

# Supreme Court narrowly upholds lower court order that USAID must pay bills

## Alito dissent claims Trump administration has “sovereign immunity”

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In a mild rebuke of the Donald Trump administration Wednesday, the Supreme Court upheld by 5-4 a lower court temporary restraining order (TRO) that requires “the Government to issue payments for ... work already completed” by contractors for the US Agency for International Development (USAID), most of which are non-profit corporations that provide various medical services overseas.

Chief Justice John Roberts and Trump nominee Amy Coney Barrett joined the three moderates to vacate the stay Roberts had entered on February 25, thus allowing the TRO to finally take effect. The ruling cautioned the lower court, however, to “clarify what obligations the Government must fulfill to ensure compliance with the temporary restraining order, with due regard for the feasibility of any compliance timelines.”

The one-paragraph “shadow docket” order was posted less than 12 hours after Trump patted Roberts on the back following Tuesday’s foul, fascistic diatribe to the joint session of Congress.

As he gestured, Trump can be heard on video telling Roberts, “Thank you again, I won’t forget it,” an apparent reference to Roberts’s majority ruling last summer that granted Trump broad immunity from criminal charges arising from the January 6, 2021 coup attempt.

Arch-reactionary Samuel Alito claimed to be “stunned” that a court would “compel the Government of the United States to pay out (and probably lose forever) 2 billion taxpayer dollars.” The openly corrupt Clarence Thomas and Trump nominees Neil Gorsuch and Brett Kavanaugh joined Alito’s dissent, which

hinged on the extreme theory that the Trump administration has “sovereign immunity,” shielding it from equitable claims based on services under contracts that predate the January 20 inauguration.

What likely “stunned” Alito, and perhaps Trump as well, is that Roberts and Barrett dared take a position adverse to the Trump administration, however equivocal.

Bringing to mind Trump’s notorious pattern of stiffing his contractors during his heyday as a real estate huckster, Alito called the Supreme Court’s refusal to stay the TRO “a most unfortunate misstep that rewards an act of judicial hubris and imposes a \$2 billion penalty on American taxpayers.”

Alito does not explain how compelling the government to pay for services rendered and products delivered by its contractors with money already allocated by Congress constitutes a “penalty.” Legal precedents suggest that paying contractual debts is an obligation, not punishment.

For decades, the State Department has used USAID to further imperialist interests through ostensibly humanitarian health and welfare programs that in fact dramatically affect millions, particularly in impoverished regions of the globe. Trump ordered a 90-day pause on all foreign aid his first day back in office, throwing global USAID efforts into chaos.

Since that time, the Trump administration has placed about 2,000 people directly employed by USAID on leave and eliminated 1,600 jobs altogether. The Trump administration announced last week that it intends to terminate more than 90 percent of USAID contracts and

withhold more than \$58 billion already authorized by Congress.

In their brief to the Supreme Court, the plaintiff organizations wrote that their work on behalf of USAID “advances US interests abroad and improves—and, in many cases, literally saves—the lives of millions of people across the globe.” Their evidence demonstrated that the payment freeze has already forced them to shut offices, furlough or terminate staff and even discontinue businesses entirely.

On February 13, District of Columbia Judge Amir Ali declined the plaintiff’s request that he stop the spending freeze but granted a TRO compelling the US government to release funds owed on contracts in existence before Trump’s inauguration. On February 25, he limited the required payments to work performed and products delivered before the date of his TRO.

Ali described the funding as necessary to prevent “irreparable injury” to multiple programs. He listed hospital construction in Nepal, Cambodia and Vietnam, health programs in Bangladesh, HIV/AIDS prevention in Africa and shelters for Central American youths fleeing gang violence, among other examples.

On Thursday Ali held further proceedings to implement his orders following the Supreme Court action. The plaintiffs requested that the outstanding bills be paid by Monday, March 10. The government refused to commit to a deadline, writing that the administration had canceled the vast majority of plaintiffs’ USAID contracts and that any balances owed would be paid in due course.

Ali also heard arguments on the plaintiff organizations’ motion for a preliminary injunction that could order the government to maintain certain USAID contracts. The Trump administration lawyer, Indraneel Sur, argued that the administration has already reviewed and canceled most of the contracts, mooting the case because there is no longer aid to restore.

“The funding freeze is not continuing,” he said. “It’s over.”

Lauren Bateman, an attorney for some of the plaintiff organizations, argued, “All evidence suggests these terminations were not made in good faith.”

Ali is expected to rule relatively soon, trigger more appeals to the District of Columbia Circuit Court of Appeals and the Supreme Court.



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