

## Synopsis der Argumente aus dem einleitenden Abschnitt des Regierungs-Schriftsatzes und der Gegenargument im Antwort-Schriftsatz des NGO

Die Zitate in den Tabellen-Zeilen 11 bis 15 stehen hinter der Einleitung des Regierungs-Schriftsatzes, scheinen mir aber nötig zu sein, um die Regierungs-Bedenken („putative“) und -Argumente („the district court lacked [...] jurisdiction“) in Tabelle-Zeile 1 und 5 zu verstehen.

Nr.	<u>Regierungs-Argumentation</u>	<u>NGO-Argumentation</u>	Anmerkungen
1	<p>Midday yesterday [25.02.2025], a federal district court ordered the Executive Branch to pay nearly \$ 2 billion by 11:59 p.m. tonight as an interim remedy in a <b>putative</b> Administrative Procedure Act (APA) suit (S. 1 f.<sup>1</sup> / 5 f.<sup>2</sup>; Hv. hinzugefügt)</p> <p>[Siehe zu „putative“ unten Zeile 5, 11 bis 15.]</p>	<p>[Siehe zu „putative“ unten Zeile 11 bis 15.]</p>	
2	<p><b>the government has</b>, since then [seit Erlaß einer <i>temporary restraining order</i> vom 13.02. durch den <i>District Court</i>], <b>complied with that order</b>, instead relying on its discretionary authorities and individual reviews.</p> <p>Neither the original TRO nor the district court's subsequent clarifications in any way suggested that the government must pay particular invoices on particular dates. (S. 2 / 6; Hv. hinzugefügt)</p>	<p>More than two weeks ago, on February 13, the district court agreed that the foreign-assistance freeze was likely unlawful and found that respondents would suffer irreparable harm if the freeze were not immediately suspended. The court therefore entered a temporary restraining order (TRO) requiring the government to preserve the status quo that had prevailed prior to the executive order. Following entry of the TRO, however, <b>the government took no steps toward compliance</b>. On February 20, responding to a motion to enforce the TRO, the district court entered an order directing the</p>	<p>Diesbzgl. scheinen mir die NGO-Behauptungen zutreffend und die Regierungs-Behauptung eine bloße Schutzbehauptung zu sein.</p> <p>Siehe unten Zeile 6.</p>

1 Gedruckte Seitenzählung.

2 Digitale Seitenzählung.

		<p>government to comply. <b>The government took no steps toward compliance.</b> The next day, the district court denied another motion to enforce the TRO as moot, reasoning that it had already directed the government to comply. <b>The government took no steps toward compliance.</b> The day after that, in response the government's motion for "clarification," the district court again made clear that the government was to suspend the foreign-assistance freeze. <b>The government took no steps toward compliance.</b> With irreparable harms mounting, respondents once more asked the court to enforce its TRO. In response, after an hour-long hearing at which <b>the government could not identify a single concrete step it had taken to comply,</b> the district court on February 25 entered yet another order, this time identifying specific steps toward compliance that the government was required to take by a date certain. (S. 1 f. / 3 f.<sup>3</sup>; Hv. hinzugefügt)</p>	
3	<p>The [Zahlungs-]order [vom 25.02.2025] does not limit its abrupt dead-line to respondents' own invoices or letters of credit, instead apparently compelling the government to pay requests from any organization that has asked for such funds. Those requests are not even in the record, nor are the underlying instruments. The timing of the order does not allow the government to conduct payment-integrity review to ensure that payments are made only</p>	<p>The government's claim that the district court's order is "overbroad" is misplaced. Appl. 14-15. The government characterizes the February 25 order as granting a "universal remed[y]" that "provide[s] relief to non-parties," Appl. 14-15, but the government overlooks that the TRO was intended to bar the government from implementing a blanket freeze on foreign assistance and required the government to take steps to restore the status quo that</p>	<p>Das Argument der NGO mag in Bezug auf die TRO – also die bloße Aussetzung des pauschalen Zahlungs-Stops – korrekt sein; aber siehe unten den roten Text in Zeile 6 zur positiven Anordnung konkreter Zahlungen bis zu einem bestimmten Termin.</p>

3 Siehe ausführlicher dazu S. 5 [gedruckte Seitenzählung] bzw. 7 [digitale Seitenzählung] bis 8 bzw. 10 des NGO-Schriftsatzes.

	for obligations that are legitimate or supported by necessary documentation – much less deny improper payments. (S. 2 f. / 6. f.)	prevailed before that freeze was instituted. The government has not challenged the scope of the TRO - indeed, it has not sought review of the TRO at all – and it cannot plausibly claim that the February 25 order was any broader than the TRO that it effectuated. (S. 20 f. / 20 f.)	
4	Such wholesale, universal relief [wie ihn die gerichtliche Anordnung vom 25.02.2025 gewährt] plainly exceeds what district courts can order under Article III and principles of equity and effectively allows a single federal district court to supervise the federal government's contracting decisions regarding foreign aid – an area where the Executive Branch ordinarily has the broadest discretion. (S. 3 / 7)		Selbst wenn <i>nicht</i> davon ausgegangen wird, daß allein schon die Hausgesetzgebung des Kongresses zum Ausgeben verpflichtet (was ich durchaus für möglich halte), so sind aber über die hier in Rede stehenden Mittel <i>Verträge</i> mit NGO abgeschlossen worden (wenn auch von früheren Regierungen) – und aufgrund dieser <i>Verträge</i> ist die Regierung bestimmte Zahlungsverpflichtungen eingegangen und hat vermutlich auch bestimmten Kündigungsfristen zugestimmt. Jedenfalls, wenn <i>nicht</i> davon ausgegangen wird, daß in den USA gerade eine (Konter)Revolution stattgefunden hat und ein Staat untergegangen und ein neuer entstanden ist, <b>dürfte</b> auch ohne deutsche Staatsmetaphysik <b>nicht davon ausgehen sein, daß die NGO keinen Anspruch auf Einhaltung der mit ihnen abgeschlossenen Verträge haben.</b>
5	On top of that, the district court lacked any jurisdiction even to issue this order dictating contractual payments by a date certain to remedy purported contractual breaches. The federal government has sovereign immunity from this type of breach-of-contract claim		Das mag – im Gegensatz zu Nr. 4 – so sein wie die Regierung behauptet: 28 U.S.C. 1346(a)(2) habe ich mir noch nicht angesehen. Die Frage ist allerdings – über den Inhalt der genannten Norm hinaus –, ob die Regierung

	<p>everywhere but the Court of Federal Claims. See 28 U.S.C. 1346(a)(2). Congress has created an intricate statutory scheme – along with a court with jurisdiction – to address claims that the government owes money under its contracts and other funding instruments. That scheme precludes the district court’s attempt to remedy alleged breaches of contract under the guise of a temporary restraining order in an APA case. (S. 3 / 7)</p> <p>[Siehe zur Frage der gerichtlichen Zuständigkeit („<i>jurisdiction</i>“) unten Zeile 11 bis 15.]</p>	<p>[Siehe zur Frage der gerichtlichen Zuständigkeit („<i>jurisdiction</i>“) unten Zeile 11 bis 15.]</p>	<p>dieses Argument rechtzeitig vorgebracht hat (siehe sogleich Nr. 6)</p>
6	<p>The district court sidestepped those arguments – though the government raised them in its opposition to a preliminary injunction filed last week and renewed them at yesterday’s hearing – on the ground that the government had not adequately preserved them, in writing, between the filing of a motion Monday night and an emergency hearing convened at 11:00 a.m. Tuesday morning. As of midday yesterday, the court stated that it would not consider its jurisdiction now, but “[i]f you want to brief that at the PI [<i>preliminary injunction</i> = die nächste Stufe des Eilrechtsschutzes nach der TRO] stage, I suppose you can.” App., <i>infra</i>, 65a<sup>4</sup>. In today’s order denying a stay pending appeal, the district court now claims to have “considered its jurisdiction at each stage of this case,” <i>id.</i> at</p>	<p>The government is not entitled to the relief it seeks. The TRO that the district court entered was intended to preserve the status quo while the court reached a preliminary determination on the merits of respondents’ claims. This Court lacks jurisdiction to review an order of the district court directing the government to comply with that temporary measure, which the government has not appealed and could not appeal.</p> <p>The February 25 order at issue in the application for vacatur does no more than compel compliance with a previously issued TRO and presents no review-worthy legal question.</p> <p>And by any measure, the district court’s order</p>	<p>Das mag so sein, wie NGO sagen.</p> <p>Aber mir scheint sehr, sehr fraglich zu sein, ob das zutreffend ist. Mir scheint vielmehr, daß die Regierung recht hat, wenn sie sagt, anzuordnen, Zahlungen zu einem Zeitpunkt bestimmten vorzunehmen, sei weitaus mehr, als nur einen pauschalen Zahlungs-Stop außer Vollzug zu setzen (siehe oben Zeile 3).</p>

4 = Seiten 65 (digitale Zählung) der Anlagen zum Regierungsschriftsatz = Teil von *District court motion hearing transcript and order from the bench* (S. 29a - 88a der Anlagen).

	93a, and believes itself empowered to force the United States to make billions of dollars in expenditures from federal funds based on its preliminary view of the government's contractual obligations. That is plainly incorrect. (S. 3 f. / 7 f.)	was within the district court's sound discretion to ensure compliance with one aspect of a TRO that the government had openly flouted for nearly two weeks.	
7	To be very clear, the government is committed to paying legitimate claims for work that was properly completed pursuant to intact obligations and supported by proper documentation. It is attempting to navigate the district court's evolving orders – and the ensuing, resource-consuming contract-review process – as best it can. The government is undertaking significant efforts to ensure that it can make proper payments. Agency leadership reports, for example, that the Secretary of State “has directed that invoices identified by the [respondents]” in their submissions to the district court “be processed and expedited for payment without the ordinary vetting procedures,” and that approximately \$ 4 million of such payments “are expected to be issued today.” App., infra, 146a <sup>5</sup> . (S. 4 bzw. 8)		
8	What the government cannot do is pay arbitrarily determined demands on an arbitrary timeline of the district court's choosing or according to extra-contractual rules that the court has devised. That mandate creates an untenable payment plan at odds with the		

5 = S. 146 (digitale Zählung) der Anlagen zum Regierungsschriftsatz = Teil des *Joint status report* vom 26.02.2025 (S. 130a - 150a der Anlagen).

	<p>President's obligations under Article II to protect the integrity of the federal fisc and make appropriate judgments about foreign aid – clear forms of irreparable harm. [...]. the government has no sure mechanism to recover wrongfully disbursed funds delivered to entities that claim to be near insolvency.</p>		
9	<p>the district court appears poised to require mini-trials, discovery, and depositions of senior officials as to whether a host of foreign-aid decisions genuinely rested on the government's conceded discretionary authority to terminate contracts and grants, or were instead supposed pretexts for a blanket foreign-aid cut that the district court considers unlawful. See <i>id.</i> at 141a<sup>6</sup> (respondents' proposed discovery plan) (requesting deposition of Secretary of State) [...]. The threat of invasive discovery into senior officials' subjective motivations only exacerbates the Article II harms inflicted by the court's order.</p>		
10	<p>This Court has jurisdiction to grant emergency relief from orders that, like this one, compel specific actions by a specific date – the very definition of a mandatory injunction. Vacatur of the order is warranted to ensure that the government is not subjected to an unlawful order with which it is not feasible to comply, despite the government's efforts.</p>		

6 = S. 141 (digitale Zählung) der Anlagen zum Regierungsschriftsatz = Teil des *Joint status report* vom 26.02.2025 (S. 130a - 150a der Anlagen).

11	<p>Yesterday morning (February 25), without first requesting or awaiting a written response from the government, the district court held a hearing and orally granted respondents' motion. App., infra, 85a. The court declined to address the government's argument that claims for specific monetary payments did not fall within the waiver of sovereign immunity provided by the APA and would instead need to be pursued through ordinary dispute-resolution procedures or in another lawsuit, potentially in the Court of Federal Claims. Nor did the court explain why its original order, which simply suspended a categorical pause, compelled the payment of specific invoices by specific dates. (S. 8 f. / 12 f.)</p>		
12	<p>the court refused to consider whether it has jurisdiction to command such payments when issuing the order - Instead purporting to consider jurisdiction only in this morning's stay denial. That jurisdictional problem is severe. Congress created an intricate and exclusive statutory scheme to address disputes over contractual payments for already-performed work. The court's order in this APA suit sidestepped that scheme entirely, and is thus unlikely to survive this Court's review. (S. 10 / 14)</p>		
13	<p>1. The district court lacked jurisdiction to order the government to make immediate payments of nearly \$ 2 billion on thousands of separate requests. Federal courts generally lack jurisdiction to order the federal government to</p>	<p>the government asks this Court for a ruling on underdeveloped jurisdictional arguments that, as the government's own characterization suggests, are fact-dependent and uncertain on this record. See Appl. 11-12 (government's</p>	<p>Ich weiß nicht... – aber mir scheint, das ist als Gegenargument zu wenig... – dafür, daß es hier um das zentrale Argument, auf das sich die Regierung beruft, geht.</p>

	<p>pay money unless Congress “unequivocally” waives the government’s sovereign immunity. <i>Lane v. Pena</i>, 518 U.S. 187, 192 (1996). Although respondents purported to bring their claims under the APA, the APA does not waive the government’s sovereign immunity from suit for the relief that the court ordered here. The APA provides a limited waiver of sovereign immunity for claims “seeking relief other than monetary damages.” 5 U.S.C. 702. The APA’s waiver, however, “comes with an important carve-out”: it does not apply “if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.” <i>Match-E-Be-Nash-She-Wish Band of Pottawatommi Indians v. Patchak</i>, 567 U.S. 209, 215 (2012) (quoting 5 U.S.C. 702). That carve-out “prevents plaintiffs from exploiting the APA’s waiver to evade limitations on suit contained in other statutes.” <i>Match-E-Be-Nash-She-Wish</i>, 567 U.S. at 215. (S. 11 / 15)</p>	<p>contention that “the Tucker Act <i>may</i> provide [an alternative] remedy” and that the Contract Disputes Act forecloses APA relief “<i>to the extent that some of the funding instruments at issue in this case are procurement contracts</i>” (emphasis added)). (S. 10 / 12)</p>	
14	<p>Congress has provided detailed, comprehensive statutory schemes for recovering payments based on federal funding instruments, and those schemes either explicitly or impliedly displace the APA’s waiver of sovereign immunity. See <i>Brown v. GSA</i>, 425 U.S. 820, 834 (1976) (explaining that “a precisely drawn, detailed statute preempts more general remedies”). First, to the extent that some of the funding instruments at issue in this case are procurement contracts, any dispute about payment on those contracts for work already performed would be governed by</p>		



	<p>the Contract Disputes Act (CDA). Critically, the CDA permits suit only following administrative exhaustion in the Civilian Board of Contract Appeals and the United States Court of Federal Claims, pursuant to specific review procedures set out by statute. See 41 U.S.C. 7103, 7104, 7105. Those remedies operate to the exclusion of any suit in district court under the APA. See <i>A&amp;S Council Oil Co. v. Lader</i>, 56 F.3d 234, 239-242 (D.C. Cir. 1995); see <i>United Aeronautical Corp. v. United States Air Force</i>, 80 F.4th 1017, 1028 (9th Cir. 2023) (“The availability of [a CDA] action in the Court of Federal Claims ‘impliedly forbids’ Aero from bringing its action in district court” under the APA.). (S. 11 f. / 15 f.)</p>		
15	<p>For other instruments, the Tucker Act may provide a remedy. That statute states that the “United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded” on “any express or implied contract with the United States.” 28 U.S.C. 1491(a); see 28 U.S.C. 1346(a)(2) (“the district courts shall not have jurisdiction of any civil action or claim against the United States founded upon any express or implied contract with the United States”). The D.C. Circuit has “held that the Tucker Act impliedly forbids” the bringing of “contract actions” against “the government in a federal district court.” <i>Albrecht v. Committee on Employee Benefits of the Fed. Reserve Emp. Benefits Sys.</i>, 357 F.3d 62, 67-68 (2004) (citation omitted). It has, in other words,</p>		

<p>“interpreted the Tucker Act * * * to ‘impliedly forbid[]’ contract claims against the Government from being brought in district court under the waiver in the APA,” and conducted careful analysis to determine whether “an action is ‘in essence’ contractual.” Perry Capital LLC v. Mnuchin, 864 F.3d 591, 618-619 (D.C. Cir. 2017). To the extent that the government has implemented its grant programs by “employ[ing] contracts to set the terms of and receive commitments from recipients,” then the proper recourse for any asserted violation of those grant terms may also be a “suit in the Claims Court for damages relating to an alleged breach.” Boaz Housing Auth. v. United States, 994 F.3d 1359, 1368 (Fed. Cir. 2021). (S. 12 / 16)</p>		
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