



441 G St. N.W.
Washington, DC 20548

Decision

Matter of: Department of Homeland Security—Application of the Impoundment Control Act to Reductions in Force for the Office for Civil Rights and Civil Liberties, the Office of the Immigration Detention Ombudsman, and the Office of the Citizenship and Immigration Services Ombudsman

File: B-337366

Date: July 31, 2025

DIGEST

On March 21, 2025, the Department of Homeland Security (DHS) delivered Reduction in Force (RIF) notices to the majority of the workforce in three of its offices: the Office for Civil Rights and Civil Liberties, the Office of the Citizenship and Immigration Services Ombudsman, and the Office of the Immigration Detention Ombudsman (collectively, the Offices). These DHS offices are funded through its operations and support appropriation account for the Office of the Secretary and Executive Management. This account received a lump-sum appropriation for fiscal year (FY) 2025.

Unless Congress enacts a law providing otherwise, executive branch officials must take care to ensure that they prudently obligate appropriations during their period of availability. The Impoundment Control Act of 1974 (ICA) allows the President to withhold funds from obligation, but only under strictly limited circumstances and only in a manner consistent with that Act. However, GAO has recognized that ordinary programmatic delays are not impoundments under the ICA.

GAO's institutional role is to support the Congress, including in Congress's exercise of its constitutional power of the purse. GAO's role is procedural—to protect congressional prerogatives and help ensure compliance with the ICA and appropriations law—and is not to be interpreted as taking a position on the underlying policies. DHS has not provided the information we requested regarding factual information and its legal views concerning the potential impoundment of appropriated funds. Yet publicly available evidence indicates that DHS is continuing to obligate and expend the funding provided to the Offices. Considering the circumstances, including DHS's discretion as to how to allocate its operation and

support appropriation, and its representations that it is continuing to obligate and expend the funding provided to the Offices, we conclude that amounts have not been unlawfully withheld. Therefore, we find no violation by DHS under the ICA with respect to the RIFs to the Offices.

GAO is aware of ongoing litigation involving the RIFs to the Offices.¹ GAO will continue to monitor this, and any other litigation related to this issue. If a court makes relevant findings of fact relating to the RIFs to the Offices, we will update this decision as necessary.

DECISION

On February 11, 2025, the President issued Executive Order No. 14210, *“Implementing the President’s ‘Department of Government Efficiency’ Workforce Optimization Initiative,”* instructing agency heads to “promptly undertake preparations to initiate large-scale reductions in force (RIFs), consistent with applicable law.” Exec. Order No. 14210, 90 Fed. Reg. 9669 (Feb. 11, 2025). The Order directed that “[a]ll offices that perform functions not mandated by statute or other law shall be prioritized in the RIFs, including all agency diversity, equity, and inclusion initiatives [and] all agency initiatives, components, or operations that [the] Administration suspends or closes,” and specified that its instructions on the RIFs “shall not apply to functions related to public safety, immigration enforcement, or law enforcement.” *Id.* On March 21, 2025, the Department of Homeland Security (DHS) delivered RIF notices to the majority of the workforce in three of its offices: the Office for Civil Rights and Civil Liberties (CRCL), the Office of the Citizenship and Immigration Services Ombudsman (CISOMB), and the Office of the Immigration Detention Ombudsman (OIDO) (collectively, the Offices).²

Our practice when rendering decisions is to contact the relevant agencies to obtain their legal views on the subject of the request. GAO, *GAO’s Protocols for Legal Decisions and Opinions*, GAO-24-107329 (Washington, D.C.: Feb. 2024), available at <https://www.gao.gov/products/gao-24-107329>. Accordingly, we reached out to DHS to seek factual information and its legal views on this matter.³ We requested that DHS provide their response by May 6, 2025. DHS has not responded to date.

¹ There is ongoing litigation challenging the legality of RIFs in DHS, including the Offices that are the subject of our decision. Complaint for Declaratory and Injunctive Relief, *Robert F. Kennedy Human Rights et al., v. U.S. Department of Homeland Security et al.*, No. 1:25-cv-1270 (D.D.C. April 24, 2025).

² Memorandum in Opposition to Plaintiff’s Motion for a Preliminary Injunction, *Robert F. Kennedy Human Rights et al.*, at 6 (D.D.C. May 14, 2025).

³ GAO, *GAO’s Protocols for Legal Decisions and Opinions*, GAO-24-107329 (Washington, D.C.: Feb. 2024), available at <https://www.gao.gov/products/gao-24-107329> (continued...)

In the past, in addition to the agency's factual assertions and legal views, we have typically analyzed apportionment schedules and data from an appropriation to determine whether there is any indication of an improper withholding. However, the Office of Management and Budget (OMB) has removed agency apportionment data from its public websites, which in GAO's view is contrary to OMB's duty to make such information publicly available.⁴ Having access to such information aids in our review of issues under the Impoundment Control Act (ICA) and our support of congressional oversight of programs. We requested apportionment data from DHS, but DHS has not responded.⁵

Pursuant to our reporting responsibilities under the ICA, we are issuing this decision.⁶ As explained below, based on publicly available information, and considering DHS's discretion in allocating its operation and support appropriation, we conclude that amounts have not been unlawfully withheld. Therefore, we find no violation by DHS under the ICA with respect to the RIFs to the Offices.

BACKGROUND

Congress has statutorily established several offices and positions in DHS to carry out functions that are relevant to this decision.⁷ The Homeland Security Act of 2002,⁸ established the Officer for Civil Rights and Civil Liberties (CRCL Officer) and required that the CRCL Officer shall "review and assess information concerning abuses of civil rights [and] civil liberties" committed by "employees or officials" of DHS and shall report annually to Congress on those allegations.⁹ The Homeland Security Act of 2002 also established the Citizenship and Immigration Services

[107329](#); Letter from General Counsel, GAO, to Acting General Counsel, DHS (April 22, 2025).

⁴ See Enclosure to B-337581, Apr. 8, 2025.

⁵ Letter from General Counsel, GAO, to Acting General Counsel, DHS (April 22, 2025).

⁶ Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, title X, § 1015, 88 Stat. 297, 336 (July 12, 1974), 2 U.S.C. § 686.

⁷ Various matters related to the Offices are under litigation. Complaint for Declaratory and Injunctive Relief, *Robert F. Kennedy Human Rights et al.*, (D.D.C. April 24, 2025). Our decision here is limited to the application of the ICA.

⁸ Pub. L. No. 107-296, 116 Stat. 2135 (*classified at* 6 U.S.C. §§ 101–681g).

⁹ Pub. L. No. 107-296, title VII, § 705, 116 Stat. at 2219–2220 (*classified at* 6 U.S.C. § 345(a)(1), (b)).

Ombudsman (CIS Ombudsman), and gave the CIS Ombudsman the responsibility of assisting individuals and employers to resolve problems with the Bureau of Citizenship and Immigration Services.¹⁰ Lastly, in the Consolidated Appropriations Act, 2020, Congress established the Ombudsman for Immigration Detention within DHS and provided that the Ombudsman for Immigration Detention shall be independent of DHS agencies and officers, and shall report directly to the DHS Secretary.¹¹ Congress charged the Immigration Detention Ombudsman with such responsibilities as investigating and resolving cases where DHS officers are found to have engaged in misconduct or have violated the rights of individuals in immigration detention, providing assistance to such individuals, conducting unannounced inspections of detention facilities, and ensuring that its functions “are complementary to existing functions within [DHS].”¹² CRCL, CISOMB, and OIDO respectively support the CRCL Officer, CIS Ombudsman, and Immigration Detention Ombudsman in fulfilling their statutory responsibilities.¹³

DHS budget documents show that the Offices are funded through the lump-sum operations and support account for the Office of the Secretary and Executive Management (OSEM).¹⁴ In Fiscal Year (FY) 2024, Congress appropriated \$363,582,000 to OSEM’s operations and support account.¹⁵ This account continues

¹⁰ Pub. L. No. 107-296, title IV, subtitle E, § 452, 116 Stat. at 2197 (*classified at* 6 U.S.C. § 272).

¹¹ Pub. L. No. 116-93, div. D, title I, § 106 (a), 133 Stat. 2317, 2504-2505 (Dec. 20, 2019) (*classified at* 6 U.S.C. § 205).

¹² *Id.* § 106 (a), 133 Stat. at 2505.

¹³ See DHS, *Legal Authorities for the Office for Civil Rights and Civil Liberties*, available at <https://www.dhs.gov/legal-authorities-office-civil-rights-and-civil-liberties> (last visited Jul. 23, 2025); DHS, *The Office of the Immigration Detention Ombudsman*, available at <https://www.dhs.gov/office-immigration-detention-ombudsman> (last visited Jul. 23, 2025); DHS, *Office of the Citizenship and Immigration Services Ombudsman*, available at <https://www.dhs.gov/about-citizenship-and-immigration-services-ombudsman> (last visited Jul. 23, 2025).

¹⁴ See, e.g., DHS, *DHS Budget, Congressional Budget Justification Fiscal Year (FY) 2025, Office of the Secretary and Executive Management*, at OSEM – O&S – 3, available at <https://www.dhs.gov/publication/congressional-budget-justification-fiscal-year-fy-2025> (last visited Jul. 23, 2025).

¹⁵ Further Consolidated Appropriations Act, 2024, Pub. L. No. 118-47, div. C, title I, 138 Stat. 460, 593 (Mar. 23, 2024).

to be funded in FY 2025, subject to a \$550,000 rescission.¹⁶ The Joint Explanatory Statement for the DHS Appropriations Act, 2024, designated amounts for each of the three offices, but this explanatory statement was not incorporated by reference into the FY 2024 or FY 2025 appropriations acts as law.¹⁷ According to the Director of the Budget Division within the Office of the Chief Financial Officer at DHS, DHS treats each Office as a separate program, project, or activity (PPA) within the larger appropriation.¹⁸ The Director stated that as individual PPAs, DHS assigned each Office a certain funding level for execution in FY 2025 through an expenditure plan that DHS submitted to Congress, which established funding levels of \$10,383,000 for CISOMB, \$42,964,000 for CRCL, and \$27,341,000 for OIDO.¹⁹

According to DHS, the agency began preparing for large-scale RIFs to the Offices in order to be consistent with the February 11, 2025, Executive Order, “*Implementing the President’s ‘Department of Government Efficiency’ Workforce Optimization Initiative*,” which instructed agency heads to prepare to initiate RIFs.²⁰

Memorandum in Opposition to Plaintiff’s Motion for a Preliminary Injunction, at 4. DHS determined that the Offices could fulfill their statutory duties using “leaner staffs and more streamlined processes” and stated that it considered the statutory requirements for each Office, duplicative and inefficient workflows, and new means of increasing efficiency when determining how much staff to reduce. *Id.* at 5, 7. According to DHS, after the RIFs, the CRCL Officer, CIS Ombudsman, and Immigration Detention Ombudsman would still be responsible for performing the duties required of them by statute. *Id.* at 7.

On March 7, 2025, DHS sent a memorandum to the Office of Personnel Management (OPM) seeking approval of competitive areas that would be subject to

¹⁶ Full Year Continuing Appropriations and Extensions Act, 2025, Pub. L. No. 119-4, div. A, title I, § 1101(a)(6), and title VII, § 1706(1), 139 Stat. 9, 11, 28 (Mar. 15, 2025).

¹⁷ See Pub. L. No. 118-47, § 4, 138 Stat. at 461. While joint explanatory statements have some value in determining congressional intent, they do not have “the force of law.” *Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 237 (D.C. Cir. 2003).

¹⁸ Declaration of Ann M. Tipton, *Robert F. Kennedy Human Rights et al.*, at ¶ 2 (D.D.C. June 16, 2025).

¹⁹ *Id.*

²⁰ Exec. Order No. 14210, 90 Fed. Reg. 9669 (Feb. 14, 2025). Subpart c of section 3 “Reductions in Force”—instructs “Agency Heads [to] promptly undertake preparations to initiate large-scale reductions in force (RIFs), consistent with applicable law, and to separate from Federal service temporary employees and reemployed annuitants working in areas that will likely be subject to the RIFs.” *Id.* § 3(c) (emphasis omitted).

the RIFs, in line with OPM regulations concerning RIF procedures. Memorandum in Opposition to Plaintiff's Motion for a Preliminary Injunction, at 5. In the memorandum, DHS requested OPM to approve RIFs for competitive areas consisting of CRCL, CISOMB, and OIDO; more specifically, DHS proposed eliminating 147 positions in CRCL, 118 positions in CISOMB, and 46 positions in OIDO. *Id.* at 6. These figures represented the entire staff of the Offices, excluding employees in the Senior Executive Service. *Id.* OPM granted approval for these competitive areas on March 7, 2025, and on March 20, 2025, the DHS Secretary provided final approval for the RIFs. *Id.*

On March 21, 2025, DHS delivered RIF notices to the majority of the workforce in CRCL, CISOMB, and OIDO. Memorandum in Opposition to Plaintiff's Motion for a Preliminary Injunction, at 6. According to DHS, those employees have largely been on administrative leave since receiving their RIF notices. *Id.* On April 7, 2025, DHS announced that qualifying employees from CRCL, CISOMB, and OIDO would be allowed to participate in a Workforce Transition Program (WTP), which offered employees financial incentives in exchange for a release of claims and a commitment to resign from the agency. *Id.* As of May 2025, DHS stated that 47 employees have signed WTP agreements and agreed to resign; DHS noted that the RIF notices for these employees will be rescinded. *Id.* In June 2025, the Director of the Budget Division, in a sworn statement, affirmed that each of the Offices "continues to obligate and execute the funding they were provided for fiscal year 2025." Declaration of Ann M. Tipton, at ¶ 3. The Director declared that "[a]ll of the Offices are funded through the remainder of fiscal year 2025, and [DHS] will execute that funding." *Id.*

DISCUSSION

At issue here is whether DHS's actions to implement Executive Order No. 14210, particularly, the RIFs to the Offices, violated the ICA. For the reasons explained below, and based on available information, we conclude that DHS did not violate the ICA.

It is important to understand the constitutional and historical underpinnings of the ICA with respect to the critical role of Congress in exercising its constitutional powers. The Constitution specifically vests Congress with the power of the purse, providing that "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law."²¹ The Constitution also gives Congress the exclusive power to legislate, and sets forth the procedures of bicameralism and presentment, through which the President may accept or veto a legislative bill passed by both houses of Congress, and Congress may subsequently override a presidential veto.²² This process does not grant the President the authority to pass his own laws or to

²¹ U.S. Const. art. I, § 9, cl. 7.

²² *Id.* at art. I, § 7, cl. 2, 3.

ignore or amend a law duly enacted by Congress.²³ Instead, the President must “faithfully execute” the law as Congress enacts it.²⁴ It follows from this that Executive Orders cannot function to repeal or undo legislation.

Once enacted, an appropriation is a law like any other, and the President must implement it by ensuring that appropriated funds are obligated and expended prudently during their period of availability unless and until Congress enacts another law providing otherwise.²⁵ In fact, Congress was concerned about the failure to prudently obligate according to its congressional prerogatives when it enacted and later amended the ICA.

The Constitution grants the President no unilateral authority to withhold funds from obligation.²⁶ Instead, Congress has vested the President with strictly circumscribed authority to impound, or withhold, budget authority only in limited circumstances as expressly provided in the ICA.²⁷ The ICA separates impoundments into two exclusive categories – deferrals and rescissions. First, the President may seek to temporarily withhold funds by proposing a “deferral.”²⁸ Second, the President may seek the permanent cancellation of funds for fiscal policy or other reasons, including the termination of programs for which Congress has provided budget authority, by proposing a “rescission.”²⁹

In either case, the ICA requires the President to first transmit a special message to Congress outlining the amounts in question and the reasons for the proposed deferral or rescission.³⁰ These special messages must provide detailed and specific reasoning to justify the withholding, as set out in the ICA.³¹ The burden to justify a

²³ See B-331564, Jan. 16, 2020, at 5 (citing *Clinton v. City of New York*, 524 U.S. 417, 438 (1998)).

²⁴ U.S. Const., art. II, § 3.

²⁵ See B-331564, Jan. 16, 2020; B-329092, Dec. 12, 2017 (The ICA operates on the premise that the President is required to obligate funds appropriated by Congress, unless otherwise authorized to withhold).

²⁶ See B-135564, July 26, 1973.

²⁷ See 2 U.S.C. §§ 681–688.

²⁸ *Id.* at § 684.

²⁹ *Id.* at § 683.

³⁰ 2 U.S.C. §§ 683–684.

³¹ See 2 U.S.C. §§ 683–684; B-237297.4, Feb. 20, 1990 (vague or general assertions are insufficient to justify the withholding of budget authority).

withholding of budget authority rests with the executive branch.

While the ICA does not circumscribe when funds can be proposed for rescission, it only permits deferral of budget authority in a limited range of circumstances: to provide for contingencies; to achieve savings made possible by or through changes in requirements or greater efficiency of operations; or as specifically provided by law.³² With respect to deferrals, the ICA specifies that the funds at issue are only temporarily withheld and must still be obligated before expiration.³³ And with respect to proposed rescissions, the funds must still be obligated unless Congress acts within 45 days to pass a new law rescinding them.³⁴

GAO's institutional role is to support the Congress, including in Congress's exercise of its constitutional power of the purse. This includes GAO's functions under the ICA, such as reviewing special messages³⁵ and reporting impoundments the President has not reported.³⁶

Application of the ICA to DHS's RIFs to the Offices

The test for whether there has been an impoundment starts with the question of whether there has been a withholding or delay in the obligation or expenditure of budget authority. 2 U.S.C. § 682(1). Where there is no withholding or delay of budget authority, there is no improper impoundment. B-335747, Apr. 22, 2024; B-331298, Dec. 23, 2020. In the past, we have opined that a reduction to federal positions for the purpose of reducing federal personnel costs was not automatically a withholding or delay that required the transmittal of a special message under the ICA, unless net savings were realized as a result of position reductions. B-115398.32, Nov. 20, 1974. See B-331298, Dec. 23, 2020. We explained that if such savings realized by position reductions were offset by the costs of pay increases, precluding a potential rescission or reserve for savings, the ICA would not apply. *Id.* When analyzing whether an agency has complied with the ICA, we look for actions that are required by law or instances where an agency's discretion is limited with respect to the obligation of funds. B-337142.1, Jun. 16, 2025.

³² 2 U.S.C. § 684(b).

³³ 2 U.S.C. §§ 683–684; B-329092, Dec. 12, 2017; 54 Comp. Gen. 453 (1974).

³⁴ *Id.* § 683. The ICA also does not authorize the withholding of budget authority through its date of expiration. See B-330330, Dec. 10, 2018. As such, so-called “pocket rescissions” are not consistent with the ICA.

³⁵ 2 U.S.C. § 685.

³⁶ *Id.* § 686.

Congress has established certain functions and officials in this case but has not established a minimum number of employees or more specific requirements for carrying out the functions.³⁷ In line with our precedent, a RIF to achieve savings does not run afoul of the ICA as long as any net savings generated from the RIF are offset by other allowable expenses. An agency can demonstrate that it is offsetting net savings by showing that it is continuing to obligate and expend all funds provided to the affected account(s).³⁸ In the pending litigation involving the RIFs to the Offices, the DHS Director of the Budget Division provided sworn statements affirming that each of the Offices “continues to obligate and execute the funding they were provided for fiscal year 2025.” Declaration of Ann M. Tipton, at ¶ 3. The Director also asserted that “[a]ll of the Offices are funded through the remainder of fiscal year 2025, and [DHS] will execute that funding.” *Id.* From these sworn statements, DHS has represented that it is continuing to obligate and execute FY 2025 funds for the Offices. The SF 133 Report on Budget Execution and Budgetary Resources for DHS, which was last updated on June 20, 2025, shows that DHS incurred direct obligations against its OSEM operations and support account past March 2025, when the RIFs occurred. This account is a lump-sum appropriation, so it is available to fund programs and activities outside of the Offices, but the data provided in the SF 133 report are generally consistent with the DHS Director’s statements that FY 2025 funds under this account are continuing to be obligated.

Additionally, the FY 2024 and FY 2025 DHS OSEM operations and support appropriations that fund the Offices are lump-sum appropriations³⁹ available for “necessary expenses” for “operations and support,” and they do not mandate specific funding levels for any of the Offices.⁴⁰ We were not able to confirm whether

³⁷ As noted previously, there is ongoing litigation challenging the legality of the RIFs in the Offices. Complaint for Declaratory and Injunctive Relief, *Robert F. Kennedy Human Rights et al.*, (D.D.C. April 24, 2025). Our decision does not address this issue; it is limited to the application of the ICA.

³⁸ We note that the ICA permits the deferral of budget authority “to achieve savings made possible by or through changes in requirements or greater efficiency of operations.” 2 U.S.C. § 684(b)(2). It would be permissible for an agency to withhold or delay budget authority for this reason as a deferral, but such deferral requires a special message to be submitted. See *id.* §§ 682(1), 684(b).

³⁹ A lump-sum appropriation provides funds for several programs or activities, without specifying how much of it is to be spent for each one. B-207697, Oct. 4, 1982. It gives a department or agency discretion in allocating appropriated funds. *Id.*

⁴⁰ We have said that when Congress enacts a lump-sum appropriation accompanied by committee reports detailing how it wants funds to be allocated, the agency has no legal obligation to follow such report statements, even if expressed as “directives,” unless they can be related to the statutory language itself. B-207697 (Oct. 4, 1982).
(continued...)

the RIFs produced net savings and do not know the status of the employees who received RIF notices, whether they remain on administrative leave or have left the Offices, nor whether additional RIF notices were rescinded. However, DHS has confirmed that it continues to obligate and expend its FY 2025 lump-sum OSEM operations and support appropriation. In addition, we recognize that the agency has broad discretion in allocating its OSEM operations and support appropriation. These factors lead us to conclude that amounts have not been unlawfully withheld under the ICA.

CONCLUSION

Based on the information available to us, we find that DHS's actions to implement Executive Order No. 14210 by conducting RIFs to the Offices have not resulted in the unlawful withholding or delay of FY 2025 funds. As supported by sworn statements from a DHS budget official, DHS is continuing to obligate the remaining FY 2025 funds provided to the Offices. Additionally, the broad grant of discretion provided to DHS through its OSEM operations and support appropriation to choose at what level to fund the Offices weighs against finding an improper impoundment in this case. Therefore, we find that DHS did not violate the ICA.

Our analysis and conclusions here apply to the issues raised under the ICA to help ensure compliance with the ICA and advance congressional oversight including in Congress's exercise of its constitutional power of the purse. We do not take a position on the legality of the RIFs; that is an issue under current litigation.⁴¹ Neither do we take a position on the policy goals of the directives and programs at issue.

The explanatory statement to the FY 2024 appropriations act does designate funding for each of the three Offices, but this explanatory statement was not incorporated by reference into either the FY 2024 or FY 2025 appropriations acts. See 170 Cong. Rec. H1839 (daily ed. Mar. 22, 2024); Pub. L. No. 118-47, 138 Stat. 460 (Mar. 23, 2024); Pub. L. No. 119-4, 139 Stat. 9. Given that the SF 133 report for DHS shows that the OSEM operations and support appropriation account continues to incur direct obligations after the RIF notices were sent out, and given the testimony provided by DHS that it continues to obligate the funding for the Offices, it remains possible that DHS could meet Congress' spending targets in the explanatory statement. Additionally, we note that that these explanatory statement funding targets are not binding themselves.

⁴¹ Complaint, *Robert F. Kennedy Human Rights et al.*, (D.D.C. Apr. 24, 2025).

Changes to these policies and priorities can be addressed through the legislative process with Congress and the Administration.

A handwritten signature in black ink, reading "Edda Emmanuelli Perez". The signature is written in a cursive, flowing style.

Edda Emmanuelli Perez
General Counsel