

Challenging Unlawful Impoundments

2026 Update

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Issue Brief

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I. INTRODUCTION

During the first year of the Trump administration’s second term, the administration undertook extensive efforts to wrest from Congress control over federal spending.¹ This includes actions the administration has taken to “impound”—i.e., decline to spend—funds appropriated by Congress. Impoundment can take place where the executive branch declines to obligate such funds in the first place, or where it terminates existing federal funding programs and then declines to reobligate the funds to other applicants before the underlying appropriations expire.²

In response to the Trump administration’s earliest efforts to impound federal funding, Governing for Impact wrote an Issue Brief in February 2025 describing how private and government litigants might challenge unlawful impoundments.³ Impoundment litigation proliferated thereafter.⁴ Factual and legal developments since February 2025—including the Supreme Court’s shadow docket order in *Department of State v. AIDS Vaccine Advocacy Coalition*, 146 S. Ct. 19 (2025) (AVAC Order)—warrant an update to our analysis. This Issue Brief therefore outlines steps that the Trump administration has taken to impound funds since February 2025; describes important developments in the legal landscape; and explains which claims might continue to be viable for litigants challenging impoundments.

¹ Emily Badger & Alicia Parlapiano, *Trump Keeps Finding New Ways to Withhold Money Even After 198 Lawsuits*, N.Y. Times (Mar. 3, 2026), <https://www.nytimes.com/interactive/2026/03/03/upshot/trump-funding-lawsuits.html>.

² See GFI, *Challenging Unlawful Impoundments 2–5* (Feb. 2025), <https://governingforimpact.org/wp-content/uploads/2025/02/Impoundment-Primer-2-1-24-final.pdf>. This Issue Brief is intended to supersede our prior writing and includes concepts therefrom where appropriate, so readers need not refer back to the February 2025 Issue Brief.

³ See *id.*

⁴ See generally Just Security, *Litigation Tracker: Legal Challenges to Trump Administration Actions*, <https://www.justsecurity.org/107087/tracker-litigation-legal-challenges-trump-administration/> (last visited Mar. 27, 2026) (searching “impoundments”).

II. BACKGROUND ON THE RELEVANT STATUTORY SCHEMES

We begin with a brief summary of the statutes that may be relevant to the lawfulness of a particular effort to impound funds.

The Administrative Procedure Act provides the general framework for challenging actions by administrative agencies, and authorizes judicial review of agency action “except to the extent that [other] statutes preclude judicial review.”⁵ There is a general “presumption favoring judicial review of administrative action,” but it can be rebutted.⁶ “Whether and to what extent a particular statute precludes judicial review is determined not only from its express language, but also from the structure of the statutory scheme, its objectives, its legislative history, and the nature of the administrative action involved.”⁷

Next is the Impoundment Control Act (ICA), which Congress enacted in 1974 in response to President Nixon’s use of impoundments to thwart congressional spending priorities.⁸ The law establishes a set of procedures the executive branch must follow in seeking to withhold appropriated funding.⁹ The ICA provides rules around two types of executive spending moves: “rescissions,” which are permanent cancellations of budget authority that require the President to transmit a special message to Congress and become effective only if Congress approves them within 45 days,¹⁰ and “deferrals,” which are temporary delays in the obligation or expenditure of budget authority that are permitted for three reasons and that likewise require a special message to Congress.¹¹ The Government Accountability

⁵ 5 U.S.C. § 701(a)(1).

⁶ *Block v. Cmty. Nutrition Inst.*, 467 U.S. 340, 349 (1984).

⁷ *Id.* at 345.

⁸ Pub. L. No. 93-344, 88 Stat. 333 (1974) (codified at 2 U.S.C. §§ 681 et seq.).

⁹ See 2 U.S.C. §§ 682-688.

¹⁰ *Id.* § 683(a)-(b).

¹¹ *Id.* §§ 682(1), 684.

Office (GAO) has opined that the ICA does allow limited “programmatic delays,” which are ordinary delays that occur when an agency is “taking necessary steps to implement a program” but cannot obligate funds right away, including because “external” factors preclude the agency from doing so.¹² The statute authorizes the Comptroller General (the head of the GAO) to file suit “if, under the [ICA],” an appropriation “is required to be made available for obligation [but] ... is not made available for obligation.”¹³

The ICA also contains four “disclaimers,” the third and fourth of which are relevant here. The third disclaimer states: “Nothing contained in this Act ... shall be construed” as “affecting in any way the claims or defense of any party to litigation concerning any impoundment.”¹⁴ And the fourth disclaimer provides: “Nothing contained in this Act ... shall be construed ... as superseding any provision of law which requires the obligation of budget authority or the making of outlays thereunder.”¹⁵

Separately, Congress appropriates funding to the executive branch through statutes.¹⁶ Appropriations statutes vary in their specificity, but tend to provide certain amounts to certain departments and offices for certain purposes. As described below, litigants have successfully enforced these statutes via litigation.

¹² Decision: Office of Management and Budget—Withholding of Ukraine Security Assistance 7, B-3315464, GAO (Jan. 16, 2020), <https://www.gao.gov/assets/b-331564.pdf>.

¹³ 2 U.S.C. § 687.

¹⁴ *Id.* § 681(3).

¹⁵ *Id.* § 681(4).

¹⁶ James V. Saturno & Megan S. Lynch, *The Appropriations Process: A Brief Overview*, Cong. Rsch. Serv., R47106 (May 17, 2023), <https://www.congress.gov/crs-product/R47106>.

III. LEGAL AND FACTUAL DEVELOPMENTS RELATED TO TRUMP'S IMPOUNDMENTS

This section provides a selective overview of various factual and legal developments that have emerged as the Trump administration continued to impound federal funds since February 2025. First, it documents various strategies the administration has used to make impoundment decisions under the radar, including at the agency and subagency level. Second, focusing on the long-running litigation over the administration's efforts to cut foreign assistance spending, the section explains how the D.C. Circuit and Supreme Court have raised questions about whether and which Administrative Procedure Act claims may proceed against impoundments. Third, it discusses potential obstacles to constitutional claims under expansive readings of *Dalton v. Specter*, 511 U.S. 462 (1994).

A. Agency-Specific Impoundments

The Trump administration's efforts to impound federal funds have continued apace, though in somewhat less conspicuous ways as compared to the administration's early, government-wide attempts.¹⁷ Instead, the administration has implemented strategies to delay and cancel obligations at the agency level.¹⁸ Despite the White House's best efforts to defang the GAO,¹⁹ many of these episodes have been documented by that office, which at one point in July 2025 had 46 open investigations into impoundment allegations.²⁰

¹⁷ Dan Jacobson, *The Trump Administration Cannot Use Award Terms and Conditions to Impound Funds*, Just Security (Feb. 24, 2025), <https://www.justsecurity.org/108132/trump-administration-impound-funds/>.

¹⁸ *Id.*

¹⁹ Tony Romm, *White House Leads Push to Block Watchdog's Inquiries Into Spending Cuts*, N.Y. Times (Jul. 22, 2025), <https://www.nytimes.com/2025/07/22/us/politics/trump-spending-government-accountability-office.html>.

²⁰ *Id.*

Agencies now often cite agency-specific authorities and priorities, rather than simply administration-wide executive orders, in pausing funding programs.²¹ In particular, the administration has argued that some appropriations statutes give the administration authority to pause particular funds and, as a backup, that many delays in funding are actually programmatic delays permitted under the ICA.²²

In spring 2025, for example, the Acting Secretary of Health and Human Services canceled over 1,800 existing grants and issued a memorandum imposing a pause on publishing entries in the Federal Register.²³ HHS justified this action as necessary “to provide the Administration with time to consider its plan for managing the federal policy and public communications processes.”²⁴ GAO nonetheless found that the pause imposed an unreasonable delay in the agency’s duty to “obligate funds for new and existing grants,” which likely violated the ICA.²⁵ Similarly, GAO found that the Department of Homeland Security unlawfully withheld budget authority from various federal disaster programs throughout much of 2025.²⁶

Most significantly, the administration has deployed a series of tactics to eliminate significant portions of the United States’s foreign aid spending. Congress appropriated more than \$30 billion in foreign aid funding for the 2025 fiscal year.²⁷ On the first day of his administration, however, President Trump issued an executive order directing an immediate pause in “United States foreign development assistance.”²⁸ Following that order, the State Department terminated nearly 10,000 USAID and State Department grants and contracts.²⁹ The terminations were

²¹ Jacobson, *supra* note 17.

²² *Id.*

²³ Dep’t of Health & Human Services—National Institutes of Health—Application of Impoundment Control Act to Availability of Funds for Grants 2-3, B-337203, GAO (Aug. 5, 2025), <https://www.gao.gov/assets/890/880607.pdf>.

²⁴ *Id.* at 8 (alteration omitted).

²⁵ *Id.* at 19.

²⁶ Dep’t of Homeland Sec.—Application of Impoundment Control Act to Federal Emergency Management Agency Federal Assistance Appropriations, B-337204.2, GAO (Sept. 15, 2025), <https://www.gao.gov/assets/890/881838.pdf>.

²⁷ AVAC, 146 S. Ct. 19, 20 (2025) (Kagan, J., dissenting).

²⁸ *Reevaluating and Realigning United States Foreign Aid*, Exec. Order No. 14169, 90 Fed. Reg. 8619 (Jan. 20, 2025).

²⁹ Elissa Miolene, *Nearly 10,000 Awards Cut from USAID, State Department*, Devex (Feb. 26, 2025), <https://www.devex.com/news/nearly-10-000-awards-cut-from-usaid-state-department-109517>.

executed without invoking the ICA’s deferral or rescission procedures; the administration characterized them as contract terminations pursuant to termination-for-convenience clauses, not impoundments. USAID was officially shuttered July 1, 2025.³⁰

B. Impoundment Control Act Preclusion

Litigation over the foreign aid funding cuts has raised new questions about plaintiffs’ ability to enforce the ICA and appropriations statutes through APA claims.

Immediately following the Trump administration’s cancellation of foreign aid funding, two parallel cases were filed in early February 2025 in the U.S. District Court for the District of Columbia.³¹ One set of plaintiffs alleged that the foreign aid pause was arbitrary and capricious under the APA, *ultra vires*, and that it violated the underlying appropriations statutes, the ICA, and the Anti-Deficiency Act.³² In March 2025, the district court entered a preliminary injunction directing the government to make available “the full amount of funds that Congress appropriated for foreign assistance programs” in the appropriations statute.³³ The government appealed to the D.C. Circuit.

The crux of the government’s argument, then and now, has been that the ICA impliedly precludes APA contrary-to-law claims premised on a violation of the ICA (ICA-based APA claims) and at least some premised on violations of appropriations laws (appropriations-based APA claims) because of the ICA’s specific structure and the fact that the Comptroller General is empowered to challenge certain ICA violations.³⁴ The third disclaimer, the government has maintained, only disclaims effect on the “claims or defense of any party *that may bring litigation*,” and ensured

³⁰ ABC News, *USAID Programs Now Being Run by State Department as Agency Ends Operations* (July 1, 2025), <https://abcnews.com/Health/usaid-programs-now-run-state-department-agency-ends/story?id=123373289>.

³¹ *AIDS Vaccine Advoc. Coal. v. United States Dep’t of State*, No. 25-cv-400 (D.D.C. filed Feb. 10, 2025); *Glob. Health Council v. Trump*, No. 25-cv-402 (D.D.C. filed Feb. 11, 2025).

³² See Complaint, *AIDS Vaccine Advoc. Coal. v. United States Dep’t of State*, No. 25-cv-400 (D.D.C. Feb. 10, 2025); Complaint, *Glob. Health Council v. Trump*, No. 25-cv-402 (D.D.C. Feb. 11, 2025).

³³ *AIDS Vaccine Advoc. Coal. v. Dep’t of State*, 770 F. Supp. 3d 121, 154 (D.D.C. 2025), *vacated and remanded sub nom. Glob. Health Council v. Trump*, 153 F.4th 1 (D.C. Cir. 2025).

³⁴ See, e.g., Defs.’ Opp’n to Pls.’ Mots. for Prelim. Relief at 35, *Glob. Health Council v. Trump*, No. 25-cv-402 (D.D.C. filed Feb. 21, 2025).

that cases pending in court at the time the ICA became law were not mooted.³⁵ In the government’s view, it does not create a cause of action for new claims against impoundments.³⁶

In its August 28, 2025 opinion (*Global Health Council*), a divided panel of the D.C. Circuit dissolved the district court’s preliminary injunction.³⁷ The court agreed with the government and expressly held that the ICA precludes APA claims to challenge violations of the ICA itself.³⁸ In particular, the majority reasoned that the fact that the ICA creates a “complex scheme of interbranch dialogue” and authorizes the Comptroller General to bring suit in federal court when the executive refuses to make funds available for obligation reflects a congressional judgment that the GAO alone may enforce the ICA.³⁹ According to the majority, these qualities of the ICA are not consistent with Congress “*sub silentio* also provid[ing] a backdoor for citizen suits at any time” via the APA.⁴⁰

The court also explicitly noted that it “[did] not decide whether the ICA precludes suits under the APA to enforce appropriations acts.”⁴¹ Immediately following the D.C. Circuit’s decision, perhaps anticipating that the plaintiffs might refile their case to exclude ICA-based APA claims and instead include appropriations-based APA claims, the President sent a special message to Congress requesting that Congress rescind roughly \$4 billion of the funding at issue.⁴² The administration contemporaneously announced that this rescission proposal effectuated a “pocket rescission.” Under the administration’s theory, and specifically its preferred reading of 2 U.S.C. § 683, the ICA provides Congress 45 days to decide whether to enact a rescission proposal, and the Executive Branch need not obligate funds before the 45-

³⁵ *Glob. Health Council v. Trump*, 153 F.4th 1, 18 (D.C. Cir. 2025) (emphasis in original); see also Defs.’ Mot. to Dismiss Third Am. Compl. at 18, *Glob. Health Council v. Trump*, No. 25-cv-402 (D.D.C. filed Jan. 23, 2026).

³⁶ *Id.*

³⁷ *Glob. Health Council*, 153 F.4th at 7.

³⁸ *Id.* at 17–20.

³⁹ *Id.* at 18–19.

⁴⁰ *Id.* at 19.

⁴¹ *Id.* at 20 n.17.

⁴² See The White House, *Historic Pocket Rescission Package Eliminates Woke, Weaponized, and Wasteful Spending* (Aug. 29, 2025), <https://www.whitehouse.gov/briefings-statements/2025/08/historic-pocket-rescission-package-eliminates-woke-weaponized-and-wasteful-spending/>; AVAC, 146 S. Ct. at 21 (Kagan, J., dissenting).

day period runs, even if the funds are going to expire within that 45-day period. Thus, according to this view, the President can likely guarantee that funds expire unspent by simply waiting to send a rescission proposal until less than 45 days remain before funds expire.

When the plaintiffs did file their amended complaint, the district court granted a preliminary injunction, ordering the administration to obligate both the \$4 billion in the rescission proposal and another \$6.5 billion in expiring funds that were not in the rescission proposal. The district court rejected the government’s argument that the ICA precludes private plaintiffs from bringing APA claims to enforce appropriations statutes (as opposed to the ICA), regardless of whether the claims related to funds in a rescission proposal. The court explained that “the transmission of the special message does not transform Plaintiffs’ claim into a new one premised once again on the ICA.”⁴³

On September 26, 2025, in its sparse shadow docket AVAC Order,⁴⁴ the Supreme Court granted a partial stay of the second preliminary injunction “as to the funding subject to the President’s August 28 special message.”⁴⁵ The unsigned order held that the administration, “at this early stage, has made a sufficient showing that the Impoundment Control Act (ICA) precludes respondents’ suit, brought pursuant to the Administrative Procedure Act, to enforce the appropriations at issue here,” without further elaboration.⁴⁶ The order also found mandamus relief unavailable and that harm to the executive’s authority to conduct foreign affairs outweighed plaintiffs’ harm, both also without further reasoning, while cautioning that the order “should not be read as a final determination on the merits.”⁴⁷

Justice Kagan dissented, joined by Justices Sotomayor and Jackson. Justice Kagan wrote that “[t]he effect [of the Court’s order] is to prevent the funds from reaching their intended recipients— not just now but (because of their impending expiration) for all time,” that the Court was operating in “uncharted territory” on “the allocation of power between the Executive and Congress over the expenditure of public

⁴³ *AIDS Vaccine Advoc. Coal. v. Dep’t of State*, 803 F. Supp. 3d 164, 179 (D.D.C. 2025).

⁴⁴ *Global Health Council and AVAC* were assigned to the same district judge, and their litigation has generally merged on appeal.

⁴⁵ AVAC, 146 S. Ct. at 19.

⁴⁶ *Id.* at 19.

⁴⁷ *Id.*

monies” (a circumstance counseling against emergency relief), and that the ICA’s express disclaimer of preclusive effect foreclosed the government and majority’s reading.⁴⁸ The funds in the special message expired September 30, 2025.

There are two troubling practical implications that flow if the ICA precludes private litigants’ claims against unlawful impoundments. First, although GAO has used its investigatory powers, including recently, it has only once brought a lawsuit under the ICA in the more than fifty years since the law’s enactment.⁴⁹ So without private enforcement, the primary means Congress provided to rein in the executive would likely be left unused. Second, if, as the AVAC Order suggests, the ICA’s preclusive effect extends beyond ICA-based APA claims to appropriations-based APA claims regarding funding subject to a President’s special message, that could bar *any* legal challenge to impoundments near the end of the fiscal year. In this scenario, the President could send a special message to Congress within 45 days of each fiscal year’s end, effecting a “pocket rescission” if Congress takes no action to approve or disapprove of the rescission. Pocket rescissions are generally understood to be unlawful, but the Trump administration’s efforts to wield them and the ambiguity of AVAC have raised concerns about litigants’ ability to challenge them in court.⁵⁰

C. *Dalton v. Specter*

In response to plaintiffs’ constitutional claims across a range of issues, including impoundments, the government has asserted expansive readings of 1994’s *Dalton v. Specter*.⁵¹ The government’s argument, which has found purchase in the D.C. Circuit and the Fourth Circuit but not the Ninth Circuit, is that *Dalton* forecloses plaintiffs’

⁴⁸ *Id.* at 20 (Kagan, J., dissenting).

⁴⁹ Edwin Dale Jr., *Staats Sues Ford On Impoundment*, N.Y. Times (Apr. 16, 1975), <https://www.nytimes.com/1975/04/16/archives/staats-sues-ford-on-impoundment-congress-seeks-release-of-housing.html>.

⁵⁰ See David Super & Sam Berger, “Pocket Rescissions” Are Unlawful, Center on Budget & Policy Priorities (July 30, 2025), <https://www.cbpp.org/research/federal-budget/pocket-rescissions-are-illegal>; GAO, *Impoundment Control Act—Withholding of Funds Through Their Date of Expiration*, B-330330 (2018), <https://www.gao.gov/products/b-330330>; GFI, *Seeking Remedies in Impoundment Cases When Funding Is Poised to Expire 5* (Aug. 2025), <https://governingforimpact.org/wp-content/uploads/2025/08/Impoundment-Remedies-final.pdf>.

⁵¹ 511 U.S. 462 (1994).

freestanding constitutional claims (i.e., claims not asserted via the APA or an *ultra vires* claim) where those claims are premised on a violation of a statute.

Dalton stemmed from litigants' effort to stop the Secretary of Defense from carrying out the President's decision to close the Philadelphia Naval Shipyard under the Defense Base Closure and Realignment Act.⁵² First, the Supreme Court held that APA review was unavailable because the challengers had failed to identify a "final agency action" taken by the Secretary. The statute at issue left all final decisionmaking to the President, who—per the Court's then-recent decision in *Franklin v. Massachusetts*—is not subject to APA review.⁵³ Second, the Court rejected the appellate court's determination that the President's decision could still be reviewed outside of the APA, a conclusion that rested on the theory that "whenever the President acts in excess of his statutory authority, he also violates the constitutional separation-of-powers doctrine."⁵⁴ The *Dalton* Court explained that, to the contrary, "[o]ur cases do not support the proposition that every action by the President, or by another executive official, in excess of his statutory authority is *ipso facto* in violation of the Constitution," and so claims asserting "that an official has acted in excess of his statutory authority" were limited by the Court's precedents.⁵⁵ Finally, assuming without deciding that "some claims that the President has violated a statutory mandate are judicially reviewable outside the framework of the APA," the Court concluded that the statute in question granted the President unreviewable discretion.⁵⁶

Dalton arguments have been central to the Trump administration's defense in funding litigation. In the D.C. Circuit foreign aid impoundment case, the government argued that plaintiffs' purportedly constitutional claims were actually statutory in nature, and thus foreclosed by *Dalton*.⁵⁷ The D.C. Circuit's *Global Health Council* opinion agreed, holding that plaintiffs lacked a constitutional cause of action to assert separation-of-powers claims that were "predicated on the underlying alleged statutory violations," because "without an appropriations statute there could be no

⁵² *Id.* at 464.

⁵³ *Id.* at 467 (citing *Franklin v. Massachusetts*, 505 U.S. 788 (1992)).

⁵⁴ *Id.* at 471.

⁵⁵ *Id.* at 472.

⁵⁶ *Id.* at 474.

⁵⁷ Opp'n to Pl.'s Mot. for Prelim. Relief at 23, *AIDS Vaccine Advoc. Coal. v. United States Dep't of State*, No. 25-cv-400 (D.D.C. filed Feb. 21, 2025).

improper impoundment.”⁵⁸ The majority rejected plaintiffs’ reliance on *Youngstown Sheet & Tube Co. v. Sawyer*— a quintessential separation-of-powers case— because it “involved the conceded *absence of any* statutory authority, not a claim that the President acted in excess of such authority.”⁵⁹ The government has renewed its *Dalton* defense against the foreign aid plaintiffs’ third amended complaint, arguing that the plaintiffs’ separation-of-powers claims are “mere statutory violation[s] dressed up in constitutional garb.”⁶⁰

The government has also successfully (as of this writing) pressed a *Dalton* defense to plaintiffs’ challenges in the D.C. Circuit to the administration’s attempts to shutter the Consumer Financial Protection Bureau. In *National Treasury Employees Union (NTEU) v. Vought*, a divided D.C. Circuit panel rejected plaintiffs’ separation-of-powers claim, explaining that the “assertedly constitutional claim here begins with the premise that shutting down the CFPB would violate the statutes that create the agency” and that *Dalton* therefore precludes it.⁶¹ However, this reading of *Dalton* in the D.C. Circuit is not final: the full D.C. Circuit granted rehearing en banc of the *NTEU* case, and its decision remains pending as of this writing.⁶² And the D.C. Circuit is currently considering appeals in a separate case in which *Dalton* is at issue, in which plaintiffs and their amici are urging the en banc court to distinguish, clarify, or overturn the *Global Health Council’s Dalton* holding.⁶³

To our knowledge, only a few other circuits have had occasion to opine on the Trump administration’s *Dalton* arguments. The Fourth Circuit’s January 2026 decision in *Sustainability Institute v. Trump* cited the D.C. Circuit’s opinion approvingly in the course of rejecting plaintiffs’ separation-of-powers claim because it “turn[ed] on the

⁵⁸ *Global Health Council*, 153 F.4th at 15 & n.11.

⁵⁹ *Id.* at 15 (quoting *Dalton*, 511 U.S. at 473) (emphasis in original).

⁶⁰ Defs.’ Mot. to Dismiss Third Am. Compl. at 40, *Glob. Health Council v. Trump*, No. 25-cv-402 (D.D.C. filed Jan. 23, 2026).

⁶¹ *Nat’l Treasury Emps. Union v. Vought*, 149 F.4th 762, 792–93 (D.C. Cir. 2025).

⁶² *Nat’l Treasury Emps. Union v. Vought*, No. 25-5091, 2025 WL 3659406 (D.C. Cir. Dec. 17, 2025).

⁶³ See Brief of Appellants at 38, *Climate United Fund v. Citibank, N.A.*, Nos. 25-5122, 25-5123 (D.C. Cir.), <https://storage.courtlistener.com/recap/gov.uscourts.cadc.41951/gov.uscourts.cadc.41951.01208818397.0.pdf> (urging court to distinguish *Global Health Council’s Dalton* holding); Brief of Constitutional Accountability Center as *Amicus Curiae* at 21-23, *Climate United Fund v. Citibank, N.A.*, No. 25-5122 (D.C. Cir. Feb. 2026), <https://www.theusconstitution.org/wp-content/uploads/2026/02/Climate-United-CAC-Br-FINAL.pdf> (urging court to clarify or overturn its *Global Health Council Dalton* holding).

allegation that the Government’s actions” contravened various statutes.⁶⁴ And in a footnote with little explanation, an unpublished Federal Circuit decision rejected a plaintiff’s constitutional claim, citing *Dalton*.⁶⁵

The Ninth Circuit—with which the D.C. Circuit explicitly acknowledged it was creating a circuit split⁶⁶—has a more plaintiff-friendly reading, “taking an expansive view of the constitutional category of claims highlighted in *Dalton*.”⁶⁷ According to the Ninth Circuit, “[w]hile an action taken by the President in excess of his statutory authority does not necessarily violate the Constitution, specific allegations regarding separation of powers may suffice.”⁶⁸ So long as the “core” of a plaintiff’s claim “could be considered constitutional,” and the claim alleges that the President lacked both statutory authority and background constitutional authority for the action, it is reviewable.⁶⁹

IV. CONTINUED VIABILITY OF LEGAL CLAIMS

This section considers how litigants might continue to challenge unlawful impoundments in light of the legal developments described above. Although litigants might bring as many of the below claims as necessary in a given situation (and as strategic to preserve those claims), they might emphasize appropriations-based APA claims, which are likely to be available in the vast majority of cases, and freestanding constitutional claims, particularly in forums where *Dalton* has been construed more narrowly.

⁶⁴ *Sustainability Inst. v. Trump*, 165 F.4th 817, 831 (4th Cir. 2026).

⁶⁵ *In re Cambridge Indus. USA Inc.*, No. 2026-101, 2025 WL 3526129, at *2 n.1 (Fed. Cir. Dec. 9, 2025).

⁶⁶ *Global Health Council*, 153 F.4th at 17 n.15.

⁶⁷ *Murphy Co. v. Biden*, 65 F.4th 1122, 1130 (9th Cir. 2023) (alterations and quotations omitted) (quoting *Dalton*, 511 U.S. at 473).

⁶⁸ *Id.* (internal quotations omitted).

⁶⁹ *Id.*

A. Administrative Procedure Act Claims

The APA directs a court to “hold unlawful and set aside agency action” that is “arbitrary, capricious, ... not in accordance with law[,]” or “in excess of statutory ... authority.”⁷⁰ This subsection addresses strategic considerations related to potential ICA preclusion of APA claims, describes the types of APA claims that litigants might bring, and notes several threshold defenses litigants might prepare to rebut.

1. Addressing Preclusion Arguments

As courts continue to wrestle with which, if any, APA claims are precluded by the ICA, litigators might prepare to respond to preclusion arguments as follows.

First, all litigants might argue that courts should discount the applicability of the AVAC Order. As the AVAC plaintiffs have noted since the Court’s order, the interim decision itself states that it “should not be read as a final determination on the merits.”⁷¹ The brevity of the order might also counsel against lower courts reading too much into it.⁷² That said, Justices Gorsuch and Kavanaugh, among others, have stated that a decision regarding interim relief “constitutes a precedent that commands respect in the lower courts,”⁷³ and as a practical matter, lower court judges are unlikely to ignore a relevant writing from the Supreme Court.

Second, outside of the D.C. Circuit, litigants might press the argument against any kind of ICA preclusion. To our knowledge, no other appellate court has held that the ICA precludes private APA enforcement of the ICA’s own requirements, and several district courts have granted relief on ICA-based APA claims.⁷⁴

⁷⁰ 5 U.S.C. § 706(2)(A), (C).

⁷¹ AVAC, 146 S. Ct. at 19.

⁷² See Pls.’ Opp’n to Defs.’ Mot. to Dismiss at 9, *Glob. Health Council v. Trump*, No. 25-cv-402 (D.D.C. filed Feb. 9, 2026).

⁷³ *Nat’l Institutes of Health v. Am. Pub. Health Ass’n*, 145 S. Ct. 2658, 2663 (2025) (Gorsuch, J. and Kavanaugh, J., concurring in part and dissenting in part).

⁷⁴ *New York v. Trump*, 769 F. Supp. 3d 119, 138–40 (D.R.I. 2025), *affirmed in part and vacated in part*, No. 25-1236, 2026 WL 734941 (1st Cir. Mar. 16, 2026); see *id.* at 14 n.8 (declining to disturb district court’s ICA holding); see also *Rhode Island v. Trump*, 781 F. Supp. 3d 25, 50–51 (D.R.I. 2025) (granting preliminary injunction in part because agency failed to follow ICA deferral and rescission procedures); *Child Trends, Inc. v. United States Dep’t of Educ.*, 795 F. Supp. 3d 700, 721 (D. Md. 2025); *Oregon Council*

The argument against preclusion is straightforward: the ICA nowhere expressly forecloses APA review, and its savings clause expressly provides that “[n]othing contained in this Act...shall be construed” as “affecting in any way the claims or defenses of any party to litigation concerning any impoundment.”⁷⁵ The D.C. Circuit’s contrary conclusion rested on inferences from the ICA’s interbranch enforcement scheme, but the savings clause’s plain text “refutes that notion.”⁷⁶ In the D.C. Circuit, litigants might instead bring APA claims alleging violations of the ICA to preserve them (in the event that the en banc D.C. Circuit narrows or overrules the panel’s decision in *Global Health Council*), but rely primarily on appropriations-based APA claims.

Of course, litigants might note that, although the Supreme Court has not directly addressed the question of the ICA’s preclusive effect on ICA-based APA claims, its willingness to grant a stay seeming to validate an even more expansive version of ICA preclusion—that the President’s special message to Congress triggered preclusion of some appropriations-based APA claims—perhaps indicates that the Court would find ICA-based APA claims precluded if presented with the question.

Third, and most commonly, in cases where the President has not triggered the ICA’s procedures with a special message, litigants in all circuits might continue to argue that the AVAC Order does not apply and therefore the ICA does not preclude their appropriations-based APA claims. The AVAC Order stated that it applied only to those funds subject to the President’s special message,⁷⁷ which seems to leave plaintiffs free to bring appropriations-based APA claims to challenge the withholding of any funds for which the ICA’s procedures have not been triggered.⁷⁸ Moreover, the D.C. Circuit’s *Global Health Council* opinion expressly declined to resolve whether the ICA precludes APA suits to enforce appropriations acts,⁷⁹ and the district court on

for *Humanities v. U.S. DOGE Serv.*, 794 F. Supp. 3d 840, 881–82 (D. Or. 2025); *City & Cnty. of San Francisco v. Trump*, 783 F. Supp. 3d 1148, 1201 (N.D. Cal. 2025).

⁷⁵ 2 U.S.C. § 681(3).

⁷⁶ AVAC, 146 S. Ct. at 21 (Kagan, J., dissenting).

⁷⁷ *Id.* at 19 (majority).

⁷⁸ The plaintiffs in *Global Health Council* have done so in their third amended complaint filed in January 2026. Third Amended Complaint, *Glob. Health Council v. Trump*, No. 25-cv-402 (D.D.C. filed Jan. 5, 2026).

⁷⁹ *Global Health Council*, 153 F.4th at 20 n.17.

remand granted a second preliminary injunction on this basis.⁸⁰ Courts outside of the D.C. Circuit have also allowed these claims to proceed.⁸¹

The government has already attempted to resist this reading in subsequent litigation, arguing instead that AVAC’s mention of “the appropriations at issue here” meant that nearly all appropriations-based APA suits are barred by the ICA, not just those for which the ICA’s procedures have been triggered by the President.⁸² But that distorts the AVAC Order, which used that language to refer only to the \$4 billion at issue; the Court granted a stay only “as to the funding subject to the President’s August 28 special message.”⁸³ Prior to the AVAC Order, the government itself highlighted the relatively limited nature of its stay application, explaining that their application was “limited to the \$4 billion that are subject of the President’s rescission proposal.”⁸⁴ So far there have been no court decisions endorsing the government’s new, more expansive reading of the AVAC Order. (However, at least one court admitted its confusion as to the proper reading and avoided the question altogether.⁸⁵)

Fourth, litigants in all circuits might bring arbitrary-and-capricious claims alongside their contrary-to law ones. Although the government may argue that the AVAC Order precludes arbitrary-and-capricious claims, at least one district court has held that the “cause of action under the APA based on arbitrary and capricious agency action [is] not impacted by the stay decision in” AVAC.⁸⁶ By its terms, AVAC applies to APA claims brought “to enforce the appropriations at issue.”⁸⁷ Arbitrary-and-capricious claims, by contrast, are brought to enforce the independent obligations that the APA places on an agency’s decisionmaking, rather than those of any particular appropriations statute. Moreover, APA review is only precluded “to the extent that”

⁸⁰ *AIDS Vaccine Advoc. Coal.*, 803 F. Supp. 3d at 177.

⁸¹ See, e.g., *Rhode Island*, 781 F. Supp. 3d at 50-51; *Child Trends, Inc.*, 795 F. Supp. 3d at 720-22.

⁸² Defs.’ Mot. to Dismiss Third Am. Compl. at 14, *Glob. Health Council v. Trump*, No. 25-cv-402 (D.D.C. filed Jan 23, 2026).

⁸³ AVAC, 146 S. Ct. at 19.

⁸⁴ Stay Appl. at 17 n.4, AVAC, No. 25A269.

⁸⁵ *City of Chicago v. U.S. Dep’t of Homeland Security*, No. 25 C 5463, 2025 WL 3043528, at *21 (N.D. Ill. Oct. 31, 2025) (deciding on arbitrary-and-capricious grounds instead of contrary to law in part because “[i]t is unclear from [AVAC] whether all contrary to law APA challenges to an agency’s action related to appropriations are precluded by the ICA” because of the Supreme Court’s express disclaimer that the order was not a final decision on the merits and because it provided no detail).

⁸⁶ *Id.*

⁸⁷ AVAC, 146 S. Ct. at 19 (emphasis added).

another statute precludes judicial review.⁸⁸ The argument that the ICA precludes ICA- and appropriations-based contrary-to-law claims rests on the fact that the ICA created a “complex scheme of interbranch dialogue” to resolve instances where “the executive branch violates its statutory expenditure obligations.”⁸⁹ The ICA creates no analogous structure that would displace the arbitrary-and-capricious standard’s application to the quality of an agency’s decisionmaking.

Assuming that these claims might survive ICA-based preclusion, we outline below what these claims might look like on the merits.

2. Appropriations-Based Contrary-to-Law Claims

Appropriations-based APA claims might be the most widely available litigation vehicle available to impoundment challengers, at least in cases where the President has not triggered the ICA’s procedures for a given appropriation. The basic argument is straightforward. When Congress appropriates funds, it typically is directing the executive branch to obligate and expend the full amount of money appropriated. Congress legislates against the backdrop of the ICA in this regard; Congress knows that any action by the executive branch that intentionally delays or prevents the spending of amounts appropriated is not permissible. For this reason, where Congress wishes to give the executive branch discretion to spend less than the full amount appropriated, or even none of the funds, Congress uses specific language — e.g., that an agency is appropriated “sums not exceeding” or “up to” an amount for a particular purpose.⁹⁰ When Congress does not use such language, the statute appropriating funds requires the executive branch to make good-faith efforts to obligate and expend all the funds for the purpose for which they were appropriated.⁹¹

Courts have invalidated executive branch actions that violate statutory directives to spend money. Most famously, in *Train v. City of New York*, the Supreme Court held that President Nixon had unlawfully directed the Environmental Protection Agency

⁸⁸ 5 U.S.C. § 701(a); *Block*, 467 U.S. at 345.

⁸⁹ *Glob. Health Council*, 153 F.4th at 19.

⁹⁰ See, e.g., *CFPB v. Com. Fin. Servs. Ass’n*, 601 U.S. 416, 432–33 (2024); *id.* at 442–43 (Kagan, J., concurring).

⁹¹ See *Washington v. U.S. Dep’t of Transp.*, No. 2:25-CV-00848-TL, 2026 WL 183584, at *11 (W.D. Wash. Jan. 23, 2026) (“Federal agencies and departments can spend, award, or suspend money based only on the power Congress has given to them — they have no other spending power.” (quoting *New York v. Trump*, 769 F. Supp. 3d at 127)).

not to expend the full amount of money that Congress directed be spent under a statute.⁹² The Court interpreted the relevant statute to require the executive branch to spend the full amounts specified for a particular program, and the Court rejected the executive branch’s argument that it had discretion to spend less.⁹³ Other courts since *Train* have upheld claims, including under the APA, that the executive branch was violating spending requirements of an appropriations statute.⁹⁴

Although the argument is strong for bringing APA claims based on any appropriations statute, it may be especially potent where an agency violates an explicit directive written in statute. Congress has embedded stronger language throughout its FY2026 appropriations statutes, perhaps in response to the Trump administration’s manipulation of federal funding. For example, various provisions specify at a granular level the amount an agency must spend by activity rather than just subagency or program.⁹⁵ Others establish timelines on which funds must be spent.⁹⁶ Still others require agencies to notify Congress prior to terminating certain grant programs⁹⁷ or reducing agency operations to levels that would not fulfill their statutory missions.⁹⁸ Even the Trump administration has conceded in litigation that the “ICA expressly declines to supersede” appropriations that “mandate that specific payments be made to a specific entity by a specific date.”⁹⁹

3. ICA-Based Contrary-to-Law Claims

Litigants in circuits other than the D.C. Circuit might argue that any delay or withholding of appropriated funds that is not accompanied by a deferral or rescission special message to Congress violates the ICA’s plain requirements.¹⁰⁰ Moreover, the

⁹² 420 U.S. 35 (1975).

⁹³ *Id.* at 42–49.

⁹⁴ See, e.g., *California v. Trump*, 963 F.3d 926 (9th Cir. 2020); *General Land Office v. Biden*, 722 F. Supp. 3d 710, 734–35 (S.D. Tex. 2024).

⁹⁵ See, e.g., Pub L. No. 119-75, Division B, Title II, Department of Health and Human Services— Health Resources and Services Administration— Health Workforce.

⁹⁶ See, e.g., Pub L. No. 119-75, Division F, Title I, Department of State and Related Programs— Related Programs— The Asia Foundation.

⁹⁷ See, e.g., Pub L. No. 119-75, Division D, Title I, Section 185; *id.* Division D, Title II, Section 220.

⁹⁸ See, e.g., Pub. L. No. 119-37, 139 Stat. 622, sec. 261; Pub. L. No. 119-74, 140 Stat. 16, sec. 114.

⁹⁹ Defs.’ Mot. to Dismiss Third Am. Compl. at 18, *Glob. Health Council v. Trump*, No. 25-cv-402 (D.D.C. filed Jan 23, 2026) (citing 2 U.S.C. § 681(4)).

¹⁰⁰ 2 U.S.C. §§ 683(b), 684(a).

ICA only allows three reasons for deferring funds: (1) to provide for contingencies; (2) to achieve savings made possible by or through changes in requirements or greater efficiency of operations; or (3) as specifically provided by law.¹⁰¹ “Policy reasons,” including efforts to ensure funds are spent in accordance with the President’s policy preferences, are not proper bases for deferrals.¹⁰² And even where the executive branch follows the proper procedures and invokes one of the statutory grounds for deferral, the ICA does not permit deferrals beyond any date by which Congress has specified the funds must be obligated or distributed.¹⁰³ For examples applying the ICA to executive branch actions (and for persuasive authority to cite in court), plaintiffs might review GAO’s findings of likely ICA violations.¹⁰⁴

The administration is likely to continue to argue that certain deferrals are merely “programmatic delays” permitted under the ICA. But as the authorities they cite for that proposition make clear, programmatic delays are meant “to advance congressional budgetary policies by ensuring that congressional programs are administered efficiently.”¹⁰⁵ In contrast, delays “to ensure compliance with presidential policy prerogatives”—the typical reason given for delaying the disbursement of funding—are not permissible programmatic delays.¹⁰⁶ Thus, assuming that ICA-based APA claims are not impliedly precluded, litigants might have ample bases for asserting ICA claims.

4. Arbitrary-and-Capricious Claims

GFI has written elsewhere about the arbitrary-and-capricious standard.¹⁰⁷ An agency’s implementation of an impoundment might be arbitrary and capricious if, for example, it is justified by “rote incorporation of executive orders,” which fails the

¹⁰¹ *Id.* § 684(b).

¹⁰² Decision: Office of Management and Budget—Withholding of Ukraine Security Assistance 7, B-3315464, GAO (Jan. 16, 2020), <https://www.gao.gov/assets/b-331564.pdf>.

¹⁰³ 2 U.S.C. § 684(a).

¹⁰⁴ GAO, Impoundment Control Act, <https://www.gao.gov/legal/appropriations-law/impoundment-control-act> (last visited Mar. 9, 2026).

¹⁰⁵ *City of New Haven v. United States*, 809 F.2d 900, 909 (D.C. Cir. 1987) (emphasis omitted).

¹⁰⁶ GAO B-331564, *supra* note 101, at 6.

¹⁰⁷ GFI, *Arbitrary-and-Capricious Challenges* (May 2025), <https://governingforimpact.org/wp-content/uploads/2025/05/Arbitrary-and-Capricious-Challenges.pdf>.

basic requirement to “articulate a satisfactory explanation” for an agency action;¹⁰⁸ based on bare policy disagreement with a program and therefore “on factors which Congress has not intended [the agency] to consider;”¹⁰⁹ or fails to satisfy the particular explanation requirements of the Supreme Court’s change-in-position doctrine.¹¹⁰

In one impoundments-related case, for example, the plaintiffs argued that the Department of Homeland Security’s rationale for freezing funding was arbitrary and capricious because it: was based on speculative “concerns that unidentified grantees may have engaged in potential violations of” a statute that criminalizes sheltering or transporting someone in the country unlawfully; was internally inconsistent; failed to consider grant-specific facts; disregarded Congress’s reason for creating the canceled program; and disregarded serious reliance interests.¹¹¹

5. Threshold Issues

There are several threshold defenses that the government continues to assert in defending against APA impoundment challenges.

First, the APA is limited to review of “final agency action.”¹¹² GFI has written elsewhere about finality in general.¹¹³ In the impoundment context, courts have “routinely” found that a decision to eliminate or pause a funding program qualifies.¹¹⁴ For example, one district court determined that an agency’s “freezing” of funding and “elimination” of a particular funding program were both final agency actions subject to challenge.¹¹⁵ Additionally, agencies might issue written or unwritten

¹⁰⁸ *Martin Luther King, Jr. Cnty. v. Turner*, 785 F. Supp. 3d 863, 888 (W.D. Wash. 2025); *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

¹⁰⁹ *State Farm*, 463 U.S. at 43; see, e.g., *State of Washington*, 2026 WL 183584, at *12.

¹¹⁰ See generally GFI, *Change-in-Position Doctrine* (Jan. 2026), <https://governingforimpact.org/wp-content/uploads/2026/01/Change-in-Position-Doctrine.pdf>.

¹¹¹ Pls.’ Mem. in Supp. of Mot. for Prelim. Injunction at 23–26, *City of Chicago v. Dep’t of Homeland Sec.*, No. 1:25-cv-05463 (N.D. Ill. filed Jun. 20, 2025) (internal quotations omitted).

¹¹² See *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997).

¹¹³ GFI, *Final Agency Action* (May 2025), <https://governingforimpact.org/wp-content/uploads/2025/05/Final-Agency-Action.pdf>.

¹¹⁴ *State of Washington*, 2026 WL 183584, at *10 (collecting cases).

¹¹⁵ *City of Chicago*, 2025 WL 3043528, at *20.

policies regarding their funding decisions that might themselves be challengeable.¹¹⁶ Although the government might seek to characterize an agency’s de-obligation of funds as a simple “accounting change,” rather than a challengeable final agency action,¹¹⁷ the fact of a de-obligation is likely a strong clue in the search for a written or unwritten policy that precipitated it.¹¹⁸

Second, the APA does not allow review of action “committed to agency discretion by law.”¹¹⁹ Again, GFI has written elsewhere about this “‘very narrow exception’ to the presumption of reviewability” under the APA.¹²⁰ The exception extends to instances where a statute “is drawn so that a court would have no meaningful standard against which to judge the agency’s exercise of discretion.”¹²¹

The government is likely to cite *Lincoln v. Vigil* for the proposition that “allocation of funds from a lump-sum appropriation is” an “administrative decision traditionally regarded as committed to agency discretion.”¹²² But, unlike in most recent impoundment cases, the underlying appropriations statute in *Lincoln* contained no specific language by which the court could assess the agency’s decision to cancel a program.¹²³ As the First Circuit recently recognized, *Lincoln* did not address the quintessential impoundment case—“an agency’s discretion to withhold obligated funds” entirely.¹²⁴ Indeed, *Lincoln* emphasized that “an agency is not free simply to disregard statutory responsibilities,” which suggests that an agency may not delay or withhold appropriations on the basis of extrinsic policy grievances.¹²⁵ Nor are impoundment cases likely to founder for a lack of “law ... to apply,” given that the

¹¹⁶ Cf., e.g., *ABA v. Dep’t of Educ.*, 370 F. Supp. 3d 1, 38 (D.D.C. 2019) (permitting plaintiffs to introduce extra-record evidence of hidden change in policy).

¹¹⁷ *City of Chicago*, 2025 WL 3043528, at *23.

¹¹⁸ Cf., e.g., *id.* (de-obligation occurred in the lead up to “the final agency actions of withholding” funds and ending a program).

¹¹⁹ 5 U.S.C. § 701(a)(2).

¹²⁰ *Campaign Legal Ctr. v. FEC*, 952 F.3d 352, 359 (D.C. Cir. 2020) (quoting *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 410 (1971)); see generally GFI, *The “Committed to Agency Discretion” Exception* (Sept. 2025), <https://governingforimpact.org/wp-content/uploads/2025/09/Committed-to-Agency-Discretion-FINAL-TO-PUBLISH.pdf>.

¹²¹ *Id.* (quoting *Heckler v. Chaney*, 470 U.S. 821, 830 (1985)).

¹²² *Lincoln*, 508 U.S. at 192; see Defs.’ Reply ISO Mot. to Dismiss Third Am. Compl. at 9, *Glob. Health Council v. Trump*, No. 1:25-cv-00402-AHA (D.D.C. Feb. 24, 2026).

¹²³ *New York*, 2026 WL 734941, at *10.

¹²⁴ *Id.*

¹²⁵ *Lincoln*, 508 U.S. at 193.

ICA, the underlying appropriations statutes, and relevant agency regulations provide “judicially manageable standard[s]” for assessing the lawfulness of the agency’s action.¹²⁶

In rebutting committed-to-agency-discretion arguments, it will be important to emphasize both the sweeping and unprecedented character of the Trump administration’s actions, and to identify any applicable statutory provisions relating to any grants that have been suspended.

Third, potential plaintiffs must fall within the “zone of interests” of appropriations statutes or the ICA, a prudential standing requirement for APA claims. But the zone-of-interests test “is not especially demanding” and requires only that the plaintiffs’ injuries be “arguably within the zone of interests to be protected or regulated by the statute.”¹²⁷ “The zone of interests test does not require that the statute directly regulate the plaintiff, nor does it require specific congressional intent to benefit the plaintiff.”¹²⁸ Plaintiffs who stand to lose funding or who face injury as a result of a program’s deterioration might well qualify.¹²⁹

Fourth, the government is likely to argue that the Tucker Act deprives district courts of jurisdiction over various funding related claims. Litigants are well-positioned to rebut and avoid these arguments — GFI has written elsewhere about how.¹³⁰

B. Constitutional Claims

Litigants might argue that President Trump’s executive orders directing funding freezes, and the agency actions implementing them, are unconstitutional under the separation of powers. In doing so, litigants might invoke a nonstatutory cause of

¹²⁶ *Shawnee Tribe v. Mnuchin*, 984 F.3d 94, 100 (D.C. Cir. 2021) (quotation omitted).

¹²⁷ *FDA v. R.J. Reynolds Vapor Co.*, 606 U.S. 226, 232 (2025) (quotations omitted); *CSL Plasma Inc. v. CBP*, 33 F.4th 584, 589 (D.C. Cir. 2022).

¹²⁸ *CSL Plasma*, 33 F.4th at 589.

¹²⁹ See, e.g., *AIDS Vaccine Advoc. Coal.*, 803 F. Supp. 3d at 179.

¹³⁰ See GFI, *Challenging Federal Award Terminations: Overcoming the Tucker Act, 2026 Update* (Mar. 2026), <https://governingforimpact.org/wp-content/uploads/2026/03/Overcoming-the-Tucker-Act-2026-Update.pdf>.

action to enjoin unconstitutional actions.¹³¹ The Constitution empowers Congress to make laws,¹³² and requires the President to faithfully execute those laws.¹³³ Congress’s powers to set the policies of the nation are at their apex when it comes to “the core congressional power of the purse.”¹³⁴

From these first principles, it has been long recognized that Presidents have no inherent constitutional authority to block, amend, or subvert appropriations enacted into law by Congress. “[T]he President is without authority to thwart congressional will by canceling appropriations passed by Congress.”¹³⁵ Even if the constitutional text itself did not resolve the constitutional question, the ICA would. Because Congress, through the ICA, has expressly prohibited the President from impounding funds except as allowed under the law, the President’s constitutional power is “at its lowest ebb,” and the President must show that the Constitution affords him “conclusive and preclusive” authority in this field.¹³⁶ The President cannot possibly make that showing with respect to the expenditure of federal funds, given that the Constitution affords Congress and not the President the power of the purse. Notably, both Chief Justice Roberts and Justice Kavanaugh have taken the view that the

¹³¹ *Free Enterprise Fund v. Public Accountability Oversight Board*, 561 U.S. 477, 491 n.2 (2010); see generally GFI, *Nonstatutory Review* (May 2025), <https://governingforimpact.org/wp-content/uploads/2025/05/Nonstatutory-Review.pdf>.

¹³² U.S. Const. art. I, § 1.

¹³³ *Id.* art. II, § 3.

¹³⁴ *Learning Res., Inc. v. Trump*, 146 S. Ct. 628, 639 (2026); *City & Cnty. of San Francisco v. Trump*, 897 F.3d 1225, 1231 (9th Cir. 2018) (the Constitution “exclusively grants the power of the purse to Congress, not the President.” (citing U.S. Const. art. I, §§ 8, 9)); see also Mem. from John G. Roberts, Jr. to Fred F. Fielding (Aug. 15, 1985), <https://perma.cc/G5AA-GJAU> (“[N]o area seems more clearly the province of Congress than the power of the purse.”).

¹³⁵ *San Francisco*, 897 F.3d at 1231; see also *In re Aiken Cnty.*, 725 F.3d 255, 261 n.1 (D.C. Cir. 2013) (Kavanaugh, J.) (“With respect to the suggestion that the President has a constitutional power to decline to spend appropriated funds, we must conclude that existence of such a broad power is supported by neither reason nor precedent.” (quoting Mem. from William H. Rehnquist, Assistant Att’y Gen., Office of Legal Counsel, to Edward L. Morgan, Deputy Counsel to the President (Dec. 1, 1969))); *Clinton v. City of New York*, 524 U.S. 417, 468 (1998) (Scalia, J., concurring in part and dissenting in part) (explaining that, in *Train*, President Nixon’s claim of a “constitutional right ... to impound appropriated funds” was proven “wrong” (quotation omitted)).

¹³⁶ *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637–38 (1952) (Jackson, J., concurring); see *San Francisco*, 897 F.3d at 1234.

President lacks inherent constitutional authority to impound funds, and that the ICA therefore constitutionally constrains the President’s actions.¹³⁷

Plaintiffs in the Fourth Circuit and D.C. Circuit (and in any other circuits that follow the D.C. Circuit’s approach) might need to navigate that court’s narrow reading of *Dalton* that forecloses freestanding constitutional claims that are “predicated on ... underlying alleged statutory violations.”¹³⁸ At least pending any revision by the D.C. Circuit to its approach to *Dalton* in the en banc proceedings in *NTEU* and *Climate United v. Citibank*,¹³⁹ this avenue might be foreclosed in these circuits for claims based only on violations of appropriations statutes. However, litigants might still distinguish the D.C. Circuit’s *Dalton* reading where they are challenging a broader agency closure or other action that clearly violates another constitutional dictate, where the government explicitly raises constitutional defenses,¹⁴⁰ where the statute at issue assigns no relevant role to the President, or where the “theories of relief on which” plaintiffs rely are “not predicated on underlying statutory violations” or “on whether any purported statutory duties were mandatory.”¹⁴¹

In the Ninth Circuit and others that have rejected the D.C. Circuit’s reading of *Dalton*, litigants likely need only demonstrate that the “core” of their constitutional claim “could be considered constitutional.”¹⁴² Because impoundment at its core involves the President directing subordinate officials to contravene duly enacted law in violation of the Appropriations Clause, Spending Clause, Take Care Clause, and separation-of-powers claims might well be viable. That said, the Ninth Circuit

¹³⁷ While at the Office of Legal Counsel in 1985, Roberts authored memos asserting that “as a general matter, the President has no independent constitutional authority to impound funds,” Mem. for David L. Chew, Staff Secretary, at 2 (Aug. 15, 1985), <https://perma.cc/G5AAGJAU>, and that he indeed “think[s] it clear” that the President’s impoundment authority is “none in normal situations,” Mem. from Roberts to Fielding, *supra* note 134. And Justice Kavanaugh, while on the D.C. Circuit, opined that “the President does not have unilateral authority to refuse to spend [appropriated] funds,” and “[i]nstead,” the President “must” follow the ICA’s provisions. *In re Aiken Cnty.*, 725 F.3d at 261 n.1.

¹³⁸ *Global Health Council*, 153 F.4th at 15 & n.11.

¹³⁹ See *Nat’l Treasury Emps. Union v. Vought*, No. 25-5091, 2025 WL 3659406 (D.C. Cir. Dec. 17, 2025) (granting rehearing en banc and vacating panel opinion); *Climate United Fund v. Citibank, N.A.*, No. 25-5122, 2025 WL 3663661 (D.C. Cir. Dec. 17, 2025) (same).

¹⁴⁰ See, e.g., Pls.’ Opp’n to Defs.’ Mot. to Dismiss at 39–40, *Glob. Health Council v. Trump*, No. 25-cv-402 (D.D.C. filed Feb. 9, 2026).

¹⁴¹ *League of United Latin Am. Citizens v. Exec. Off. of the President*, No. CV 25-0946 (CKK), 2026 WL 252420, at *26 (D.D.C. Jan. 30, 2026) (internal quotations omitted).

¹⁴² *Murphy Co.*, 65 F.4th at 1130.

cautioned that “dismissal for lack of jurisdiction is [still] warranted if the alleged claim of statutory excess is made solely for the purpose of obtaining jurisdiction or is wholly insubstantial and frivolous.”¹⁴³ Plaintiffs might instead plead “particularized allegations” about how a President’s action exceeds his statutory authority,¹⁴⁴ and a constitutional argument about how the Executive Branch therefore interfered with Congress’s Article I powers.¹⁴⁵

In circuits that have not yet addressed this question (and in the D.C. Circuit and the Fourth Circuit, to preserve the claim), litigants might also argue that *Dalton* stands only for the narrow rule that “every action by the President, or by another executive official, in excess of his statutory authority is [not] *ipso facto* in violation of the Constitution.”¹⁴⁶ *Dalton* itself confirmed that constitutional claims remain available whenever the President acts with “a want of Presidential power” rather than “a mere excess or abuse of discretion in exerting a power given.”¹⁴⁷ *Dalton* involved a statute that delegated unreviewable authority to the President for decisions on base closures; the plaintiff’s only claim in that case was that the President had *exercised* delegated authority improperly.¹⁴⁸

Impoundment cases are categorically different: the executive does not claim to be exercising statutorily delegated spending discretion; it claims authority to abolish mandatory grant programs and withhold funds Congress directed be spent. Where Congress has specifically appropriated funds and mandated their expenditure, there is no delegated discretion to “exceed.” The executive has acted with no authority at all, a situation more analogous to *Youngstown* than to *Dalton*.

This point is reinforced by the structural nature of any claim that the executive violated the Appropriations Clause. Because the Clause requires that money be spent

¹⁴³ *Id.* at 1131.

¹⁴⁴ *Id.* (internal quotations omitted).

¹⁴⁵ *City & Cnty. of San Francisco v. Trump*, No. 25-CV-01350-WHO, 2026 WL 145874, at *9 (N.D. Cal. Jan. 20, 2026).

¹⁴⁶ *Dalton*, 511 U.S. at 472 (emphasis added). For a comprehensive treatment of these arguments, litigants might consult the amicus brief filed by the Constitutional Accountability Center in *Climate United Fund v. EPA*, which develops the full case for why *Dalton* leaves the constitutional lane open for challenges to impoundments. Brief of Constitutional Accountability Center as Amicus Curiae, *Climate United Fund v. Citibank, N.A.*, No. 25-5122 (D.C. Cir. Feb. 2026), <https://www.theusconstitution.org/wp-content/uploads/2026/02/Climate-United-CAC-Br-FINAL.pdf>.

¹⁴⁷ *Id.* at 474 (cleaned up).

¹⁴⁸ *Id.* at 476.

only “in consequence of Appropriations made by Law,” constitutional challenges to impoundment will almost always depend in part on whether the executive is complying with appropriations statutes.¹⁴⁹ If mere mention of an appropriations statute automatically foreclosed the constitutional claim, Appropriations Clause violations would be essentially unchallengeable. That is arguably an absurd result — one that would insulate the executive’s most serious usurpations of congressional power from judicial review.

C. Other Claims

Three other legal vehicles merit attention, particularly in circumstances where appropriations statutes contain mandatory directions to the executive branch and where APA and constitutional theories face preclusion or reviewability obstacles.

1. *Ultra Vires*

Ultra vires claims that “a federal actor has violated a federal statute” are distinct from the above-described “[n]onstatutory review claims alleging a constitutional violation.”¹⁵⁰ Thus, *ultra vires* claims against agencies might present a separate pathway that is not defeated by *Dalton* but that imposes demanding requirements of its own.

Such claims asserting statutory violations have been described as a “Hail Mary pass” because plaintiffs must show that the challenged conduct represents an extreme or blatant violation of a statute, and that the plaintiff has no other means of challenging the conduct. To prevail, a plaintiff must show “(i) the statutory preclusion of review is implied rather than express; (ii) there is no alternative procedure for review of the statutory claim; and (iii) the agency plainly acts in excess of its delegated powers and contrary to a specific prohibition in the statute that is clear and mandatory.”¹⁵¹ Only “blatant” errors qualify; “routine” statutory misinterpretations do not.¹⁵² GFI has

¹⁴⁹ U.S. Const. art. I, § 9, cl. 7.

¹⁵⁰ *Sustainability Inst.*, 165 F.4th at 829–30 (emphasis added); see also *Global Health Council*, 153 F.4th at 13, 20 (evaluating freestanding separation-of-powers claims and *ultra vires* claims separately).

¹⁵¹ *Changji Esquel Textile Co. v. Raimondo*, 40 F.4th 716, 722 (D.C. Cir. 2022) (quotation omitted)

¹⁵² *FedEx Corp. v. Dep’t of Commerce*, 39 F.4th 756, 765–67 (D.C. Cir. 2022).

written elsewhere about how litigants might seek *ultra vires* review,¹⁵³ but in the impoundment context, the theory is likely most plausible where an agency withholds funds that a specific, mandatory appropriations statute directs it to expend or attempts to effect the wholesale shuttering of grant programs.¹⁵⁴

2. Mandamus

Mandamus is warranted “to correct transparent violations of a clear duty to act” by federal officials, including when they use policy reasons to justify a refusal to spend appropriated funds.¹⁵⁵ However, the Supreme Court rejected mandamus in *AVAC* without any reasoning,¹⁵⁶ so the extent to which mandamus remains available is unclear.

Generally speaking, mandamus requires plaintiffs to show “(1) a clear and indisputable right to relief, (2) that the government agency or official is violating a clear duty to act, and (3) that no adequate alternative remedy exists.”¹⁵⁷ Where a court’s interpretation of ICA preclusion forecloses APA review, the third and most challenging prong of this test might be fulfilled. To meet the first two requirements, litigants advancing a mandamus argument might need to identify sufficiently specific and mandatory appropriations statutes, much like in the context of an *ultra vires* claim. In *National Endowment for Democracy v. United States*, for instance, the plaintiff explicitly invoked the Mandamus Act and the All Writs Act alongside its APA claims, arguing that the statute’s mandatory direction satisfied the pleading standard.¹⁵⁸ The D.C. district court granted a preliminary injunction on August 11, 2025, though on APA grounds, finding the defendants had “likely unlawfully frozen

¹⁵³ See GFI, *Nonstatutory Review* (May 2025), <https://governingforimpact.org/wp-content/uploads/2025/05/Nonstatutory-Review.pdf>.

¹⁵⁴ See, e.g., Amended Compl. at 59, *Nat’l Endowment for Democracy v. United States*, No. 1:25-cv-648-DLF (D.D.C. filed June 30, 2025) (“[T]he statutory scheme creates a mandatory duty for Defendants to apportion, obligate, disburse, and otherwise make available the Endowment’s congressionally appropriated funds.”); see also generally Jordan Ascher, *NRC v. Texas and Nonstatutory Review of Executive Action*, *Lawfare* (Jul. 21, 2025), <https://www.lawfaremedia.org/article/nrc-v.-texas-and-nonstatutory-review-of-executive-action>.

¹⁵⁵ *In re Aiken County*, 725 F.3d at 258 (internal quotation omitted).

¹⁵⁶ *AVAC*, 146 S. Ct. at 19 (“The Government has also made a sufficient showing that mandamus relief is unavailable to respondents.”).

¹⁵⁷ *Am. Hosp. Ass’n v. Burwell*, 812 F.3d 183, 189 (D.C. Cir. 2016).

¹⁵⁸ Amended Compl. at 45–46, *Nat’l Endowment for Democracy v. United States*, No. 1:25-cv-648-DLF (D.D.C. filed June 30, 2025).

the Endowment’s funding,” a result consistent with, if not squarely resting on, the mandamus claim.¹⁵⁹

3. Agency Action Unlawfully Withheld

The APA empowers courts to “compel agency action unlawfully withheld or unreasonably delayed.”¹⁶⁰ GFI has written elsewhere about this standard.¹⁶¹ Courts have interpreted this provision with significant deference to agency’s authority to prioritize their activities, explaining that “the only agency action that can be compelled under the APA is action legally *required*.”¹⁶² This requirement might be most clearly satisfied where a mandatory appropriations statute — one that directs the agency to expend specific funds for specific purposes without discretionary qualifying language — imposes a duty to obligate certain funding and the agency has failed to do so.

V. CONCLUSION

Despite new obstacles, litigants challenging the Trump administration’s efforts to impound congressionally appropriated funding continue to have viable options. Applicable legal doctrines are constantly evolving as the administration continues to take unprecedented actions and litigation percolates through the court system, so litigants might take care to ensure that they remain aware of changes in the state of play.

The information in this document is provided for informational purposes only and does not contain legal advice, legal opinions, or any other form of advice regarding any specific facts or circumstances and does not create or constitute an attorney-client relationship. You should contact an attorney to obtain advice with respect to any particular legal matter and should not act upon any such information without seeking qualified legal counsel on your specific needs.

¹⁵⁹ *Nat’l Endowment for Democracy v. United States*, 795 F. Supp. 3d 63, 73 (D.D.C. 2025).

¹⁶⁰ 5 U.S.C. § 706(1).

¹⁶¹ GFI, *Challenging Nonenforcement* 28 (May 2025), <https://governingforimpact.org/wp-content/uploads/2025/05/Challenging-Non-Enforcement.pdf>.

¹⁶² *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 63 (2004) (emphasis in original).