Opinion
NCR Voices
Protest supporting USAID

People hold placards outside the U.S. Agency for International Development building in Washington Feb. 3 after billionaire Elon Musk, who is heading President Donald Trump's drive to shrink the federal government, said work is underway to shut down the U.S. foreign aid agency. (OSV News/Reuters/Kent Nishimura)



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March 7, 2025
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"Oyez, oyez … God save the United States and this honorable court." These are the words with which every session of the U.S. Supreme Court opens, and we had all better pray God is hearing that prayer.

So far, so good.

On March 5 the U.S. Supreme Court upheld a lower court ruling that ordered the Trump administration to disburse $2 billion in foreign aid for work that had already been completed. The court ordered District Judge Amir Ali to hold a hearing to establish what the government is required to do in order to be in compliance with his order.

The result is not the eschaton. Judge Ali's order did not address the issue of foreign aid that Congress had already approved but not yet spent. It did not, and could not, address the issue of whether foreign aid is a good use of taxpayers' money. Ali merely issued a preliminary injunction against the immediate stoppage of payments by executive order while he considers the merits of the issue.

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Even if all the aid agencies that undertake foreign aid projects get reimbursed for their expenses so far, that will not save those projects for the long term. My colleagues Brian Fraga and Brian Roewe recently reported on the Trump administration's cancellation of many projects administered by the U.S. bishops' conference and Jesuit Refugee Services, none of which are affected by the Supreme Court's ruling.

The courts cannot stop President Donald Trump and his adviser Elon Musk from being cruel. But they can enforce the law. They can remind Trump and Musk that executive orders are not laws, and that in this country, the president must abide by the law.

The decision was 5-4, with Chief Justice John Roberts and Associate Justice Amy Coney Barrett joining the courts three more liberal justices — Associate Justices Sonia Sotomayor, Elena Kagan and Ketanji Brown Jackson — in the majority.

Justice Roberts

Chief Justice John Roberts, seen at Donald Trump's inauguration ceremonies Jan. 20, ruled with the 5-4 majority March 5, rejecting Trump's bid to freeze $2 billion in foreign aid payments. (OSV News/Reuters via pool/Chip Somodevilla)

Associate Justice Samuel Alito penned a dissent. "Does a single district-court judge who likely lacks jurisdiction have the unchecked power to compel the Government of the United States to pay out (and probably lose forever) 2 billion taxpayer dollars?" Alito asked. "The answer to that question should be an emphatic 'No,' but a majority

of this Court apparently thinks otherwise. I am stunned." I was stunned too. I thought conservative jurists were not concerned about policy outcomes.

Later in his dissent, Alito writes that Judge Ali's decision "left the Government little time to try to obtain some review of what it regarded as a lawless order." Lawless order? The contention of the plaintiffs was that Trump's executive order was itself a violation of the Administrative Procedure Act. If anyone in Washington is being lawless these days, it is the president.

Alito's dissent was joined by Associate Justices Clarence Thomas, Neil Gorsuch and Brett Kavanaugh.

The decision and dissent evenly divided the Catholics on the court, and it is tempting to think Roberts, Sotomayor and Barrett have been listening to the sermons they hear on Sunday while the others have been snoozing. But that is a disservice to all nine justices. They all bring years of judicial philosophy to their decisions, some of which may be informed by their Catholic beliefs, and much of it not. There will be other cases in which Roberts and Barrett will not side with the liberals and that, too, will likely have little to do with their religious beliefs.

That said, judicial philosophy does not evacuate other considerations from a person's mind. You don't rise through the ranks of the judiciary without a certain amount of savvy. Roberts and Barrett knew that in siding with the court's liberals they were also sending a signal to the Trump administration that they are not going to rubber stamp his decisions if those decisions violate the law.

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For the chief justice, this was not the first time he warned Trump to abide by the law. In 2020, Roberts voted to uphold President Barack Obama’s executive order granting Deferred Action for Childhood Arrivals, or DACA, to hundreds of thousands of children brought to the U.S. as undocumented immigrants, the "Dreamers."

"We do not decide whether DACA or its rescission are sound policies," Roberts wrote. "The wisdom of those decisions is none of our concern. Here we address only whether the Administration complied with the procedural requirements in the law that insist on 'a reasoned explanation for its action.' "

Let us acknowledge how much water the phrase "a reasoned explanation" is carrying. In the court's future decisions on Trump's willingness to ignore administrative law, justices will need to explicate their standards of judgment more clearly.

With the Republican Party in control of the two political branches of government, the judiciary's willingness to defend the law is invaluable. The Supreme Court will sometimes reach decisions many of us do not like, but at the moment, they are the most important tool of constitutional defense. Withered be the hand raised against it.

"God save the United States and this honorable court."

This story appears in the **Trump's Second Term** feature series. View the full series.