ORAL ARGUMENT SCHEDULED FOR FEBRUARY 26, 2026

No. 25-5387

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

FRIENDS OF THE EARTH U.S., *et al.*,

Plaintiffs-Appellants,

v.

EXPORT-IMPORT BANK OF THE UNITED STATES, *et al.*,

Defendants-Appellees,

TOTALENERGIES EP MOZAMBIQUE AREA 1, LIMITADA,

Intervenor Defendant-Appellee.

On Appeal from the United States District Court for the District of Columbia

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BRIEF FOR FEDERAL APPELLEES
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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), the undersigned counsel certifies as follows:

A. Parties and Amici

Plaintiffs in district court, and appellants here, are Friends of the Earth U.S. and Justiça Ambiental.

Defendants in district court, and appellants here, are the Export-Import Bank of the United States (EXIM); John Jovanovic, in his official capacity as President and Chairman of EXIM;[1] James Burrows, in his official capacity as acting Vice President and Vice Chairman of EXIM; and Spencer Bachus III, in his official capacity as Board Member of EXIM.

Participating as Defendant-Intervenor in this case is TotalEnergies EP Mozambique Area 1, Limitada.

There were no additional parties and no *amici curiae* in district court, and none have entered an appearance before this Court.

B. Rulings Under Review

The ruling under review is the October 10, 2025, memorandum opinion and order (Dkts. 52 & 53) entered by the Honorable Carl J. Nichols

[1] Plaintiffs originally brought suit against James Cruse, in his official capacity as Acting President and Chairman of EXIM. Pursuant to Federal Rule of Appellate Procedure 43(c)(2), President Jovanovic was automatically substituted as a party.

in *Friends of the Earth U.S. v. Export-Import Bank of the United States*, No. 1:25-cv-2235 (D.D.C.), denying plaintiffs' motion for a preliminary injunction. *See* JA565-97.

C. Related Cases

This case has not previously been before this Court. Counsel are not aware of any currently pending related cases within the meaning of D.C. Circuit Rule 28(a)(1)(C).

/s/ McKaye L. Neumeister
McKaye L. Neumeister

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GLOSSARY

APA	Administrative Procedure Act
EIS	Environmental Impact Statement
EPIC	Electronic Privacy Information Center
EXIM	Export-Import Bank of the United States
LNG	Liquified Natural Gas
NEPA	National Environmental Policy Act
PETA	People for the Ethical Treatment of Animals

INTRODUCTION

In 2019, the Export-Import Bank of the United States (EXIM) approved a $5 billion direct loan to fund a liquified natural gas (LNG) project in Mozambique. The project was expected to support over 16,000 American jobs and have a "net positive effect on the U.S. balance of trade of about $2.31 billion dollars." JA293, 301. Due to a terrorist insurgency in the region, the project operator was forced to declare *force majeure* and suspend work for four years. After the security situation stabilized, the operator sought to resume the project and requested to extend the disbursement and repayment dates of the loan by four years. In March 2025, EXIM's Board of Directors approved the amendment.

Plaintiffs are two non-profit organizations challenging that decision and seeking a preliminary injunction to block the disbursement of loan funds. Plaintiffs' primary contention is that the Board was required to satisfy all the procedural requirements applicable to the consideration of a brand-new loan application before it could approve the requested date extension. Nothing in the relevant statutes or internal agency guidelines requires that result—the loan was previously approved in 2019. Moreover, plaintiffs have failed to demonstrate standing to press their claims, irreparable harm to their own concrete interests, or that the balance of equities favors immediate relief. Accordingly, the district court did not abuse its discretion in denying plaintiffs' request for a preliminary injunction.

This Court should affirm.

STATEMENT OF JURISDICTION

Plaintiffs invoked the district court's jurisdiction under 28 U.S.C. § 1331 and § 1346(a)(2). JA19. The court denied plaintiffs' preliminary-injunction motion on October 10, 2025. JA563-64. Plaintiffs timely appealed on October 29, 2025. JA10. This Court has jurisdiction under 28 U.S.C. § 1292(a)(1).

STATEMENT OF THE ISSUE

In seeking to halt loan disbursements during the pendency of this litigation, plaintiffs have failed to demonstrate: a substantial likelihood of standing; a likelihood of success on the merits of their claims that, before approving the amendment, EXIM was required to undertake notice and comment, a new economic analysis, or an environmental impact statement; irreparable harm to plaintiffs' own concrete interests; or that the balance of equities favors relief. The question presented is:

Whether the district court abused its discretion in denying plaintiffs' motion for a preliminary injunction.

PERTINENT STATUTES AND REGULATIONS

Pertinent statutes and regulations are reproduced in the addendum to this brief.

STATEMENT OF THE CASE

A. Statutory Background

1. The Export-Import Bank of the United States is the nation's official export credit agency. EXIM was originally established in 1934 and assumed its current form with the enactment of the Export-Import Bank Act of 1945, Pub. L. No. 79-173, 59 Stat. 526 (codified at 12 U.S.C. § 635 *et seq.*) (Bank Act). Congress established EXIM as "an independent agency" managed by a Board of Directors consisting of five individuals appointed by the President with the advice and consent of the Senate, and who "serve at the pleasure of the President." 12 U.S.C. § 635a(a), (b), (c)(1), (8)(A)(i).

The core purpose of EXIM is "to facilitate exports of goods and services … and in so doing to contribute to the employment of United States workers." 12 U.S.C. § 635(a)(1). Operating as a bank, it offers a variety of financing instruments to accomplish this end, including "loans, guarantees, insurance, and credits" to support the export of U.S. goods and services to foreign buyers. *Id.*

Consistent with that mission and the nature of EXIM's activities, its charter affords EXIM "broad authority to manage and finance its operations in the most economical and efficient manner in order to meet the changing export credit needs of the U.S. exporter." S. Rep. No. 92-51, at 2 (1971). Congress recognized that, to achieve its objectives notwithstanding competition from other nations promoting their own industries, EXIM needed to be flexible and responsive to market conditions. *See* 12 U.S.C. § 635(b)(1)(A)-(B); S. Rep. No. 99-274, at 8 (1986) (emphasizing need to preserve "competitiveness and flexibility in assisting U.S. exporters"). The Bank Act thus imbues EXIM with considerable discretion to exercise its judgment in deciding whether to approve financing.

Thus, even limitations on EXIM's authority do not apply based on its judgment and expertise. For instance, EXIM is prohibited from "extend[ing] any direct credit" for "expanding production of any commodity for export" by a foreign country "if … [EXIM] determines that" (1) "the commodity is likely to be in surplus on world markets at the time [it] will first be sold" or "the resulting production capacity is expected to compete with United States production" and (2) the extension of credit "will cause substantial injury to United States producers." 12 U.S.C. § 635(e)(1). Even when both conditions are met, however, the prohibition "shall not apply" if "in the judgment of the Board" the "benefits to industry and employment" likely outweigh the injury. *Id.* § 635(e)(3).

In imposing such directives and discretion on EXIM to achieve its statutory objectives, Congress recognized that although EXIM is a federal agency, 12 U.S.C. § 635a(a), it is not akin to a traditional regulatory agency. EXIM is thus not subject to various aspects of the Administrative Procedure Act (APA), including the APA's notice-and-comment requirements. *See id.* § 635(e)(7)(F) ("This paragraph shall not be construed to make subchapter II of chapter 5 of Title 5 applicable to [EXIM]."); 5 U.S.C. § 553(a)(2) (exempting from notice-and-comment rulemaking "matter[s] relating to … loans"). Accordingly, like commercial banks, EXIM does not make financing determinations with the aim of creating a record of the Board's decisions for subsequent judicial review. Although the Bank Act imposes some narrower notice-and-comment requirements on EXIM limited to specific circumstances, they function in a way that preserves EXIM's flexibility to manage its banking operations.

Since 2012, Congress has required EXIM to "provide a notice and comment period" before "any meeting of [its] Board for final consideration of a long-term transaction" over $100 million. Export-Import Bank Reauthorization Act of 2012, Pub. L. No. 112-122, § 9(a), 126 Stat. 350, 354-55 (codified at 12 U.S.C. § 635a(c)(10)(A)). The statute spells out the various "[s]pecific requirements" that EXIM must follow in doing so, 12 U.S.C.

§ 635a(c)(10)(C), and when "revised notice" and "additional comment" are required because of "material change[s]" made to an application on which comment was solicited, *id.* § 635a(c)(10)(D). After receiving comments, staff must provide commenters' views to the Board before it "tak[es] final action on an application." *Id.* § 635a(c)(10)(E). The Bank Act does not direct EXIM to afford those comments any particular consideration or response. *See id.* Nor does it require EXIM to publish a final decision in the Federal Register. *See id.* § 635a(c)(10)(F) (providing only that commenters can request "a non-confidential summary" of certain information).[2]

2. As a federal agency, EXIM is subject to the National Environmental Policy Act (NEPA). NEPA requires agencies to prepare an environmental impact statement (EIS) for any "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). The statute makes clear, however, that the term "major Federal action" does not include "loans … where a Federal agency does not exercise sufficient control and responsibility over the subsequent use of such financial assistance or the effect of the action." *Id.* § 4336e(10)(B)(iii).

[2] A similar notice-and-comment process applies when EXIM "intends to conduct a detailed economic impact analysis or similar study" in determining whether to extend credit under § 635(e). 12 U.S.C. § 635(e)(7)(B).

A "major Federal action" also does not encompass "extraterritorial activities," meaning "agency activities or decisions with effects located entirely outside of the jurisdiction of the United States." 42 U.S.C. § 4336e(10)(B)(vi). EXIM's regulations thus recognize that NEPA's application to its actions will be "relatively rare." 12 C.F.R. § 408.3.

Accordingly, Congress provided for EXIM's consideration of certain environmental effects apart from NEPA. The Bank Act instructs EXIM to "establish procedures to take into account the potential beneficial and adverse environmental effects of goods and services for which support is requested" under its programs for certain transactions. 12 U.S.C. § 635i-5(a)(1). And the statute authorizes EXIM to determine, "in its judgment," whether "to withhold financing from a project for environmental reasons or to approve financing after considering the potential environmental effects." *Id.* § 635i-5(a)(2).

B. Factual Background

1. In 2010, a significant reserve of natural gas was discovered off the northern coast of Mozambique. JA240. A project was launched in the Cabo Delgado province to "gather, process and export" this natural gas. JA240. The project is operated by TotalEnergies EP Mozambique Area 1, Limitada (TotalEnergies), JA239, "on behalf of a joint venture of energy companies from around the world and in cooperation with the Government of Mozambique," JA241. Under the auspices of the Mozambican government, a multi-year environmental and social impact assessment of the project was conducted, and the Mozambican government approved the assessment in 2014. JA242.[3]

In April 2015, an application was submitted to EXIM requesting "a direct loan in the amount of up to $5 billion to purchase U.S. goods and services for the development, financing, construction and operation of" the project. JA269; *see* JA273-82 (application). The team of EXIM staff members assigned to the transaction began a four-year process of due diligence and negotiation. JA269.

In 2018, EXIM published a notice in the Federal Register that it had "received an application for a $5 billion direct loan to support the export of approximately $4.348 billion in U.S. equipment and services to establish an integrated [LNG] … project in Mozambique" and sought comments regarding the detailed economic impact analysis it planned to conduct for the project. 83 Fed. Reg. 61,379, 61,379 (Nov. 29, 2018). After considering comments, EXIM finalized its economic analysis in August 2019. *See* JA344.

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[3] In 2016, EXIM posted the project online and linked to the environmental assessment. JA243; *see* Mozambique LNG, *Environmental Impact Assessment*, https://perma.cc/Q9VP-JKEG.

The analysis observed that, with respect to the global LNG market, "there will be a supply-demand gap opening in the early-to-mid 2020s," leading to a 5-10% gap by 2024, and the "gap would grow from there." JA349. Citing projections up to 2040, the analysis explained that "LNG demand is set to grow substantially over the next ten to fifteen years, beyond the 2025 level," concluding that "it is unlikely that structural oversupply develops in the LNG market any time in the foreseeable future." JA350. The analysis ultimately concluded that the transaction "will likely have a net positive effect on the U.S. economy," estimating a "positive impact of approximately $2.31 billion on the U.S. balance of trade." JA354.

After finalizing its economic analysis, EXIM published a notice seeking public comments on the "application for final commitment" for the project. 84 Fed. Reg. 44,304, 44,304 (Aug. 23, 2019). EXIM staff prepared a memorandum to present to the Board of Directors, which included various analyses of the application, such as the economic impact analysis and an environmental and social evaluation. *See* JA284-401. In posting the project and environmental assessment to its website in 2016, EXIM had previously determined that no EIS was required because the project did not constitute a "major Federal action" under NEPA. *See* JA184, 325. And in its 2019 environmental analysis, staff explained that the project "will not significantly impact critical habitat, protected areas, or ecologically-sensitive areas." JA332. The analysis concluded that "the design, construction and operation of the proposed [project] is expected to meet Mozambique's and EXIM's environmental and social requirements," and staff thus had "no environmentally based objections to support of this transaction." JA333.

In September 2019, EXIM approved the application for final commitment and authorized "a direct loan of up to $5 billion." JA250; *see* JA403 (Board meeting minutes). In a press release announcing the decision, EXIM explained that it "engaged in a multiyear due diligence process" and "closely consider[ed] the potential beneficial and adverse environmental and social effects," including review of the Mozambican-government approved environmental and social impact assessment. JA253. EXIM concluded that the transaction "will support an estimated 16,400 American jobs over the five-year construction period." JA250.

The terms of the final loan agreement "include a mechanism for amendments to the Agreement." JA244. And a resolution of the Board contemplates such amendments, delegating authority to EXIM staff to make certain changes to previously approved transactions on their own, with other changes requiring Board approval. JA413-18. The amendment process was first invoked in May 2020 to decrease the total amount of the loan to $4.7

billion, "allocate an estimated $1.8 billion … to support the project's offshore production," and make TotalEnergies the project operator. JA244, 256; *see* JA406 (Board meeting minutes).

2. An insurgency by ISIS-affiliated jihadists has existed in the northern Cabo Delgado province of Mozambique since 2017. JA244. On March 24, 2021, the insurgency attacked a town close to the project site. JA244. A month later, in light of the security situation in the province, TotalEnergies declared *force majeure* and suspended work on the project. JA245.

3. As a result of the efforts of the Mozambican government and regional partners following the March 2021 attack, the security situation significantly improved in the region. JA247. TotalEnergies thus sought to resume work on the project after a multi-year pause and submitted a request to EXIM in January 2024 to extend the loan's final disbursement, repayment, and completion dates by four years. JA271. Because the extension sought was greater than two years, EXIM's procedures required that the amendment request be submitted to the Board. JA271; *see* JA414.

On March 13, 2025, EXIM "unanimously approved the second amendment of [the] 2019 direct loan." JA260; *see* JA424 (Board meeting minutes). This amendment "extends certain dates and makes related changes in connection with the restart of project construction operations following [the] security related force majeure declaration." JA263. EXIM explained that it "thoroughly reviewed the physical security situation of the project" before approving the amendment, and "determined that the security risks to the project had been properly addressed." JA263.

EXIM emphasized its prior "economic impact analysis" and conclusion "that the transaction would likely have a net positive impact on the U.S. economy, based on supply/demand analysis over the life of the loan." JA264. It thus reiterated that the project "will not compete in any harmful way with the production of U.S. LNG." JA264. EXIM also noted the "lengthy and transparent internal, interagency, and external due diligence and risk review process" that it undertook prior to the 2019 approval. JA264.

C. Prior Proceedings

Plaintiffs Friends of the Earth U.S. and Justiça Ambiental are two non-profit environmental organizations. JA20-22. On July 14, 2025, plaintiffs brought this suit against EXIM and its Board of Directors, challenging the Board's March 2025 action. As relevant here, the complaint alleges that the amendment violated the APA and/or NEPA because, in advance of that approval, EXIM did not: (1) provide an opportunity for notice and comment, JA97-98; (2) consider "adverse economic impacts in the United States," JA98-99; (3) prepare an EIS, JA103; or (4) provide certain "statutorily mandated information," JA103-04. On July 21, 2025, plaintiffs moved for a preliminary injunction, JA6, seeking to enjoin EXIM from releasing any loan funds, Dkt. 13-17, at 2.

The district court denied the motion. JA563. Evaluating standing, JA569-76, the court concluded that plaintiffs failed to show a "'substantial likelihood of standing'" under most of their theories, JA574; *see* JA571 n.1. The court explained that plaintiffs had only demonstrated informational injury based on "EXIM's failure to share statutorily mandated information before it approved the 2025 extension," JA574-76, although such standing only supported some claims, JA576.

On the merits, the district court concluded that plaintiffs failed to demonstrate a likelihood of success on any of their claims. JA576-91. The court determined that the Board was not required to undergo another round of notice and comment before approving the date extension, reasoning that the relevant statutory requirements did not apply to the amendment at issue, JA580-82, and EXIM's internal policies did not either, JA583-85. The court further concluded that "nothing in the Bank Act expressly required EXIM to engage in further [economic] analysis" before approving the extension. JA586. Under NEPA, the court determined that "Plaintiffs have not established that EXIM's decision not to prepare an EIS was arbitrary or contrary to law." JA590. Finally, the court concluded that because EXIM was not required to undergo notice and comment or an environmental or economic analysis, there was no "'discrete' information-sharing action that it was 'required to take.'" JA591.

Addressing the remaining preliminary-injunction factors, the district court concluded that "[t]he irreparable harm factor slightly favors Plaintiffs" but "does not weigh too strongly in Plaintiffs' favor because it is less clear that Plaintiffs' injuries are certain and imminent." JA593-94. And the court determined that "[t]he balance of equities is in relative equipoise," emphasizing that "disrupting such a large project significantly harms the reliance interests of several countries and corporations that have been working for over a decade to extract LNG from Mozambique." JA595. Overall, the court concluded that "the 'extraordinary remedy' of a preliminary injunction is not merited." JA596.

SUMMARY OF ARGUMENT

I. The district court correctly denied a preliminary injunction because plaintiffs have no likelihood of success on the merits.

A. Plaintiffs have not demonstrated a substantial likelihood of standing to challenge EXIM's March 2025 approval of the loan amendment.

In *FDA v. Alliance for Hippocratic Medicine*, the Supreme Court made clear that organizational standing does not exist when a litigant merely spends money to "advocate against the defendant's action." 602 U.S. 367, 394 (2024). Rather, the defendant's actions must have "directly affected and interfered with [the plaintiff]'s core business activities," as by impairing its ability to provide specific direct services. *Id.* at 395. The injuries alleged by plaintiffs here—involving harm to their advocacy efforts and the burden of facing greater general demand for their services—do not demonstrate that EXIM's action directly interfered with their core activities in such a way as to support organizational standing.

Plaintiffs also fail to demonstrate a likelihood of informational standing. Nor would any such informational injuries warrant the preliminary injunction that plaintiffs seek.

B. Plaintiffs' challenge to EXIM's decision to approve the amendment without a new round of notice and comment has no likelihood of success. The Bank Act only requires notice-and-comment procedures for a financing decision when the Board is engaging in final consideration of an application proposing a long-term, high-value transaction, or when there has been a material change to such an application. *See* 12 U.S.C. § 635a(c)(10). Those circumstances do not describe the amendment at issue.

C. Plaintiffs have likewise failed to show a likelihood of success on their claim that the Bank Act required a fresh economic analysis before EXIM could approve the amendment. Certain economic determinations are required before EXIM "extend[s] any direct credit" for "expanding production of any commodity for export" by a foreign country. 12 U.S.C. § 635(e)(1). The original 2019 approval of the loan was just such an action extending credit to the project. EXIM undertook the appropriate economic analysis before making that 2019 decision, plaintiffs did not challenge that decision, and EXIM reasonably reiterated the conclusions of that analysis in approving the 2025 amendment.

D. Similarly, plaintiffs have not demonstrated a likelihood of success on their claim that EXIM was required to issue an environmental impact statement before approving the amendment. NEPA only requires an EIS for "major Federal actions." EXIM determined prior to the 2019 approval that the loan was not a "major Federal action," and no new determination was required for an amendment that maintained the status quo. Plaintiffs have not shown that EXIM's decision not to issue an EIS is likely beyond the "broad zone of reasonableness" that courts afford agency decisionmakers under NEPA. *See Seven Cnty. Infrastructure Coal. v. Eagle County*, 605 U.S. 168, 183 (2025).

E. Plaintiffs' claim that EXIM failed to divulge statutorily mandated information is derivative of their other claims and thus fails for the same reasons. Regardless, the informational injury underlying this claim would not be redressed by—and thus cannot justify—an injunction barring the disbursement of loan funds.

II. The remaining preliminary-injunction factors do not favor relief.

A. Plaintiffs fail to identify any irreparable harm to their own concrete interests directly resulting from EXIM's amendment approval and redressable by a preliminary injunction. The three alleged injuries identified—involving procedural rights in vacuo, harm to third parties, or the choice to provide services—do not qualify as irreparable injuries that can support preliminary-injunctive relief.

B. Plaintiffs also cannot show that the public interest and balance of equities support such relief where plaintiffs have not demonstrated a likelihood that the amendment approval was unlawful and where there is significant harm to the reliance interests of several countries and corporations from further delay of this long-anticipated project.

III. If the Court disagrees with any of the district court's reasoning, the proper course would be to remand for that court to rebalance the preliminary-injunction factors in the first instance.

STANDARD OF REVIEW

The denial of a motion for a preliminary injunction is reviewed for abuse of discretion. *See eBay Inc. v. MercExchange, LLC*, 547 U.S. 388, 391 (2006).

ARGUMENT

A preliminary injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). To prevail, the moving party must establish (1) that it is "likely to succeed on the merits"; (2) that it is "likely to suffer irreparable harm in the absence of preliminary relief"; (3) that the "balance of equities" tips in its favor; and (4) that "an injunction is in the public interest." *Id.* at 20. The last two factors "merge" where "the government is the party sought to be enjoined." *MediNatura, Inc. v. FDA*, 998 F.3d 931, 945 (D.C. Cir. 2021).

I. Plaintiffs Have Failed To Demonstrate A Likelihood Of Success On The Merits.

A foundational requirement for obtaining preliminary-injunctive relief is that the plaintiff demonstrate a likelihood of success on the merits. Indeed, because "likelihood of success is an independent, free-standing requirement for a preliminary injunction," even a "strong showing" on another factor could not "make up for a failure to demonstrate a likelihood of success on the merits." *Davis v. Pension Benefit Guar. Corp.*, 571 F.3d 1288, 1296 (D.C. Cir. 2009) (Kavanaugh, J., concurring). Accordingly, where a plaintiff fails to clear this initial hurdle, the Court need not "'proceed to review the other three preliminary injunction factors.'" *Guedes v. ATF*, 920 F.3d 1, 10 (D.C. Cir. 2019) (per curiam).

Because plaintiffs lack a substantial likelihood of standing to bring any of their claims, they cannot demonstrate likely success on the merits, and the denial of the preliminary injunction can be affirmed on that basis alone. But even if plaintiffs had standing, the district court correctly determined that they are unlikely to succeed on the merits of any of their claims.

A. Plaintiffs Have Failed to Demonstrate a Substantial Likelihood of Standing.

As the party seeking a preliminary injunction, plaintiffs "must show a substantial likelihood of standing." *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 913 (D.C. Cir. 2015) (quotation marks omitted). They have failed to do so.

1. Plaintiffs lack organizational standing.

In attempting to demonstrate standing, plaintiffs advance theories of organizational standing that are incompatible with the Supreme Court's recent decision in *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367 (2024). In general, organizations may "sue on their own behalf for injuries they have sustained." *Id.* at 393 (quotation marks omitted). Like all litigants, however, organizations must establish standing by "satisfy[ing] the usual standards for injury in fact, causation, and redressability." *Id.* at 393-94. Plaintiffs' attempts to meet those requirements are not sufficient under *Alliance*.

In *Alliance*, the Court squarely rejected the proposition that "standing exists when an organization diverts its resources in response to a defendant's actions." 602 U.S. at 395. As the Court explained, "[a]n organization cannot manufacture its own standing" by "expending money to gather information and advocate against the defendant's action" in this way. *Id.* at 394. Rather, organizations must show that a defendant's "actions directly affected and interfered with [the plaintiff]'s core business activities." *Id.* at 395. For instance, directly giving an organization "false information" that "'perceptibly impaired [its] ability to provide [specific direct] services'" was sufficient to establish organizational standing in *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982). *Alliance*, 602 U.S. at 395. But the principle cannot be "extend[ed] … beyond [that] context." *Id.* at 396.

a.i. Plaintiffs' lead theory of standing is that they were "denie[d] … a means of redress [they] would use to advance [their] mission"—specifically, that they were denied the opportunity to comment on the Board's amendment approval because EXIM did not conduct notice and comment before that decision. Br.22-23.

The denial of an opportunity to engage in public advocacy is not tantamount to direct interference with a core business activity under *Alliance*. *See* 602 U.S. at 395 (observing that "[c]ritically," the *Havens Realty* plaintiff was "not only … an issue-advocacy organization"). The Supreme Court emphasized that organizational standing cannot be "simply based on the 'intensity of the litigant's interest' or because of strong opposition to the government's conduct." *Id.* at 394. If allegedly denying an issue-advocacy organization the opportunity to submit comments (or proper consideration of those comments) were alone a sufficiently concrete injury, however, "that theory would mean that all the organizations in America would have standing to challenge almost every federal policy that they dislike." *Id.* at 395. "[S]uch an expansive theory of standing" cannot be correct. *Id.*

This Court's precedents confirm that "harms to an organization's interests in litigation, lobbying," "participating in administrative proceedings," "or pure issue advocacy" do not constitute concrete injuries sufficient to establish organizational standing. *Friends of Animals v. Bernhardt*, 961 F.3d 1197, 1208 (D.C. Cir. 2020); *see, e.g.*, *Center for*

Biological Diversity v. U.S. Dep't of the Interior, 144 F.4th 296, 315 (D.C. Cir. 2025); *Electronic Priv. Info. Ctr. (EPIC) v. FAA*, 892 F.3d 1249, 1255 (D.C. Cir. 2018). As applied to this case, that conclusion is bolstered by the principle that "the 'deprivation of a procedural right without some concrete interest that is affected by the deprivation—a procedural right *in vacuo*—is insufficient' to confer Article III standing." *Ameria First Legal Found. v. Greer*, 153 F.4th 1311, 1314 (D.C. Cir. 2025). The denial of an opportunity to participate in agency decisionmaking, on its own, is not a concrete injury for purposes of Article III; the fact that plaintiffs engage in issue advocacy does not alter that conclusion.

ii. Plaintiffs err in relying on older precedent of this Court to contend that an organization has standing so long as it can demonstrate that "the defendant's act 'injured the organization's interest'" and it "'used its resources to counteract that harm.'" Br.20 (quoting *People for the Ethical Treatment of Animals v. USDA* (*PETA*), 797 F.3d 1087, 1094 (D.C. Cir. 2015)).

That framework for assessing organizational standing is irreconcilable with the Supreme Court's more recent decision in *Alliance*. There, the Court made clear that an organization (like any other litigant) may not establish cognizable injury based on asserted harm to its "interests." *Alliance*, 602

U.S. at 394 (quotation marks omitted). And the Court squarely considered the question whether "standing exists when an organization diverts its resources in response to a defendant's actions" and concluded that such a theory of standing "is incorrect." *Id.* at 395; *see also PETA*, 797 F.3d at 1099 (Millett, J., dubitante) (explaining that this Court's older diversion-of-resources precedent is "hard to reconcile" with ordinary standing principles).

Plaintiffs contend that "[f]ar from casting doubt on *PETA*," this Court has "*applied* it" after *Alliance*. Br.28 (citation modified). But they do not identify any cases actually favorable for them. Instead, they rely on *Center for Biological Diversity* , which rejected the organizational plaintiff's theory of standing even under this Court's previous precedents. 144 F.4th at 314-15. The Court thus had no occasion to specifically consider whether the framework identified in those precedents can be reconciled with *Alliance*.

Indeed, far from reaffirming those precedents, the Court specifically noted that *Alliance* "described *Havens Realty*—the foundation of [this Court's] organizational injury precedents—as an 'unusual case' and cautioned against extending it beyond circumstances in which the challenged action 'directly affected and interfered with [a plaintiff's] core business activities.'" *Center for Biological Diversity*, 144 F.4th at 315 (second alteration in original) (quoting *Alliance*, 602 U.S. at 395-96). And as Judge

Millett has explained, the *Havens Realty* decision is best understood as standing for the unremarkable proposition that an organizational plaintiff can establish standing by showing that the defendant acted directly on the plaintiff organization in a way that impeded the plaintiff's ability to carry out its mission. *See PETA*, 797 F.3d at 1100 (Millett, J., dubitante) (noting that in *Havens Realty*, the defendant had unlawfully provided misinformation to the plaintiff organization).

iii. Moreover, even assuming that *PETA* remains good law and that the facts of that case demonstrated interference with a "core business activity," the circumstances here still would not demonstrate standing under the "inability to seek redress" theory in *PETA*.

Plaintiffs assert that *PETA* controls because EXIM has denied them "a means of redress [they] would use to advance [their] mission." Br.22. But there, PETA argued that the Department of Agriculture's failure to engage in notice-and-comment rulemaking to apply Animal Welfare Act regulations to birds deprived PETA of the ability to file complaints under those regulations alerting the Department to avian mistreatment. *PETA*, 797 F.3d at 1089-91. The challenged action was thus found to "perceptibly impai[r] PETA's ability to … bring [Animal Welfare Act] violations to the attention of the agency charged with preventing avian cruelty." *Id.* at 1095 (citation modified). The concrete injury for standing purposes was not PETA's *past procedural* inability to participate in the specific notice-and-comment rulemaking underlying the claims at issue; rather, it was the inability to file future complaints of illegality to initiate *future substantive* proceedings.

This Court has previously determined that plaintiffs lack organizational standing under *PETA*'s "inability to seek redress" theory where, as here, they challenge the lack of notice-and-comment rulemaking in the administrative action under review, rather than the deprivation of a separate mechanism for the future pursuit of substantive relief from an agency. *See EPIC*, 892 F.3d at 1256; *Food & Water Watch*, 808 F.3d at 920-21. In such cases, plaintiffs' failure to participate in notice-and-comment rulemaking alone "sound[s] in pure issue advocacy." *EPIC*, 892 F.3d at 1256. And injuries "limited to issue advocacy" are not sufficient even under *PETA*. *Center for Biological Diversity*, 144 F.4th at 315.

b. Under plaintiffs' second theory of organizational standing, the LNG project will "displace more people" and "exacerbate the conflict" with the insurgency in Mozambique, causing locals to seek services from plaintiffs "in greater numbers," and resulting in "less effective" means for plaintiffs to secure "remedies." Br.30-31. Again, plaintiffs' theory is not sufficient under *Alliance*.

i. As an initial matter, the standing section of plaintiffs' brief (Br.30-35) provides no detail regarding plaintiffs' mission or the kind of on-the-ground "services" purportedly being impaired. Without those specifics, it is impossible to properly assess whether plaintiffs' "core ... activities" are implicated. *Alliance*, 602 U.S. at 395. Significantly, plaintiffs profess to be environmental organizations, JA20-21, but they offer no explanation for how any increased burden of providing services impairs efforts to protect the environment. *See American Soc'y for the Prevention of Cruelty to Animals v. Feld Ent., Inc.*, 659 F.3d 13, 25 (D.C. Cir. 2011) ("[A]n organization seeking to establish *Havens* standing must show a 'direct conflict between the defendant's conduct and the organization's *mission*.'").

In any event, the "services" identified in plaintiffs' statement (Br.12-13) and cited declarations (Br.32, 34) largely sound in issue advocacy. Given the lack of notice and comment, plaintiffs assert that they will instead "raise community members' rights [and] interests" by "using grievance mechanisms," "meeting with Congress," "engaging with the [Office of Inspector General]," "submitting complaints to other banks," and "press outreach." JA115, ¶¶ 40-41; JA132, ¶ 53; *see also* [redacted]

[redacted] "[E]xpending money to gather information and advocate against the defendant's action" does not give rise to organizational standing. *Alliance*, 602 U.S. at 394; *EPIC*, 892 F.3d at 1256 (altering advocacy strategy in absence of notice-and-comment rulemaking not sufficient).

Additionally, to demonstrate a concrete injury in fact, an organization must establish that the defendant's conduct "'perceptibly impaired'" the organization's "'ability to provide ... services.'" *Alliance*, 602 U.S. at 395; *Food & Water Watch*, 808 F.3d at 919 (such impairment occurs "when the defendant's conduct causes an inhibition of the organization's daily operations" (citation modified)). Plaintiffs demonstrate no such "interfere[nce]" here. *Alliance*, 602 U.S. at 395.

Instead, plaintiffs contend that they are already providing services to "Project-affected people" but "EXIM's funding will require them to provide more ... services" that are "more difficult" and "less effective" than if plaintiffs had persuaded EXIM not to approve the amendment. Br.21, 30-32, 34. Plaintiffs also assert that, given the existing conflict in the area, it will be difficult to travel there to effectively address "new ... harms." Br.34-35. Contributing to circumstances in which an organization could be asked to provide *more* of a certain type of services can hardly be deemed to "'impai[r]'" or "interfer[e]" with the ability to provide those specific services in the way that the Supreme Court contemplated in *Alliance*. 602 U.S. at 395 (describing *Havens Realty*, in which the defendant gave the plaintiff "false information about apartment availability," which "'impaired [the plaintiff]'s ability to provide counseling and referral services for … homeseekers'"). The Court cautioned that the notion of sufficient interference with the ability to provide specific services in *Havens Realty* should not be "extend[ed] … beyond [that] context." *Id.* at 396. To find a sufficient injury here—where plaintiffs only complain that the challenged action might result in being asked to provide more of certain less-preferred services—would require a significant extension of *Havens Realty*.

ii. Moreover, organizational standing as clarified in *Alliance* requires that challenged actions "directly affec[t] and interfer[e] with [the plaintiff]'s core business activities." 602 U.S. at 395; *see Viasat, Inc. v. FCC,* 47 F.4th 769, 781 (D.C. Cir. 2022) ("[An organization] must prove that its 'discrete programmatic concerns are being *directly* and adversely affected.'" (emphasis added)). Causation is particularly important in the organizational-standing context where, as here, the challenged government action is "'regulat[ing] … *someone else*'" and standing "'is ordinarily substantially more difficult to establish.'" *Alliance*, 602 U.S. at 382. Courts must disregard "speculative links—that is, where it is not sufficiently predictable how third parties would react to government action or cause downstream injury," and "attenuated links—that is, where the government action is so far removed from its distant (even if predictable) ripple effects that the plaintiffs cannot establish Article III standing." *Id.* at 383.

Under plaintiffs' theory, EXIM's approval of the amendment will cause the project to be resumed; the resumption of the project will ultimately displace local people, harm the environment, and "fue[l] the conflict"; through that conflict, the insurgency will target the project area to a greater degree; this will all cause local people to seek more services from plaintiffs; and plaintiffs will be "force[d]" "to provide more and more burdensome services." Br.31-34. The alleged impairment to plaintiffs' services comes at the end of that long causal chain, and relies "on speculation about what third parties … will do in response to the 2025 extension." JA571 n.1 (rejecting standing relying on speculation about actions of "Islamic insurgencies and the Mozambican government").

There is no sense in which EXIM's approval of the loan extension at the beginning of that chain "*directly* affect[s] and interfere[s]" with those services. *Alliance*, 602 U.S. at 395 (emphasis added); *see Center for Biological Diversity*, 144 F.4th at 315 (explaining that *Alliance* "cautioned against extending [*Havens Realty*] beyond circumstances in which the challenged action *directly affected and interfered* with a plaintiff's core business activities") (emphasis added) (citation modified)). Instead of demonstrating the requisite direct interference, plaintiffs rely on multiple speculative and attenuated links that are insufficient to satisfy the causation requirement.

2. Plaintiffs lack informational standing.

Plaintiffs' opening brief does not renew several standing arguments pursued in district court, including the informational-standing argument. *See* JA571 n.1 (diversion of resources and third-party standing); JA574-76 (informational injury). Accordingly, such arguments are ordinarily deemed forfeited. *See Scenic Am., Inc. v. U.S. Dep't of Transp.*, 836 F.3d 42, 53 n.4 (D.C. Cir. 2016) ("Although a party cannot forfeit a claim that we lack jurisdiction, it can forfeit a claim that we possess jurisdiction.").

a. Even assuming informational injury were not forfeited, plaintiffs have not demonstrated standing on this basis. To demonstrate an informational injury, a "plaintiff must show that '(1) it has been deprived of information that, on its interpretation, a statute requires the government or a third party to disclose to it, and (2) it suffers, by being denied access to that information, the type of harm Congress sought to prevent by requiring disclosure.'" *EPIC v. Presidential Advisory Comm'n on Election Integrity*, 878 F.3d 371, 378 (D.C. Cir. 2017).

Plaintiffs primarily argued that they are harmed because lack of disclosure inhibits their ability to "shar[e]" information "to educate [local] communities." Dkt. 13-1, at 35. But plaintiffs never claim (much less attempt to demonstrate) that this is "'the type of harm Congress sought to prevent by requiring disclosure.'" *Presidential Advisory Comm'n*, 878 F.3d at 378; *see* Dkt. 13-1, at 34-35, 38; Dkt. 38, at 12-15.

Plaintiffs also argued that "[t]hey were left in the dark about EXIM's intentions and the Project's plans and impacts, forced to seek alternate information sources, denied the ability to make fully informed submissions, and will be harmed by the destructive Project." Dkt. 13-1, at 38. But they offer only the bare assertion that those are "the types of injuries Congress sought to prevent" in requiring disclosure, *id.*, which (in addition to being so cursory as to be forfeited) is incorrect. The purpose of EXIM producing and disclosing certain information as part of its decisionmaking process is not for the benefit of issue-advocacy organizations; it's to ensure that EXIM "take[s] into account the potential beneficial and adverse environmental effects of goods and services for which support is requested," "[c]onsistent with [statutory] objectives." 12 U.S.C. § 635i-5(a)(1)[4]; *see id.* § 635(b)(1)(A) (listing objectives). Accordingly, plaintiffs cannot demonstrate informational standing based on the fact that EXIM did not release certain analyses that it was not required to create.

b. In all events, even if plaintiffs had demonstrated informational standing, it would be improper to issue a preliminary injunction barring disbursement of loan funds solely on that basis. Halting the substantive agency action "would not 'likely' redress any informational … injury, even had [plaintiffs'] suffered one." *Presidential Advisory Comm'n*, 878 F.3d at 380. Rather, "ordering the defendants *not* to" engage in the substantive action "only *negates* the need (if any) to prepare" and release the desired information, "making it *less* likely that [plaintiffs] will obtain the information." *Id.*

[4] This is the only true disclosure requirement that plaintiffs identify. Br.70. Directives to engage in certain decisionmaking procedures do not qualify as public-disclosure requirements merely because the agency is required to publish a notice in the Federal Register of those procedures, *see* 12 U.S.C. § 635a(c)(10)(C)(i)(I); *id.* § 635(e)(7)(B)(i); or disclose to a requestor certain summaries of studies created through those procedures if those studies exist, *see id.* § 635a(c)(10)(F); *id.* § 635(e)(7)(D). Regardless, those procedures are also designed to ensure that *the Board* has the benefit of certain information in determining whether a particular transaction would have adverse domestic effects, *id.* § 635(e), and whether to ultimately approve the transaction, *id.* § 635a(c)(10).

B. EXIM Was Not Required to Undertake a Second Round of Notice and Comment.

1. The Bank Act did not require notice and comment before approval of the amendment.

The district court correctly determined that, after engaging in notice and comment as part of its final approval of the loan application in 2019—which plaintiffs did not challenge—EXIM was not required to undertake another round of notice and comment before approving the 2025 amendment. *See* JA579-83.

The Bank Act provides for narrow circumstances under which notice and comment is required for general financing decisions. When the Board meets to undertake "final consideration of a long-term transaction" exceeding $100 million, EXIM must "provide a notice and comment period," 12 U.S.C. § 635a(c)(10)(A), by "publish[ing] … a notice of the application proposing the transaction" in the Federal Register, and "provid[ing]" at least "25 days for the submission … of comments on the application," *id.* § 635a(c)(10)(C)(i)(I)-(II). As part of that process, if "a material change is made to an application" after notice has already been published, EXIM must "publish … a revised notice of the application and provide for an additional comment period." *Id.* § 635a(c)(10)(D)(i).

EXIM did not violate those notice-and-comment requirements in approving the 2025 amendment.

a. Crucially, those procedures do not apply to *amendments* to previously approved transactions. In such circumstances, there is no "application proposing the transaction" on which to seek comment, 12 U.S.C. § 635a(c)(10)(C)(i)(I), because that application has already been granted and EXIM has already approved a final commitment on the transaction. The Bank Act imposes no requirement for soliciting additional comments on routine requests for amendments. This targeted application of notice-and-comment requirements was necessary to effectuate Congress's objectives in imposing such procedures: ensuing that EXIM "has information it needs to confirm it is not supporting transactions used to support products that could be used to compete with American companies," while preventing the process from ultimately delaying transactions. 158 Cong. Rec. H2465, H2468 (daily ed. May 9, 2012).

EXIM properly engaged in notice and comment on the application for financing this transaction in advance of the "final consideration of [this] long-term transaction," 12 U.S.C. § 635a(c)(10)(A), which occurred in 2019 when the Board approved the loan's final commitment. *See* JA403; 84 Fed. Reg. 44,304. In March 2025, the Board was not considering a new application for a long-term transaction; rather, it was considering an amendment to a transaction that had already been finally approved, given the disruption caused by unrelated events from 2021 to 2024. As the district court explained, "EXIM's decision to extend the dates in a previously approved loan by four years ... appears fundamentally different than the kind of 'final consideration of a long-term transaction' at the end of the application process contemplated by the Bank Act." JA581.

i. Plaintiffs contend that the March 2025 approval fits within the ordinary meaning of "'final consideration of a long-term transaction,'" and thus notice and comment was required. Br.36-38. This argument hinges on reading this single statutory phrase in isolation. But courts "do not construe statutory phrases in isolation; [they] read statutes as a whole," because "the meaning of statutory language, plain or not, depends on context." *Ross v. SEC*, 34 F.4th 1114, 1119 (D.C. Cir. 2022) (citation modified). In context, it is clear what Congress meant by "final consideration": EXIM's final action on an application proposing the long-term transaction.

That meaning is clear from the relationship between the provisions in § 635a(c)(10). Subparagraph (A) establishes the requirement "[i]n general" that the Board must "provide a notice and comment period." 12 U.S.C. § 635a(c)(10)(A). Subparagraph (C) sets forth the "[s]pecific requirements" for the nature and content of the notice and length of the comment period required by (A). *Id.* § 635a(c)(10)(C). That includes "a notice of the application proposing the transaction" "publish[ed] in the Federal Register," and at least a 25-day period "for the submission … of comments on the application." *Id.* § 635a(c)(10)(C)(i)(I)-(II). Subparagraph (D) specifies the "[p]rocedure" that applies if there is a "material change … made to an application … after a notice with respect to the application" was already "published" under subparagraph (C). *Id.* § 635a(c)(10)(D)(i). And subparagraph (E) specifies how "comments on the application" "submitted" through this process are provided to the Board "[b]efore [it] tak[es] final action on an application." *Id.* § 635a(c)(10)(E). Those provisions collectively refer to a single process through which comments are solicited, submitted, and considered on one specific type of action: EXIM's final decision on an application proposing a long-term transaction over $100 million. *See* JA581 ("[T]he Bank Act … repeatedly makes clear that this procedural requirement is concerned with applications for a loan.").

Whether the March 2025 action approved a "transaction" in the abstract, or was the most recent time the Board considered any aspect of that "transaction," Br.37-38, is inapposite. The "[s]pecific requirements" in subparagraph (C) only direct EXIM to publish notice of an "application proposing [a covered] transaction," and provide for the submission of comments "on [that] application." 12 U.S.C. § 635a(c)(10)(C)(i)(I)-(II). If the Board is not undertaking final consideration of an application proposing a long-term, high-value transaction, those specific requirements to publish notice and accept comments do not apply. It thus makes no sense to think that Congress intentionally chose the word "transaction" in subparagraph (A) to mean something for which there was no pending "application," *contra* Br.39-40; and thus set up a free-floating "general notice and comment requirement" in subparagraph (A) that need not follow the specific requirements in subparagraphs (C), (D), and (E), *contra* Br.41-42. Congress established a single notice-and-comment process subject to one set of requirements and tied to the final consideration of an application.

ii. Plaintiffs also contend that "even if an 'application' … triggers notice and comment, the Board was considering an application," either because TotalEnergies's 2024 amendment request should be treated as a new application or because EXIM undertook new final consideration of the original 2015 application. Br.40-41. These arguments are unavailing.

The 2024 amendment request does not qualify as the kind of application for which its "final consideration" triggers notice and comment. Under the Bank Act, notice and comment is required for the final consideration of an "application *proposing* the [long-term, high-value] transaction." 12 U.S.C. § 635a(c)(10)(C)(i)(I) (emphasis added).[5] The original 2015 application was the one that proposed this transaction. The 2024 amendment request, by contrast, proposed merely to extend the dates of the previously approved transaction. Significantly, plaintiffs seem to acknowledge that there is a single transaction at issue that had been proposed before 2019. Br.40 ("[B]ecause a 'transaction' may refer to a series of agreements, it does not matter if the Board previously approved an application for a Project loan.").

Even if the March 2025 Board meeting constituted the "final consideration of a long-term transaction" proposed in the original 2015 application, and the 2019 approval of the loan's final commitment is somehow retroactively recharacterized as only intermediate consideration (*but see supra*), plaintiffs fare no better. EXIM fully complied with the notice-and-comment requirement by engaging in that process back in 2019, "[*b*]*efore*" the 2025 "meeting of the Board." 12 U.S.C. § 635a(c)(10)(A) (emphasis added). There is no statutory requirement for notice and

[5] The fact that the amendment request proposed changes that were not "material" under the meaning of the Bank Act—some of which the Board did not need to approve at all—only underscores that the request could not be treated as a new application. *See infra* Part I.B.1.b.

comment to occur with any particular temporal proximity to the "final consideration."

b. The district court also correctly determined that the 2025 amendment did not involve a "material change" requiring a revised notice and new comment period. JA581-82.

The statute specifies that an additional notice-and-comment process is required for "materially changed applications," 12 U.S.C. § 635a(c)(10)(D), *i.e.*, "an application to which this paragraph applies" and thus for which "notice with respect to the application" was already "published under subparagraph (C)(i)(I)," *id.* § 635a(c)(10)(D)(i). But as explained, the 2025 amendment was not an "application" under the meaning of § 635a(c)(10), and there was no pending application for a final commitment in 2025 that could be subject to a material change. That application had already been granted in 2019. Indeed, plaintiffs agree (Br.43), that the material-change provision does not apply to the 2025 amendment. Plaintiffs thus waive any argument that the material-change provision was violated here, and no further consideration of this provision is required.

Even assuming the material-change provision applied, these changes were not "material" within the meaning of the Bank Act. The statute "defined" "material change" such that "the term … includes an increase of at least 25 percent in the amount of a loan or guarantee requested in the application." 12 U.S.C. § 635a(c)(10)(D)(ii). When Congress uses the term "includes," the following "examples enumerated in the text" are generally "intended to be illustrative, not exhaustive." *United States v. Brock*, 94 F.4th 39, 57 (D.C. Cir. 2024) (quotation marks omitted). To be "encompassed by the definition," however, "other unlisted forms of conduct must fit that same mold." *Id.*

The changes at issue do not fit the same mold as an increase of 25% or more in the loan amount—which here would require an increase of $1.175 billion. Plaintiffs assert that "extending dates" is material because "the interest rates and repayment schedule are different," and "the start date of production" was delayed. Br.44-45. But if a 24% increase in the loan amount (here, a $1.128 billion increase) would not constitute a "material change" under the Bank Act, then such date extensions clearly do not qualify. *See* JA582 n.7 ("A four-year extension of dates, on its own, does not fit the same mold of the kind of material change … that Congress chose to codify in the statute." (citation modified)). EXIM's established procedures confirm that date extensions are immaterial to how the Board views a transaction: the Board need only approve such changes if they are over two years; otherwise staff can approve that amendment without involving the Board. *See* JA414.

Plaintiffs invoke (Br.44) the fact that the staff memorandum to the Board in connection with the 2025 amendment [redacted] But the memo specifically explains that it is [redacted]

Plaintiffs also assert that "changes to the operating environment, like the conflict" qualify as "material changes." Br.45. But the statute only applies to "a material change … *made to an application*." 12 U.S.C. § 635a(c)(10)(D)(i) (emphasis added). That naturally refers to changes in the *terms* of a loan for which applicants are applying, such as "an increase … in the amount of a loan … requested in the application," *id.* § 635a(c)(10)(D)(ii). "Expanding the phrase ['material change'] to capture" changes to the external environment generally "breaks that mold" Congress created. *Brock*, 94 F.4th at 57.

Finally, plaintiffs fault the district court for "disregard[ing] … extensive changes 'of substance' regarding [redacted]

[redacted]

Br.44 (citing [redacted]). But the only "changes" that plaintiffs identified below were that "Total declared *force majeure*" and the "date changes." Dkt. 13-1, at 20; Dkt. 38, at 29-30. Plaintiffs thus "forfeited" any "arguments" regarding other changes "by failing to raise them in the district court." *Doe v. Columbia*, 151 F.4th 435, 450 n.3 (D.C. Cir. 2025). In any event, [redacted] also do not fit the same mold as a 25% ($1.175 billion) alteration to the loan amount. Under EXIM's procedures, such amendments could be approved by staff without the Board's involvement. *See* JA271; [redacted].

c. Finally, plaintiffs invoke context and purpose in support of their statutory construction. Br.46-50. But as discussed, *supra* Part I.B.1.a, those factors favor the defendants' reading of the Bank Act.

Specifically, plaintiffs point to a provision requiring EXIM to notify Congress before "final approval[s]" of transactions over $100 million, which operates "concurrent with" the public-notice period. Br.47 (first quoting 12 U.S.C. § 635(b)(3); then quoting *id.* § 635a(c)(10)(A)). Plaintiffs argue that the absence of language regarding applications in the congressional-notification requirement of § 635(b)(3) "confirms" that this same language "does not limit the" public-notice requirement. Br.47. To the contrary, the text of a separate requirement in a separate statutory section provides no reason to disregard the proper reading of § 635a(c)(10). Moreover, as the district court noted, because § 635(b)(3) "applies only for 'final' approvals" and is cross-referenced by § 635a(c)(10)(A), it should be given the same meaning as the public-notice requirement. JA582-83.

Invoking general APA principles, plaintiffs also argue that notice and comment must occur close in time to agency decisionmaking, and new opportunity for comment must be afforded given changed circumstances. Br.48-50. Congress specifically determined, however, to exempt EXIM's loan-making activities from the APA's general notice-and-comment requirements. 5 U.S.C. § 553(a)(2); 12 U.S.C. § 635(e)(7)(F). Instead, Congress created narrower requirements governing only certain EXIM actions. EXIM followed those requirements here, and nothing in the statute required it to conduct an additional round of notice and comment before resolving a routine amendment request for an already-approved loan. Accordingly, plaintiffs lack a likelihood of success on their claim that the Bank Act required EXIM to undertake such procedures here.

2. EXIM's non-binding internal guidelines do not require notice and comment for amendments.

Plaintiffs next contend (Br.51-54) that internal agency guidelines separately required EXIM to provide notice and comment before approving the amendment, and failure to do so was arbitrary and capricious. This argument fails on two bases.

First, as the district court explained, the guidelines "are principally concerned with *applications* for a loan—not amendments to a previously approved loan." JA584 (citing EXIM, *Environmental and Social Due Diligence Procedures and Guidelines* § I.2, https://perma.cc/98CK-QCS6 (*Environmental Guidelines*)). The guidelines are thus consistent with the Bank Act itself. *Compare Environmental Guidelines* § I.8 ("final application for long-term financing"), *and id.* § IV.B.2 ("Final Applications[] for long-term transactions"), *with* 12 U.S.C. § 635a(c)(10)(A) ("final consideration of a long-term transaction"), *id.* § 635a(c)(10)(E) ("final action on an application"); and *id.* § 635a(c)(10)(C)(i)(I) ("application proposing the transaction").

Second, the *Environmental Guidelines* contain non-binding policy statements. As the statute makes clear in directing the establishment of the guidelines, they exist to assist "the Board of Directors" in exercising discretion to determine, "*in its judgment*, to withhold financing from a project for environmental reasons or to approve financing after considering the potential environmental effects." 12 U.S.C. § 635i-5(a)(2) (emphasis added). The guidelines thus do not impose legally binding obligations distinct from the Bank Act. *See EPIC v. IRS*, 910 F.3d 1232, 1245 (D.C. Cir. 2018) ("A non-binding document cannot impose on an agency an enforceable duty to act.").

Plaintiffs reiterate various arguments that the 2025 action was not an amendment, that dates alone were not changed, and that failure to conduct new notice and comment was improper. Br.52-53 (citing Br.37-38, 40, 46-50). For the reasons those arguments were unavailing on the statutory claim, they remain so here. *See supra* Part I.B.1.

C. EXIM Was Not Required to Conduct a Second Economic Analysis.

The district court correctly determined that "nothing in the Bank Act expressly required EXIM to engage in further [economic] analysis or to respond to public comments" relevant to such analysis. JA586.

Subsection 635(e) provides that EXIM "may not extend any direct credit or financial guarantee for establishing or expanding production of any commodity for export by any [foreign] country" if EXIM "determines that" certain economic conditions are met. 12 U.S.C. § 635(e)(1). Those conditions pertain to the likelihood of global surplus, competing production capacity, and harm to domestic producers. *Id.* § 635(e)(1)(A), (B). The statute further provides that this prohibition "shall not apply" where, in the Board's "judgment," the "benefits to [domestic] industry and employment" "are likely to outweigh" any injury to domestic producers. *Id.* § 635(e)(3). Additionally, "[i]f, in making a determination under this subsection with respect to a loan" EXIM "intends to conduct a detailed economic impact analysis or similar study," it must publish a notice of intent in the Federal Register and the resulting analysis must "include consideration of … the views of the public and interested parties." *Id.* § 635(e)(7)(A)(ii), (B)(i).

1. As an initial matter, those statutory requirements have no connection to plaintiffs' mission or their asserted injuries. The objective of the economic-analysis requirement is to avoid transactions that "adversely affec[t]" domestic industry. 12 U.S.C. § 635(e). Plaintiffs are not engaged in the domestic LNG industry; they are environmental organizations asserting standing related to providing advocacy services to locals in Mozambique. Plaintiffs "can[not] be expected to police the [economic] interests that the statute protects," and thus are not "arguably within the zone of interests" given the "substantive provisions" at issue. *CSL Plasma Inc. v. CBP*, 33 F.4th 584, 589 (D.C. Cir. 2022) (quotation marks omitted).

2.a. Moreover, by its own terms, § 635(e)(1) does not apply to the approval of a loan amendment. Section 635(e)(1) is only triggered where EXIM is deciding whether to "extend any direct credit or financial guarantee." 12 U.S.C. § 635(e)(1). To "extend credit" means to make credit available to the borrower. *See Extend*, Merriam-Webster Dictionary Online, https://www.merriam-webster.com/dictionary/extend (last visited Dec. 18, 2025) ("to make available" as in "*extending* credit to customers"). This refers to EXIM's final action granting an application and approving a loan. That understanding is bolstered by the fact that, like the notice-and-comment requirements discussed above, § 635(e) ties the decision under consideration to the existence of a pending loan application. *See* 12 U.S.C. § 635(e)(1), (7)(B)(iii), (C). The same reasons to read the notice-and-comment requirements in § 635a(c)(10) as governing a final decision on an application proposing a loan—and not an amendment altering a previously approved loan—also apply here.

EXIM properly engaged in the economic analysis required under § 635(e)—including notice-and-comment procedures—before approving the loan in 2019. *See* JA344; 83 Fed. Reg. 61,379. The decision to alter the dates of a loan that was already fully approved is not tantamount to the extension of direct credit under the meaning of § 635(e)(1).

Even if § 635(e)(1) applied separately to the 2025 amendment, as the district court explained, "the Bank Act's substantive prohibitions on extending credit" in § 635(e) "apply only if '[EXIM] determines' that the triggering conditions were met." JA586 (quoting 12 U.S.C. § 635(e)). And "additional notice and comment" is "similarly only necessary 'if [EXIM] conducts a detailed economic impact analysis or similar study.'" JA586 (alteration omitted) (quoting 12 U.S.C. § 635(e)(7)(A)). Those provisions are conditional. The use of "if" in a second clause "imposes a condition on the applicability" of the first clause; a requirement in the first clause "does not apply at all if the conditions in the second clause … have not been satisfied." *Dodd v. United States*, 545 U.S. 353, 358 (2005). In other words, where EXIM does not make certain antecedent determinations, the restriction on approval and notice-and-comment requirement simply do not apply. EXIM did not make those determinations with respect to the 2025 amendment.

b. Plaintiffs' counterarguments are unavailing.

Plaintiffs assert that the relevant conditions in § 635(e)(1)(B) demonstrating adverse domestic effects were present in 2025, and thus EXIM could not "extend credit" at that time without satisfying the statutory exception. Br.63-64. As explained, however, the 2025 decision was not extending credit; it was altering the time period for credit that had already been extended in 2019. And the statute leaves it to *EXIM*—not plaintiffs—to make the triggering determinations required for the prohibition in § 635(e)(1) and the notice-and-comment requirements in § 635(e)(7).

Plaintiffs also object (Br.65) that the "use of 'if' does not grant EXIM discretion" to "choos[e] not to assess a project's likely economic impacts." The government is not arguing for such discretion; rather, we contend that those statutory requirements cannot be extended beyond their text to apply in broader circumstances. If EXIM is not considering whether to "extend any direct credit," then the prohibition on doing so (§ 635(e)(1)) does not apply and EXIM need not consider whether the conditions triggering the prohibition (§ 635(e)(1)(A)-(B)) are met. Similarly, if EXIM is not "conduct[ing] a detailed economic impact analysis" in aid of a "determination under" § 635(e)—*e.g.*, because EXIM is not determining whether to extend credit—then EXIM need not "include consideration" of specific things in that non-existent analysis. 12 U.S.C. § 635(e)(7)(A). EXIM assessed whether those economic conditions were met and considered relevant public views in 2019 when it extended the credit at issue. JA344-54. In doing so, EXIM concluded that the transaction "will likely have a net positive effect on the U.S. economy" in the form of "a positive impact of approximately $2.31 billion on the U.S. balance of trade." JA354. Nothing in the statute requires EXIM to revisit that assessment.

Additionally, plaintiffs briefly invoke the directive in 12 U.S.C. § 635(b)(1)(B) that "in authorizing any loan," EXIM must "take into account any serious adverse effect" on U.S. industry. *See* Br.65. And plaintiffs similarly assert that agency guidelines require a "Detailed Economic Impact Assessment for every 'transaction' that has a 'risk of substantial injury.'" Br.66. EXIM already conducted that assessment for this transaction back in 2019 when it was deciding whether to authorize the loan at issue. *See* JA344.

3. Even if EXIM was required to consider economic effects when it approved the 2025 amendment, EXIM expressly relied upon its 2019 economic impact analysis in doing so. Nothing further was required.

The 2019 economic analysis concluded that LNG "is not currently, and is not likely to become, in structural oversupply during the repayment of the EXIM Bank facility." JA344. The loan repayment originally had a term of 12.5 years, lasting until approximately 2031. JA345. When EXIM approved the amendment in 2025, it referenced this analysis and explained that the project "will not compete in any harmful way with the production of U.S. LNG." JA264. EXIM reaffirmed that it had "concluded with independent experts that the transaction would likely have a net positive impact on the

U.S. economy, based on supply/demand analysis over the life of the loan." JA264; *see* [redacted].

That supply-demand analysis in 2019 forecast that there would be a "supply-demand gap opening in the early-to-mid 2020s." JA349. And the analysis forecasted demand "grow[ing] substantially over the next ten to fifteen years, beyond the 2025 level," citing various projections that extended up to 2040. JA350. As the district court concluded, EXIM thus "reasonably relied on the Detailed Economic Impact Analysis prepared for the 2019 loan" in approving the amendment, because in 2019 EXIM had "forecasted economic trends through 2031 and concluded that 'it is unlikely that structural oversupply develops in the LNG market any time in the foreseeable future.'" JA586-87. Because those existing forecasts already encompassed the relevant time period, it was reasonable to rely on them.

Plaintiffs assert that the 2019 forecast is "obviously incorrect," Br.68, and there will be a "considerable glut" of LNG "in 2029-2030," Br.69. But they rely on a single declarant who was only asked for "the evidence that global LNG markets will be in oversupply in 2030," JA189, and not evidence to the contrary. And this declarant only concludes that "there is strong reason to believe" there will be "oversupply in 2030," while hedging. JA195; *see* JA196 ("[I]t is important to note potential uncertainties …."); JA192 ("projections for future global LNG demand growth vary"). This opinion is not sufficient to demonstrate that EXIM's reliance on the 2019 analysis was improper.

Plaintiffs assert that EXIM's own procedures did not permit relying on 2019 forecasts, Br.68, but those guidelines describe what to consider "[w]hen a transaction requires a Detailed Economic Impact Analysis." EXIM, *Economic Impact Procedures and Methodological Guidelines* § 2 (Feb. 2025), https://perma.cc/F74W-5YBV. EXIM undertook that analysis for this transaction before the decision to extend credit was made in 2019.

Plaintiffs further contend that it was arbitrary and capricious for EXIM to rely on "outdated" analysis "when more accurate, up-to-date evidence is available." Br.68. The cited cases address an agency's obligations in the context of notice-and-comment decisionmaking, to which EXIM is not subject. Regardless, the principle applied where an agency knew about and possessed updated evidence, but chose to ignore it. *See Sierra Club v. EPA*, 671 F.3d 955, 965-66 (9th Cir. 2012); *Dow AgroSciences LLC v. National Marine Fisheries Serv.*, 707 F.3d 462, 472-73 (4th Cir. 2013). It does not apply where, as here, an agency does not already possess that evidence and would have to undertake the "onerous burden" of "a new compilation of … data." *Sierra Club*, 671 F.3d at 966.

D. EXIM Was Not Required to Issue an Environmental Impact Statement under NEPA.

The district court correctly determined that plaintiffs are unlikely to succeed on their NEPA claim. *See* JA588-91.

NEPA requires preparation of an EIS for any "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). The statute specifies, however, that "[t]he term 'major Federal action' means an action that the agency carrying out such action determines is subject to substantial Federal control and responsibility," *id.* § 4336e(10)(A), which does not include "loans … where a Federal agency does not exercise sufficient control and responsibility over the subsequent use of such financial assistance or the effect of the action," *id.* § 4336e(10)(B)(iii). Moreover, the term does not include "extraterritorial activities or decisions, which means agency activities or decisions with effects located entirely outside of the jurisdiction of the United States." *Id.* § 4336e(10)(B)(vi). Given the nature of EXIM's activities, its regulations anticipate only "relatively rare cases where [EXIM] financing … may affect environmental quality in the United States." 12 C.F.R. § 408.3.

1. EXIM was not required to prepare an EIS because the 2025 amendment was not "major Federal action." EXIM expressly concluded that the 2019 loan approval was not a major Federal action, JA184—a decision that plaintiffs never challenged.[6] And because approving the underlying loan was not a major Federal action, approving a minor amendment to that loan was not either. As this Court has recognized, where there is no proposal to change the status quo, there is no "major Federal action" that could require an EIS. *Earthworks v. U.S. Dep't of the Interior*, 105 F.4th 449, 459 (D.C. Cir. 2024). The 2025 amendment merely continued the status quo following the 2019 approval.

2. Plaintiffs cannot demonstrate likely success on their claim that NEPA required an EIS here.

a. Plaintiffs complain that the record contains no explanation for why EXIM concluded that there was no "major Federal action." Br.57. As explained, EXIM reached this decision in 2016 regarding the project, which Plaintiffs did not challenge in connection with the 2019 approval of the loan. JA184. The lack of a separate determination in 2025 is hardly surprising, since EXIM was merely extending the previously approved loan. And unlike traditional regulatory agencies, EXIM does not issue written decisions for publication in the Federal Register when it grants financing or approves

[6] In bringing this action, plaintiffs challenge EXIM's decision in *March 2025* not to undertake an EIS before approving the amendment specifically. *See* JA103, 104-05.

amendments. *See* 12 U.S.C. § 635a(c)(10)(F) (providing only for limited disclosure of "summary"); *id.* § 635(e)(7)(D) (same).

Moreover, because this appeal was taken in an interlocutory posture, the government had not yet produced the administrative record in district court. *See* Br.53 n.12. The district court acknowledged that "'without benefit of the full administrative record,'" it was "'difficult'" to assess EXIM's actions under NEPA. JA590 n.14. But that simply "makes it harder for Plaintiffs to carry their heavy burden at the preliminary injunction stage." *Id.* (citation modified). As this Court has emphasized, a "preliminary injunction is an extraordinary and drastic remedy," and "should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." *Abdullah v. Obama*, 753 F.3d 193, 197 (D.C. Cir. 2014) (quotation marks omitted). At this stage of the litigation, plaintiffs cannot clearly make that showing as to a claim that courts lack sufficient information to properly adjudicate. We think this claim is likely subject to dismissal given the legal points above, but in any event after the administrative record has been produced and the case proceeds to summary judgment, the parties can litigate whether the record sufficiently supports EXIM's conclusion that no EIS was required.

b. Moreover, there are several bases on which it would not be "clearly outside 'a broad zone of reasonableness,'" JA590 (quoting *Seven*

Cnty., 605 U.S. at 183), to have concluded that there was no "major Federal action" here. Plaintiffs contend that EXIM has "sufficient control" over the project. Br.57-59. But NEPA specifically excludes "loans … where a Federal agency does not exercise sufficient control and responsibility over the subsequent use of such financial assistance or the effect of the action." 42 U.S.C. § 4336e(10)(B)(iii). It is far from clear that the transaction at issue would not constitute such a loan.

Plaintiffs further contend that the project will have environmental effects in the United States. Br.59-60. But the project will take place entirely in Mozambique. NEPA specifically excludes "agency activities or decisions with effects located entirely outside of the jurisdiction of the United States." 42 U.S.C. § 4336e(10)(B)(vi). Plaintiffs' theory of environmental effects being sufficient because they are felt "all over the world"—including thousands of miles away in the United States—is exceedingly broad. Br.59. It is far from clear that NEPA mandates consideration of environmental effects which are that indirect and at such an extreme geographical remove. *See Seven Cnty.*, 605 U.S. at 187 (giving limited examples of "indirect effects" that "can sometimes fall within NEPA").

Moreover, as the Supreme Court reiterated, courts "afford substantial deference" to agencies under NEPA, ensuring only that "agency choices …

fall within a broad zone of reasonableness." *Seven Cnty.*, 605 U.S. at 180, 183; *id.* at 183 (describing this "rule of reason" as applying to determination regarding "whether … to prepare an EIS"). Ultimately, a court "may not 'substitute its judgment for that of the agency as to the environmental consequences of its actions.'" *Id.* at 183. Particularly given that deferential review, and without the administrative record, plaintiffs cannot demonstrate that EXIM's conclusion was likely so unreasonable as to warrant relief.

E. Plaintiffs' Denial-of-Information Claims Are Derivative of Their Other Claims and Cannot Support the Requested Injunction.

Finally, plaintiffs' disclosure claims are dependent on their other claims that "[n]otice and comment, economic analysis, and NEPA analysis were all required." Br.70. Because plaintiffs have not demonstrated a likelihood of success on those claims, they cannot do so on this one. In all events, the failure to release desired information alone could not plausibly support a preliminary injunction halting the disbursement of funds. Such an injunction could not remedy any informational injury underlying this claim. *See supra* Part I.A.2.b.

II. The Remaining Factors Weigh Against Preliminary-Injunctive Relief.

A. Plaintiffs Have Not Demonstrated Irreparable Harm.

Plaintiffs have not satisfied the "'high standard'" for demonstrating an irreparable injury that is "'both certain and great.'" *Clevinger v. Advocacy Holdings, Inc.*, 134 F.4th 1230, 1234 (D.C. Cir. 2025). Plaintiffs purport to identify three categories of injury, none of which is sufficient. And plaintiffs' "four-month delay in seeking a preliminary injunction" after the amendment was approved, JA595—and nearly six-year delay after the loan's approval in 2019—further suggests "a lack of irreparable harm," *see Gordon v. Holder*, 632 F.3d 722, 725 (D.C. Cir. 2011). The failure to demonstrate irreparable harm is sufficient "'grounds for refusing to issue a preliminary injunction.'" *Clevinger*, 134 F.4th at 1236.

1. Plaintiffs assert that the "denial of [their] right to comment and to influence the due diligence process," and EXIM's "failure to conduct a NEPA analysis, are irreparable." Br.71. Plaintiffs provide no support, however, for the proposition that the violation of such procedural rights, alone, constitutes irreparable injury. If procedural injuries in vacuo categorically fail to constitute concrete injuries for purposes of standing, they cannot satisfy the higher bar for irreparable injury justifying preliminary-injunctive relief. Indeed, a "chorus of federal courts" have confirmed "that procedural injury, standing alone, cannot constitute irreparable harm." *Eastern Band of Cherokee Indians v. U.S. Dep't of the Interior*, No. 20-cv-757, 2020 WL 2079443, at *4 (D.D.C. Apr. 30, 2020) (collecting cases). If plaintiffs ultimately prevail in this litigation, the district court can order EXIM to undertake the processes in which plaintiffs seek to participate.

2. Plaintiffs also allege that restarting the project will cause "local people" "environmental harm." Br.72. A movant is required to establish, however, "'that *he* is likely to suffer irreparable harm in the absence of preliminary relief,'" *Clevinger*, 134 F.4th at 1233 (emphasis added), not that *third parties* will suffer such harm. Plaintiffs cannot rely on the prospect of injuries to individuals in Mozambique to satisfy this requirement.

3. Finally, plaintiffs assert that they "will face increased demand for their services" to "address these harms" faced by local people. Br.72. But plaintiffs allege that they began providing such services long before the loan amendment. Br.11-14. This may be a worthy endeavor, but for purposes of this inquiry plaintiffs fail to explain how *choosing* to continue to help local communities would amount to irreparable harm. Plaintiffs thus have not shown that the "'alleged harm will directly result from the action which

[they] see[k] to enjoin,'" *MediNatura*, 998 F.3d at 945, as opposed to plaintiffs' own choices or the actions of third parties.

Moreover, plaintiffs have not demonstrated that any increase beyond the services that they were otherwise already providing would be an injury sufficiently "'certain,'" "'great,'" and irreparable. *Clevinger*, 134 F.4th at 1234. Rather, the prediction of additional services constitutes the type of "'[m]ere injur[y] … in terms of money, time and energy … expended in the absence of a' preliminary injunction" that is "'not enough'" to satisfy this prong. *Id.*

B. The Public Interest and Balance of Equities Favor the Government.

The district court did not abuse its discretion in determining that the public interest and balance of equities did not favor granting relief.

As the court explained, "disrupting such a large project significantly harms the reliance interests of several countries and corporations that have been working for over a decade to extract LNG from Mozambique." JA595. And the "magnitude of the harm" to those reliance interests "that would result from" preliminary relief had "likely increased" due to "Plaintiffs' four-month delay in seeking a preliminary injunction after the 2025 extension." JA595. Plaintiffs object that the project has already "been on hold" so a further pause would not hurt TotalEnergies. Br.74-75. But the interests at play extend *beyond* the project operator to "several countries and corporations," and their reliance on the four-year hold finally ending. And it is proper for courts to consider a movant's delay in seeking relief to "bolste[r]" the conclusion that a preliminary injunction is not warranted. *Gordon*, 632 F.3d at 724; *Fund for Animals v. Frizzell*, 530 F.2d 982, 987 (D.C. Cir. 1975) (per curiam) (44-day delay after "appellants knew" of alleged denial of procedural right "bolstered" "conclusion that an injunction should not issue").

Plaintiffs argue that the district court erred in this balancing because it "erred in assessing the merits." Br.74. Because the court correctly determined that plaintiffs have not shown a likelihood of success on the merits, *supra* Part I, it properly concluded that given this "'most important factor,'" plaintiffs were "not entitled to a preliminary injunction." JA596.

III. If This Court Disagrees, The Proper Course Is Remand.

If this Court concludes that the district court abused its discretion in the assessment of any preliminary-injunction factor, it should remand for the court to reconsider plaintiffs' request for relief in the first instance. Plaintiffs ask this Court to reverse the denial of its motion and remand with specific instructions "to enter a preliminary injunction." Br.76. This Court should decline to order such relief.

"The decision to grant or deny permanent injunctive relief is an act of equitable discretion by the district court[.]" *eBay*, 547 U.S. at 391. The court here has not had the opportunity to exercise that discretion while factoring in a conclusion that plaintiffs can demonstrate a likelihood of success on the merits of any claim. *See* JA596. And whether the court might exercise its discretion to grant preliminary-injunctive relief could depend on the nature of the final relief that would be appropriate for each claim, assuming plaintiffs ultimately prevail—which could involve declaratory relief, a disclosure order, remand without vacatur, or a permanent injunction. *See, e.g.*, *Delta Air Lines, Inc. v. EXIM*, 718 F.3d 974, 978 (D.C. Cir. 2013) (per curiam) (remanding without vacating). Accordingly, if the Court believes plaintiffs have demonstrated a likelihood of success as to any of their claims, it should simply remand for the district court to rebalance the preliminary-injunction factors.

This course is particularly warranted where there is reason to believe that the district court's assessment of those factors might have shifted over time. In evaluating the balance of equities, the court observed that "Plaintiffs' four-month delay in seeking a preliminary injunction after the 2025 extension has likely increased the magnitude of the harm that would result from" such relief to the "reliance interests of several countries and corporations that have been working for over a decade to extract LNG from Mozambique," "given that many parties have been operating under the assumption that the loan is available." JA595. It has now been over nine months since the amendment was approved in March 2025, and the harm to those reliance interests has only grown stronger.

CONCLUSION

The district court's judgment should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 12,951 words. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Word for Microsoft 365 in Georgia 14-point font, a proportionally spaced typeface.

/s/ McKaye L. Neumeister
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CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2025, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system and the Court's Box.com system for sealed documents. Service of the sealed version of this brief will be accomplished via email.

/s/ McKaye L. Neumeister
McKaye L. Neumeister

ADDENDUM

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5 U.S.C. § 553 (excerpt)

§ 553. Rule making

(a) This section applies, according to the provisions thereof, except to the extent that there is involved--

(1) a military or foreign affairs function of the United States; or

(2) a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.

* * * *

12 U.S.C. § 635 (excerpt)

§ 635. Powers and functions of Bank

* * *

[(b)] (3) Except as provided by the fourth sentence of this paragraph, no loan or financial guarantee or general guarantee or insurance facility or combination thereof (i) in an amount which equals or exceeds $100,000,000, or (ii) for the export of technology, fuel, equipment, materials, or goods or services to be used in the construction, alteration, operation, or maintenance of nuclear power, enrichment, reprocessing, research, or heavy water production facilities, shall be finally approved by the Board of Directors of the Bank, unless in each case the Bank has submitted to the Congress with respect to such loan, financial guarantee, or combination thereof, a detailed statement describing and explaining the transaction, at least 25 days of continuous session of the Congress prior to the date of final approval. For the purpose of the preceding sentence, continuity of a session of the Congress shall be considered as broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain shall be excluded in the computation of the 25 day period referred to in such sentence. * * * *

* * *

(e) Limitation on assistance which adversely affects the United States

(1) In general

The Bank may not extend any direct credit or financial guarantee for establishing or expanding production of any commodity for export by any country other than the United States, if--

(A) the Bank determines that--

(i) the commodity is likely to be in surplus on world markets at the time the resulting commodity will first be sold; or

(ii) the resulting production capacity is expected to compete with United States production of the same, similar, or competing commodity; and

(B) the Bank determines that the extension of such credit or guarantee will cause substantial injury to United States producers of the same, similar, or competing commodity.

In making the determination under subparagraph (B), the Bank shall determine whether the facility that would benefit from the extension of a credit or guarantee is reasonably likely to produce a commodity in addition to, or other than, the commodity specified in the application and whether the production of the additional commodity may cause substantial injury to United States producers of the same, or a similar or competing, commodity.

* * *

(3) Exception

Paragraphs (1) and (2) shall not apply in any case where, in the judgment of the Board of Directors of the Bank, the short- and long-term benefits to industry and employment in the United States are likely to outweigh the short- and long-term injury to United States producers and employment of the same, similar, or competing commodity.

* * *

(7) Procedures to reduce adverse effects of loans and guarantees on industries and employment in United States

(A) Consideration of economic effects of proposed transactions

If, in making a determination under this paragraph with respect to a loan or guarantee, the Bank conducts a detailed economic impact analysis or similar study, the analysis or study, as the case may be, shall include consideration of--

(i) the factors set forth in subparagraphs (A) and (B) of paragraph (1); and

(ii) the views of the public and interested parties.

(B) Notice and comment requirements

(i) In general

If, in making a determination under this subsection with respect to a loan or guarantee, the Bank intends to conduct a detailed economic impact analysis or similar study, the Bank shall publish in the Federal Register a notice of the intent, and provide a period of not less than 14 days (which, on request by any affected party, shall be extended to a period of not more than 30 days) for the submission to the Bank of comments on the economic effects of the provision of the loan or guarantee, including comments on the factors set forth in subparagraphs (A) and (B) of paragraph (1). In addition, the Bank shall seek comments on the economic effects from the Department of Commerce, the Office of Management and Budget, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives.

* * *

(iii) Procedure regarding materially changed applications

(I) In general

If a material change is made to an application for a loan or guarantee from the Bank after a notice with respect to the intent described in clause (i) is published under this subparagraph, the Bank shall publish in the Federal Register a revised notice of the intent, and shall provide for a comment period, as provided in clauses (i) and (ii).

(II) Material change defined

As used in subclause (I), the term “material change”, with respect to an application, includes--

(aa) a change of at least 25 percent in the amount of a loan or guarantee requested in the application; and

(bb) a change in the principal product to be produced as a result of any transaction that would be facilitated by the provision of the loan or guarantee.

(C) Requirement to address views of adversely affected persons

Before taking final action on an application for a loan or guarantee to which this section applies, the staff of the Bank shall provide in writing to the Board of Directors the views of any person who submitted comments pursuant to subparagraph (B).

(D) Publication of conclusions

Within 30 days after a party affected by a final decision of the Board of Directors with respect to a loan or guarantee makes a written request therefor, the Bank shall provide to the affected party a non-confidential summary of the facts found and conclusions reached in any detailed economic impact analysis or similar study conducted pursuant to subparagraph (B) with respect to the loan or guarantee, that were submitted to the Board of Directors.

* * *

(F) Rule of interpretation

This paragraph shall not be construed to make subchapter II of chapter 5 of Title 5 applicable to the Bank.

* * * *

12 U.S.C. § 635a (excerpt)

§ 635a. Management of Bank

* * *

(10) Notice and comment requirements

(A) In general

Before any meeting of the Board for final consideration of a long-term transaction the value of which exceeds $100,000,000, and concurrent with any statement required to be submitted under section 635(b)(3) of this title with respect to the transaction, the Bank shall provide a notice and comment period.

(B) Financial threshold determinations

For purposes of determining whether the value of a proposed transaction exceeds the financial threshold set forth in subparagraph

(A), the Bank shall aggregate the dollar amount of the proposed transaction and the dollar amounts of all long-term loans and guarantees, approved by the Bank in the preceding 12-month period, that involved the same foreign entity and substantially the same product to be produced.

(C) Specific requirements

(i) In general

The Bank shall--

(I) publish in the Federal Register a notice of the application proposing the transaction;

(II) provide a period of not less than 25 days for the submission to the Bank of comments on the application; and

(III) notify the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives of the application, and seek comments on the application from the Department of Commerce and the Office of Management and Budget.

(ii) Content of notice

The notice published under clause (i)(I) with respect to an application for a loan or financial guarantee shall include appropriate information about--

(I) a brief non-proprietary description of the purposes of the transaction and the anticipated use of any item being exported, including, to the extent the Bank is reasonably aware, whether the item may be used to produce exports or provide services in competition with the exportation of goods or the provision of services by a United States industry;

(II) the identities of the obligor, principal supplier, and guarantor; and

(III) a description, such as type or model number, of any item with respect to which Bank financing is being sought, but only to the extent the description does not disclose any information that is confidential or proprietary business information, that would violate the Trade Secrets Act, or that would jeopardize jobs in the

United States by supplying information which competitors could use to compete with companies in the United States.

(D) Procedure regarding materially changed applications

(i) In general

If a material change is made to an application to which this paragraph applies, after a notice with respect to the application is published under subparagraph (C)(i)(I), the Bank shall publish in the Federal Register a revised notice of the application and provide for an additional comment period as provided in subparagraph (C)(i)(II).

(ii) Material change defined

In clause (i), the term "material change", with respect to an application for a loan or guarantee, includes an increase of at least 25 percent in the amount of a loan or guarantee requested in the application.

(E) Requirement to address views of commenters

Before taking final action on an application to which this paragraph applies, the staff of the Bank shall provide in writing to the Board of Directors the views of any person who submitted comments on the application pursuant to this paragraph.

(F) Publication of conclusions

Within 30 days after a final decision of the Board of Directors with respect to an application to which this paragraph applies, the Bank shall provide to a commenter on the application or the decision who makes a request therefor, a non-confidential summary of the facts found and conclusions reached in any detailed analysis or similar study with respect to the loan or guarantee that is the subject of the application, that was submitted to the Board of Directors. Such summary should be sent within 30 days of the receipt of the written request or date of the final decision of the Board of Directors, whichever is later.

(G) Rule of interpretation

The obligations imposed by this paragraph shall not be interpreted to create, modify, or preclude any legal right of action.

* * * *

12 U.S.C. § 635i-5 (excerpt)

§ 635i-5. Environmental policy and procedures

(a) Environmental effects consideration

(1) In general

Consistent with the objectives of section 635(b)(1)(A) of this title, the Bank shall establish procedures to take into account the potential beneficial and adverse environmental effects of goods and services for which support is requested under its direct lending and guarantee programs. Such procedures shall provide for the public disclosure of environmental assessments and supplemental environmental reports required to be submitted to the Bank, including remediation or mitigation plans and procedures, and related monitoring reports. The preceding sentence shall not be interpreted to require the public disclosure of any information described in section 1905 of Title 18. Such procedures shall apply to any transaction involving a project--

(A) for which long-term support of $25,000,000 (or, if less than $25,000,000, the threshold established pursuant to international agreements, including the Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence, as adopted by the Organisation for Economic Co-operation and Development Council on June 28, 2012, and the risk-management framework adopted by financial institutions for determining, assessing, and managing environmental and social risk in projects (commonly referred to as the "Equator Principles")) or more is requested from the Bank;

(B) for which the Bank's support would be critical to its implementation; and

(C) which may have significant environmental effects upon the global commons or any country not participating in the project, or may produce an emission, an effluent, or a principal product that is prohibited or strictly regulated pursuant to Federal environmental law.

(2) Authority to withhold financing

The procedures established under paragraph (1) shall permit the Board of Directors, in its judgment, to withhold financing from a project for environmental reasons or to approve financing after considering the potential environmental effects of a project.

* * *

(d) Interpretation

Nothing in this section shall be construed to create any cause of action.

42 U.S.C. § 4332 (excerpt)

§ 4332. Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all agencies of the Federal Government shall—

* * *

(C) consistent with the provisions of this chapter and except where compliance would be inconsistent with other statutory requirements, include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on--

(i) reasonably foreseeable environmental effects of the proposed agency action;

(ii) any reasonably foreseeable adverse environmental effects which cannot be avoided should the proposal be implemented;

(iii) a reasonable range of alternatives to the proposed agency action, including an analysis of any negative environmental impacts of not implementing the proposed agency action in the case of a no action alternative, that are technically and economically feasible, and meet the purpose and need of the proposal;

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and

(v) any irreversible and irretrievable commitments of Federal resources which would be involved in the proposed agency action should it be implemented. * * * *

42 U.S.C. § 4336e (excerpt)

§ 4336e. Definitions

* * *

(6) Environmental impact statement

The term "environmental impact statement" means a detailed written statement that is required by section 4332(2)(C) of this title.

(7) Finding of no significant impact

The term "finding of no significant impact" means a determination by a Federal agency that a proposed agency action does not require the issuance of an environmental impact statement.

* * *

(10) Major Federal action

(A) In general

The term "major Federal action" means an action that the agency carrying out such action determines is subject to substantial Federal control and responsibility.

(B) Exclusion

The term "major Federal action" does not include--

(i) a non-Federal action--

(I) with no or minimal Federal funding; or

(II) with no or minimal Federal involvement where a Federal agency cannot control the outcome of the project;

(ii) funding assistance solely in the form of general revenue sharing funds which do not provide Federal agency compliance or enforcement responsibility over the subsequent use of such funds;

(iii) loans, loan guarantees, or other forms of financial assistance where a Federal agency does not exercise sufficient control and responsibility over the subsequent use of such financial assistance or the effect of the action;

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(vi) extraterritorial activities or decisions, which means agency activities or decisions with effects located entirely outside of the jurisdiction of the United States; or

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12 C.F.R. § 408.3

§ 408.3. Applicability

Historically, virtually all financing provided by Eximbank has been in aid of U.S. exports which involve no effects on the quality of the environment within the United States, its territories or possessions. Eximbank has separate procedures for conducting environmental reviews where such reviews are required by E.O. 12114 (January 4, 1979) because of potential effects on the environment of global commons areas or on the environment of foreign nations. The procedures set forth in this part apply to the relatively rare cases where Eximbank financing of U.S. exports may affect environmental quality in the United States, its territories or possessions.