Garamendi*, 539 U.S. 396, 414 (2003).

A. This Court Has Jurisdiction To Vacate The District Court's February 25 Order

1. Respondents contend (Opp. 9-10) that this Court lacks jurisdiction to review the district court's order, which they dismiss as a mere "minute order directing [the government] to comply with" the initial TRO. But what matters for appealability is not the order's form but whether it "has the practical effect of granting * * * an injunction." *Abbott* v. *Perez*, 585 U.S. 579, 594 (2018) (citation and internal quotation marks omitted); see *Sampson* v. *Murray*, 415 U.S. 61, 86-87 (1974). Lower courts cannot foreclose appeals by labeling injunctions as minute orders. Here, the district court issued a "minute order" on its docket only because it had orally ordered sweeping relief from the bench. See Appl. 8-9.

And the February 25 order imposes new, mandatory obligations that the original TRO did not require—creating a discrete, immediately appealable order. The original TRO, while erroneous, simply "enjoined" the agencies "from enforcing or giving effect to" agency memoranda that imposed a pause on foreign-aid funding, "including by: suspending, pausing, or otherwise preventing the obligation or disburse-

ment of appropriated foreign-assistance funds in connection with any" instrument "that was in existence as of January 19, 2025." App. 14a. But the district court expressly refused to "enjoin [applicants] from taking action to enforce the terms of particular contracts, including with respect to expirations, modifications, or terminations pursuant to contractual provisions." *Ibid.* As the court subsequently clarified, the TRO still permitted the agencies to continue taking actions (including terminations) on individual awards based on their underlying "authorities under statutes, regulations, and other legal authorities." App. 19a; see App. 21a. And the court expressly disclaimed any intention of "supervising [applicants'] determinations as to whether to continue or terminate individual grants based on their terms," or of requiring applicants to "'litigate every arguable breach of contract in a contempt posture.'" App. 25a (citation omitted). Instead, the TRO was intended "to restore the status quo as it existed before [applicants'] blanket suspension" of foreign-aid funding. App. 24a.

The February 25 order, though styled as an order to "enforce" the original TRO, instead newly compelled the government to pay within 36 hours "*all* invoices and letter of credit drawdown requests on *all* contracts for work completed prior to the entry of the Court's TRO on February 13." App. 86a (emphases added). The order does not permit the government to "conduct an individualized review," as the TRO did. App. 19a. The order does not allow the government to confirm before fulfilling thousands of payment requests that each request is legitimate. See Appl. 24. And the order does not even distinguish between requests that were actually due or overdue as of February 26 and ones that were not yet due to be paid under the terms of the underlying agreements or the agencies' preexisting processes. Nor did the order address the logistics or practicalities of its new demand.

Those commands are not consistent with an attempt to restore the status quo

before the TRO. They are a further break from what the government had previously done. Well before the funding pause, the State Department's internal policy manual directed grant officers to review payment requests for legitimacy before processing them, rather than to make payment immediately upon receipt of a payment request. Federal Assistance Div., United States Dep't of State, *Federal Assistance Directive* Ch. 4.C (May 2024). That comports with general federal guidance on reimbursements, which directs federal agencies to "make payment within 30 calendar days after receipt of the payment request unless the Federal agency * * * reasonably believes the request to be improper." 2 C.F.R. 200.305(b)(3). Notably, respondents never explain why some $2 billion in payments must *all* have been paid by 11:59 p.m. on February 26—presumably in large part because the record does not contain the underlying instruments or payment requests.

The February 25 order therefore qualifies as an appealable order even under the narrowest view of what kinds of TROs are appealable. The order has the "practical effect" of granting an injunction, *Abbott*, 585 U.S. at 594 (citation omitted), by compelling the government to affirmatively act to disburse nearly $2 billion in funds on a short-fused timeline. That requirement is about as final as it gets: once that money leaves the federal fisc, the government is not likely to get those funds back. Appl. 24-25. And an order may be more appropriately characterized as a preliminary injunction when it has "serious, perhaps irreparable, consequence[s]." *Carson* v. *American Brands, Inc.*, 450 U.S. 79, 84 (1981) (citation omitted). Courts of appeals have regularly "allowed interlocutory appeal of TROs that," like this one, "do not preserve the status quo but rather act as a mandatory injunction requiring affirmative action." *Northeast Ohio Coal. for the Homeless & Serv. Emps. Int'l Union* v. *Blackwell*, 467 F.3d 999, 1006 (6th Cir. 2006); see *Office of Pers. Mgmt.* v. *American Fed'n*

of Gov't Emps., 473 U.S. 1301, 1304-1305 (1985) (Burger, C.J., in chambers) (TRO was appealable when it "did not merely preserve the status quo pending further proceedings, but commanded an unprecedented action irreversibly altering a delicate balance involving the foreign relations of the United States") (citation and internal quotation marks omitted).

Respondents' contrary jurisdictional theory is untenable. Under their view, the district court could apparently order the United States to pay any sum, on any deadline, on pain of contempt, so long as the payment demand relates to foreign aid—yet the government could never appeal, no matter how unlawful the order.

2. Respondents contend (Opp. 12) that vacating the February 25 order would be pointless since the district court's original TRO would still be in place. They echo the lower courts' insistence that the challenged order "in no way modified the TRO's terms" and did not "require applicants to do anything more than they would have had to do absent the temporarily restrained agency actions." *Ibid.* (brackets, citations, and ellipsis omitted). But, as explained, the order plainly requires the government to do far more than the original TRO, let alone the pre-TRO status quo. Before this litigation, the government could have conducted an orderly, individualized review of pending payment requests to ensure their legitimacy, then fulfilled legitimate payment requests when they became due; any disputes over non-payment or delayed payment would then be resolved through established procedures that may culminate in the Court of Federal Claims. See p. 5-6, *supra*. The initial TRO—although unlawful on many other grounds—did not appear to disrupt normal payment-resolution processes. The challenged order plainly does, by compelling the government to fulfill *all* payment requests for work completed before February 13 by a specific and arbitrary deadline, regardless of the legitimacy of the requests or the

actual contractual deadlines for payment, and regardless of the established administrative and statutory mechanisms for resolving surrounding disputes.

Likewise, respondents are wrong to fault (Opp. 12-13) the government for failing to detail to the district court the difficulties in complying with the February 25 order's 36-hour deadline. Neither the TRO nor the court's subsequent clarifying orders had indicated that a requirement to cease pauses in disbursements would suddenly become a requirement to make thousands of outstanding payments at once, let alone by a specific date. App. 14a. The government understandably had not informed the court that it would not be able to comply with a deadline that it had never been asked to meet—especially since the district court had not requested briefing on the subject before entering its February 25 order. See Appl. 13-14.

Vacating the district court's immediate-payment order would not open the floodgates to emergency relief. This Court and lower courts have repeatedly acknowledged that judicial orders forcing a party to take immediate, irrevocable actions are quintessential appealable injunctions. The Court would not be breaking any new ground by granting relief in this case. If anything, respondents' arguments risk igniting more emergency appeals. Respondents suggest (Opp. 13, 19) that the government's appeal of the February 25 order is deficient because it did not appeal the initial TRO (though they would also treat that as unappealable). If a defendant could appeal subsequent compulsory orders only by appealing an initial TRO, that would spark more emergency litigation, not less.

B. The Government Is Likely To Succeed On The Merits

1. This Court's review is warranted when, as here, a lower court attempts to micromanage the Executive Branch with serious and irrevocable consequences. See Appl. 19-20. In this case, the district court has ordered the government to pay

billions of dollars in the field of foreign affairs, where the President's power is at its height. See Appl. 20-21. And the court did so without seriously evaluating its subject-matter jurisdiction—which does not extend to requiring such payments. As applicants have explained, the type of relief in the court's February 25 order is a classic contract remedy that respondents here can pursue only in the Court of Federal Claims under the Contract Disputes Act of 1978, 41 U.S.C. 601 *et seq.* (CDA) and the Tucker Act, 28 U.S.C. 1491 (potentially after first exhausting administrative remedies). Appl. 11-12. The government retains its sovereign immunity from respondents' contract claims everywhere else. *Ibid.* But instead of grappling with those limitations on its jurisdiction, the district court postponed their consideration to the preliminary-injunction stage. See Appl. 13-14. The extraordinary resulting order cries out for this Court's intervention.

Respondents barely defend the legal merits of the district court's order. They do not argue that the court considered the government's jurisdictional arguments before entering that order, as it was required to do. See Appl. 13-14; *Steel Co.* v. *Citizens for a Better Env't*, 523 U.S. 83, 95 (1998). And their defense of the court's jurisdiction consists (Opp. 18) of one cursory paragraph arguing that *Bowen* v. *Massachusetts*, 487 U.S. 879 (1988), permitted a claim involving monetary relief to proceed under the APA's waiver of sovereign immunity.

But this Court has clarified that *Bowen* does not govern cases like this one. In *Maine Community Health Options* v. *United States*, 590 U.S. 296 (2020), this Court explained that suits involving "prospective declaratory and injunctive relief" in the context of a "'complex ongoing relationship,'" may be brought under the APA, but suits that "'remedy[] particular categories of past injuries or labors'" instead are properly brought under the Tucker Act—*i.e.*, in the Court of Federal Claims. *Id.* at

327 (brackets and citations omitted). The plaintiffs in *Bowen*, this Court explained, could bring APA claims because they had sued "not merely for past due sums, but for an injunction to correct the method of calculating payments going forward." *Id.* at 326-327 (citation omitted). In *Maine Community Health*, by contrast, the plaintiffs requested "specific sums already calculated, past due, and designed to compensate for completed labors," which this Court held was the kind of claim that "lies in the Tucker Act's heartland." *Id.* at 327.

The February 25 order—which compels payment of specific past-due sums—has therefore put this case "in the Tucker Act's heartland." The district court has not awarded "prospective, nonmonetary relief," or purported to manage a "complex ongoing relationship" between respondents and the government, *Maine Community Health*, 590 U.S. at 327, but is instead requiring the government to "promptly pay letter of credit drawdown requests for reimbursements" for "work completed prior to the entry of the Court's TRO on February 13." App. 86a. In the words of *Maine Community Health*, the court has ordered the government to pay "specific sums already calculated" that are "designed to compensate for completed labors." 590 U.S. at 327.

Respondents do not engage with other reasons why ordering the government to pay out sums for requests pending on February 26 falls within the exclusive jurisdiction of the Court of Federal Claims. They do not dispute, for example, that where the CDA and the Tucker Act govern, the APA's waiver of sovereign immunity under 5 U.S.C. 702 does not apply. See Appl. 11-13. Nor do they contest that those statutory schemes govern here because the relief that respondents have requested and received is "in 'its essence' contractual." *Perry Capital LLC* v. *Mnuchin*, 864 F.3d 591, 618-619 (D.C. Cir. 2017) (citation omitted), cert. denied, 583 U.S. 1115 (2018). Whether

an action is essentially contractual "depends both on the source of the rights upon which the plaintiff bases its claims, and upon the type of relief sought (or appropriate)." *Megapulse, Inc.* v. *Lewis*, 672 F.2d 959, 968 (D.C. Cir. 1982). The only potential "source of the rights" to the payments ordered by the district court was "created in the first instance by the contract" or other funding obligation. *Spectrum Leasing Corp.* v. *United States*, 764 F.2d 891, 894 & n.5 (D.C. Cir. 1985). And the monetary relief that the court has ordered is quintessentially contractual in nature. See *id.* at 894-895; *Megapulse*, 672 F.2d at 968. The February 25 order thus has transformed this case into an agglomeration of thousands of contract actions—which must be pursued under the Tucker Act (or the CDA), or not at all.

Respondents dismiss (Opp. 16) the government's jurisdictional argument as "tentative." But the government has contended without qualification that "the district court lacked any jurisdiction" to issue the order. See Appl. 3. The lack of clarity about whether past-due-payment remedies should come under the CDA or the Tucker Act, see Appl. 11-13, is attributable to the "inability" on the current record to review "each individual funding instrument," Appl. 13—which only underscores that the district court lacked jurisdiction in this APA suit to order contract-compliance remedies. It does not make the government's jurisdictional objection tentative.

2. This Court's review is also warranted to correct the district court's erroneous award of universal relief. As applicants have explained (Appl. 14-15), universal relief violates the core principle that equitable remedies must be tailored to "the plaintiff's injuries." *Labrador* v. *Poe ex rel. Poe*, 144 S. Ct. 921, 927 (2024) (Gorsuch, J., concurring). Respondents fail to justify the order's universal scope. They do not attempt to explain how an order directing the government to make contract payments to potentially thousands of absent parties can be squared with Article III or tradi-

tional principles of equity. See Appl. 14-15. Instead, their only response (Opp. 19) is that the original TRO *also* ordered worldwide relief. But the court's failure to abide by Article III in one order did not give it license to continue doing so in subsequent orders.

3. The district court has threatened to exacerbate the harms of its order by proposing wide-ranging discovery into the subjective motivations of senior officials in exercising their lawful authorities to terminate grants and contracts. See, *e.g.*, App. 24a-25a (distinguishing terminations based on "good faith and pretext"), 28a (proposing discovery). Respondents dismiss the government's concerns as "premature," Opp. 19, yet already asked to depose the Secretary of State and requested an order to rescind all terminations since January 20 regardless of the legality of those terminations. App. 141a; 25-cv-402 D. Ct. Doc. 46-6, at 2. Absent this Court's intervention, this suit will continue metastasizing into judicial supervision of the Executive Branch's entire foreign-aid apparatus—in clear contravention of the President's Article II powers.

4. Respondents primarily argue (Opp. 16-18) that the government brought the order upon itself by failing to comply with the initial TRO. That argument is a distraction, and it is also wrong. This dispute over the lawfulness of the challenged order does not require the Court to wade into broader factual disputes about the underlying TRO and the government's compliance. And in any event, facts about the TRO and compliance cut in the government's favor. The agencies followed the district court's initial TRO by "issu[ing] directives to contracting officers and grant officers to comply with the TRO, * * * quoting [its] operative terms." App. 144a. And consistent with the TRO's allowance for contract-by-contract determinations, 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 to terminate or resume the instrument based on the agencies' underlying legal authorities. *Ibid.* That individualized review, now largely complete, has resulted in in the retention of over 500 USAID awards, worth up to $57 billion, as well as about 2700 State awards. App. 145a. The agencies' decision to continue tens of billions of dollars in awards belies any notion that they are proceeding under the enjoined pause. Yet despite those efforts, respondents and the district court continue to express concern that the government's terminations are pretextual. See Appl. 16-17 (citing App. 25a, 67a). Respondents even seek to depose a Cabinet secretary about his termination decisions. App. 141a.

Respondents apparently believe that the agencies were not complying with the original TRO because the government did not make payments immediately after the TRO was put in place. See Opp. 1-2, 16. But the original TRO did not direct the agencies to immediately make payments. In subsequent clarifying orders, the district court explained that any "agreement that was in effect as of January 19, 2025, must be given effect and promptly receive disbursements." App. 25a; see App. 20a. But the court did not say that the agencies had to make payments by a certain date regardless of when they were due. And the court did not forbid agencies from taking steps to ensure that payment requests were legitimate before making disbursements.

Regardless, the district court's frustrations with the government regarding the initial TRO did not and could not give the court subject-matter jurisdiction to issue the February 25 order resolving matters outside a district court's power. A court may not act without subject-matter jurisdiction under any circumstances. See *Gonzalez* v. *Thaler*, 565 U.S. 134, 141 (2012) ("Subject-matter jurisdiction can never be waived or forfeited."). The court lacked jurisdiction to grant Tucker Act-style relief to poten-

tially thousands of absent parties in an action brought under the APA.

C. The Equities Support Relief

1. Respondents deny that the district court's order injures applicants by intruding on the prerogatives of the Executive Branch and accuse the government of pressing a "vision of unbounded Executive power." Opp. 19 (brackets, citation, and internal quotation marks omitted). But the government merely presses the vision of executive power enshrined in the Constitution and endorsed by this Court: the President has the obligation and the authority under Article II to "protect the integrity of the federal fisc and make appropriate judgments about foreign aid." Appl. 4. It should be self-evident that a district court order that effectively precludes the government from conducting due diligence before making billions of dollars in foreign-aid payments, while dictating how and when the government makes those payments, impermissibly intrudes on those prerogatives.

Respondents portray (Opp. 19-20) any practical harm to the government as "speculative" unless the government offers "evidence that any of the requests for payment for already completed foreign assistance work are illegitimate." That gets things backwards. The government cannot provide "evidence" that any specific request for payment is illegitimate without conducting the very review that the court's order makes impossible. See Appl. 20 (explaining that the order's timeline "effectively precludes the agencies from exercising their lawful authority to ensure that those payments are legitimate").

Respondents relatedly argue (Opp. 20) that the government's harms are "remediable" rather than irreparable, because USAID has a "proven track record of recovering improperly disbursed funds." But respondents do not dispute that their own financial situation supports the agencies' expectation that funding recipients are

likely to "immediately spend any funds they receive—making it impossible for the Government to recover those funds as a practical matter." App. 105a.

Respondents finally repeat (Opp. 20) that the burden of complying with the district court's order is a self-inflicted injury. They contend (*ibid.*) that the government "refused to comply with the TRO in a timely manner" and thus cannot "leverage its procrastination into an emergency vacatur." But, as explained, see pp. 12-13, *supra*, the government was taking steps to comply with the TRO that the court actually issued; then the goalposts moved.

2. On the other side of the balance, respondents fail to show that vacating the district court's order would cause them irreparable harm. They assert that they "would face extraordinary and irreversible harm if the *funding freeze* continues." Opp. 21 (emphasis added). But the "funding freeze" is not continuing; it is over. See pp. 12-13, *supra*. The Department of State and USAID have now largely completed their individualized review of all funding awards and decided to retain thousands of awards, rendering respondents' original challenge to the blanket "freeze" moot. See App. 145a. And as explained above (see pp. 4-5, *supra*), the order at issue here is far removed from the initial TRO concerning the pause on foreign-aid funding.

Respondents emphasize (Opp. 3-4, 21) declarations describing their immediate need for payment. But vacating the February 25 order will not prevent them from having their requests for payments processed. Agency leadership has already represented that millions of dollars in payments from State were being issued to two of respondents for their already-completed work last week. App. 146a. Moreover, at the Secretary's direction, invoices identified by the other respondents are being "processed and expedited for payment without the ordinary vetting procedures." *Ibid.* And if the government's payment of past-due invoices for previously completed work

is not to respondents' satisfaction, they may pursue those claims under the proper statutory framework—the CDA or the Tucker Act. See Appl. 25-26. What respondents cannot do is leverage their individual equities into a wholesale pay-or-else order affecting untold numbers of requests, disrupting ordinary processes, and thwarting the Executive's control of foreign-aid disbursements.

* * * * *

For the foregoing reasons and those stated in the government's application, this Court should vacate the district court's February 25, 2025 order.

Respectfully submitted.

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