PRESS RELEASE

Justice Department Clarifies Duty of States to Report Known Illegal Aliens Under Welfare-Reform Law

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For Immediate Release

Office of Public Affairs

The Department of Justice's Office of Legal Counsel has issued a legal opinion clarifying that when a state chooses to participate in the Temporary Assistance for Needy Families (TANF) and the Supplemental Security Income (SSI) programs, all agencies within that state — not only those that administer TANF or SSI benefits — must report individuals known to be not lawfully present in the United States to the Department of Homeland Security (DHS).

"Congress wrote this requirement plainly," said Assistant Attorney General T. Elliot Gaiser of the Justice Department's Office of Legal Counsel. "When a state chooses to participate in TANF, it accepts the obligation to report illegal aliens in the United States. Tax dollars intended to help vulnerable Americans should not perversely encourage illegal entry into the United States, but rather should reinforce our laws and our borders."

"Our clarification does not impose new obligations on states," said Deputy Assistant Attorney General Joshua Craddock of the Justice Department's Office of Legal Counsel and author of the opinion. "It simply restores the original meaning of the statute Congress enacted and ensures that DHS receives the information it is legally entitled to. States that accept TANF funding must abide by federal law, and failure to comply may lead to serious consequences, including loss of program funding."

The Office withdrew a Clinton-era opinion from 1998 that construed the reporting requirement much more narrowly. Under that prior interpretation, only the specific state agencies administering TANF or SSI were required to provide information to federal immigration authorities. All fifty states, the District of Columbia, and several U.S. territories currently participate in TANF and SSI, and federal TANF funding grants exceed $16.4 billion annually.

The Office of Legal Counsel's Sept. 1 opinion explains that Congress defined "State" broadly in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. As a result, when a state accepts federal TANF or SSI funds, the entire state government — including all component agencies — is bound by federal law to share information with DHS about individuals the state knows to be not lawfully present.

The opinion applies prospectively. States will not face retroactive penalties for past reliance on the 1998 interpretation. Federal agencies may rely on OLC's advice to update TANF and SSI grant agreements and compliance processes to reflect the correct legal standard moving forward.

Note*: Read the full opinion here.*

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Component

Office of Legal Counsel

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PRESS RELEASE

Justice Department Office of Legal Counsel Concludes the Constitution Requires Presidential Control of the Foreign Service Grievance Board

(Slip Opinion)

Reconsidering State Reporting Requirements in Section 404 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

The word "State" in section 404 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 encompasses all component agencies within a state. The mandatory reporting obligations in section 404(b)–(c) thus apply to all agencies within a "State" that participates in the Temporary Assistance for Needy Families and Supplemental Security Income programs subject to those requirements.

Our Office's prior advice to the contrary, which narrowly construed the term "State" to refer only to the "state agencies administering the particular federally funded program," 22 Op. O.L.C. 204, 205 (1998), is hereby withdrawn.

September 1, 2026

MEMORANDUM OPINION FOR THE ACTING GENERAL COUNSEL
DEPARTMENT OF HEALTH AND HUMAN SERVICES

Congress overhauled the national welfare system when it enacted the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 ("PRWORA"). As part of its effort to ensure that ineligible noncitizens would not receive welfare benefits, Congress attached reporting requirements to certain federal benefits programs. *See id.* § 404, 110 Stat. at 2267. Under section 404, federal agencies administering such programs must inform the Department of Homeland Security ("DHS") of any person they know to be not lawfully present in the United States. Section 404 also obliges any participating "State" to report any person that the "State" knows to be not lawfully present.

In 1998, this Office narrowly construed the term "State" as used in section 404 to refer only to the "state agencies administering the particular federally funded program," rather than all component agencies within the State. *Construction of State Reporting Requirements in Section 404 of the Personal Responsibility and Work Opportunity Reconciliation Act*, 22 Op. O.L.C. 204, 205 (1998) ("1998 Opinion") (emphasis omitted). We reached that view by disregarding PRWORA's definition of "State" and giving that term inconsistent meanings within the same statutory provision.

The Department of Health and Human Services ("HHS") administers grants to states for welfare benefits subject to PRWORA, including the

Temporary Assistance for Needy Families program ("TANF"). In keeping with HHS's mission to protect that program's availability to vulnerable Americans, you have asked us to reconsider our interpretation of section 404. Memorandum for Josh Craddock, Deputy Assistant Attorney General, Office of Legal Counsel, from Emily Claire Mimnaugh, Deputy General Counsel, Department of Health and Human Services, *Re: Interpretation of "State" Under Section 404 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996* at 1 (June 16, 2026). Having done so, we conclude that our 1998 Opinion improperly narrowed the conditions that Congress attached to federal funding for certain federal benefits programs. We now withdraw it.

This opinion proceeds as follows. Part I provides background on PRWORA's statutory framework and our 1998 Opinion. Part II examines the textual and structural reasons for interpreting "State" as used in section 404 to include all state agencies. Part III identifies and responds to counterarguments—including those raised by the 1998 Opinion.

I.

A.

Congress enacted section 404 as part of a comprehensive statutory framework that addressed abuse of the welfare system by aliens in the United States. *See* PRWORA § 404, 110 Stat. at 2267 (codified as amended at 8 U.S.C. § 1614 and 42 U.S.C. §§ 611a, 1383(e), 1437y). Section 404 imposes notification and reporting requirements relating to certain federal benefits programs. Section 404(a) covers notification and applies to federal agencies: "Each Federal agency that administers a program to which section [401], [402], or [403] applies shall, directly or through the States, post information and provide general notification to the public and to program recipients of the changes regarding eligibility for any such program pursuant to this subchapter." 8 U.S.C. § 1614.

The remaining subsections establish reporting obligations relating to certain federal benefits programs. Section 404(b) applies to TANF—a block-grant program to states for assistance to low-income families. PRWORA § 404(b), 110 Stat. at 2267 (codified at 42 U.S.C. § 611a). PRWORA amended the Social Security Act to abolish the Assistance to Families with Dependent Children program and replace it with TANF. *Id.* §§ 101–103, 110 Stat. at 2110–13. Since that time, the federal government—acting through HHS—has "provide[d] about $16.5 billion to states in TANF block grants" every year. Gov't Accountability Off., GAO-25-107226, *Temporary Assistance for Needy Families: HHS Could Facilitate Information Sharing to Improve States' Use of Data on Job Training and Other Services* at 1 (2025), https://www.gao.gov/assets/gao-25-107226.pdf [https://perma.cc/M67P-K3CR]. In return for this assistance, section 404(b) requires that "[e]ach State" receiving such federal grants "shall, at least 4 times annually and upon request of the Immigration and Naturalization Service ['INS'], furnish [INS] with the name and address of, and other identifying information on, any individual who the State knows is unlawfully in the United States." 42 U.S.C. § 611a.[1]

Section 404(c) amended the Social Security Act with respect to the Supplemental Security Income program ("SSI"). PRWORA § 404(c), 110 Stat. at 2267 (codified as amended at 42 U.S.C. § 1383(e)). In relevant part, section 404(c) provides that, "[n]otwithstanding any other provision of law, the Commissioner [of Social Security] shall . . . furnish [INS] with the name and address of, and other identifying information on, any individual who the Commissioner knows is unlawfully in the United States." *Id.* In addition, the Commissioner "shall ensure that each agreement entered into under section 1616(a) with a State provides that the State shall furnish such information at such times with respect to any individual who the State knows is unlawfully in the United States." *Id.*

Section 404(d) added a new section 27 to title I of the United States Housing Act of 1937 that affects certain public housing programs administered by the Department of Housing and Urban Development ("HUD"). *Id.* § 404(d), 110 Stat. at 2267 (codified at 42 U.S.C. § 1437y). Similar to section 404(c), it requires that, "[n]otwithstanding any other provision of law, the [HUD] Secretary shall . . . furnish [INS] with the name and address of, and other identifying information on, any individual who the Secretary knows is unlawfully in the United States." *Id.* In addition, the Secretary "shall ensure that each contract for assistance entered into under section 6 or 8 of this Act with a public housing agency provides that the public housing agency shall furnish such

[1] Congress later reconstituted INS into new agencies within DHS. *See* Homeland Security Act of 2002, Pub. L. No. 107-296, §§ 471–472, 474, 116 Stat. 2135, 2205–06, 2209.

information at such times with respect to any individual who the public housing agency knows is unlawfully in the United States." *Id.*[2]

B.

Following PRWORA's enactment, our Office interpreted the state reporting requirements under section 404(b) and (c). *See* 1998 Opinion, 22 Op. O.L.C. at 204–05. A PRWORA "Working Group" within the Clinton Administration had considered two potential interpretations of "State" as used in section 404—a "broad" reading that would implicate "any state agency," and a "'narrow' view" under which "the reporting requirement [was] limited only to those state agencies administering the particular federally funded program in question." *Id.* at 205 (emphases omitted). INS asked this Office whether federal agencies could adopt the

[2] Section 404 repeatedly uses the word "knows," but does not define that term. In 2000, several federal agencies promulgated a joint regulation stating that "an entity will 'know' that an alien is not lawfully present in the United States only when the unlawful presence is a finding of fact or conclusion of law that is made by the entity as part of a formal determination that is subject to administrative review" and that "must be supported by a determination by [DHS] or the Executive Office of Immigration Review, such as a Final Order of Deportation." Responsibility of Certain Entities to Notify the Immigration and Naturalization Service of Any Alien Who the Entity "Knows" Is Not Lawfully Present in the United States, 65 Fed. Reg. 58301, 58302 (Sept. 28, 2000). That regulation rested on *ipse dixit* and lacked any interpretation of the statutory term "knows." While such findings of fact or conclusions of law certainly qualify as agency knowledge, the regulation improperly set the threshold for knowledge much higher than PRWORA requires.

To "know" means "to have cognizance, consciousness, or awareness of" a fact. *Webster's Third New International Dictionary* 1252 (1993 ed.); *see also Black's Law Dictionary* 1040–41 (12th ed. 2024) (defining "knowledge" as "[a]n awareness or understanding of a fact or circumstance; a state of mind in which a person has no substantial doubt about the existence of a fact"). And in non-criminal contexts, "willful blindness may support a finding of actual knowledge." *Unicolors, Inc. v. H&M Hennes & Mauritz, L.P.*, 142 S. Ct. 941, 948 (2022). A state therefore may know that an alien is not lawfully present even without a formal removal order—for example, where DHS has affirmatively notified the state that the alien lacks lawful status; where the alien admits that he entered unlawfully and has no basis for lawful presence; where the agency receives immigration records establishing that the alien's lawful status has expired or been terminated; or where the alien submits documentation that, on its face, establishes the absence of lawful status. Conversely, an agency cannot avoid acquiring knowledge of unlawful status by deliberately refusing to consider readily available information or by insisting on a formal adjudication that the statute nowhere requires.

narrow reading. *Id.* at 204. We agreed with the Working Group that "the 'narrow' construction [was] the better interpretation." *Id.*

The 1998 Opinion considered the text of subsections (b) and (c).[3] The Working Group had conceded that, "intuitively, the term 'State' would seem to comprehend any of the state's subordinate entities." *Id.* at 205 (cleaned up). This Office likewise recognized that "'State' often includes state agencies other than the particular agency that administers the program most relevant to the statute in which the term appears." *Id.* at 206. But our 1998 Opinion nevertheless concluded that "State" was innately ambiguous because it "can contain many meanings." *Id.* at 205 (citation omitted).

We next determined that PRWORA's "context, structure[,] and purpose" cast doubt on the "broad" reading of "State," relying heavily on the canon against surplusage. *Id.* at 206. Although we recognized that state participation in TANF "is in a strict sense 'voluntary,'" we argued that all states "can be expected to participate in TANF"—meaning that all state agencies would be under a mandatory reporting requirement via section 404(b). *Id.* This, we reasoned, would make redundant the reporting requirements in sections 404(c) and 404(d) and the reporting authorization in another PRWORA provision, section 434. *Id.* at 206–07 (citing PRWORA § 434, 110 Stat. at 2275 (codified at 8 U.S.C. § 1644)). We also observed that PRWORA singled out select programs for reporting requirements—TANF, SSI, and HUD housing—which we thought suggested that "Congress intended to require reporting only by state agencies implementing the specific programs referred to in section 404." *Id.* Finally, we noted that we expected Congress to be "more explicit" if it "had genuinely intended *all* state agencies" to be subject to section 404 reporting requirements. *Id.* at 207 (emphasis in original).

Our 1998 Opinion acknowledged several textual counterarguments. To start, we noted that "under normal rules of statutory construction," the same term used multiple times in a provision is presumed to have "a unitary meaning." *Id.* We read section 404's reference to a "State to which a grant is made" as "refer[ring] to a 'State' in the broad sense," which would normally mean that subsequent uses of "State" for the

[3] We determined that section 404(d) did "not pose any comparable interpretive problem" because it "relates to 'public housing agencies,' not to 'States.'" 1998 Opinion, 22 Op. O.L.C. at 205 n.3.

reporting requirements would have the same broad meaning. *Id.* But we rejected that presumption as conflicting with the canon against surplusage. *Id.* at 207–08. The 1998 Opinion also observed that "State" is statutorily defined "under PRWORA's amendments for Part IV-A of the Social Security Act"—where section 404 is codified—to mean "the 50 States of the United States," the District of Columbia, and the U.S. territories. *Id.* at 208. But we viewed this definition as merely signifying that "State" covers D.C. and the U.S. territories, which otherwise might not be understood as included. *Id.*

Having determined that the word "State" in section 404 was ambiguous, we looked to legislative history. And we discovered some statements in the conference reports that we thought "support[ed]" reading "State" more narrowly to mean only the state agency administering the covered program. *Id.* at 208–09. Our 1998 Opinion then relied on that history to resolve what we considered statutory ambiguity. *Id.* at 209.

II.

Our Office recognizes a "long tradition of general adherence to Executive Branch legal precedent," and we do not lightly reconsider our prior advice. *Reconsidering Whether the Wire Act Applies to Non-Sports Gambling*, 42 Op. O.L.C. 158, 177 (2018). But we have found it appropriate to withdraw past opinions when, among other reasons, we have identified significant "errors in the supporting legal reasoning." *Reconsidering the Application of the Hyde Amendment to the Provision of Transportation for Women Seeking Abortions*, 49 Op. O.L.C. __, at *17 (July 11, 2025) (citation omitted).

Upon reconsideration, we are forced to conclude that our prior opinion erred in its analysis and result. Our 1998 Opinion read ambiguity into plain text by disregarding an express statutory definition, the text's ordinary meaning, and countervailing canons of construction. Both the methodology and bottom-line conclusion are sufficiently erroneous to warrant withdrawing the 1998 Opinion. Those errors are compounded by the practical consequences of our prior opinion, which affect the administration of two major federal benefits programs and materially reduce the mission-relevant information that DHS is entitled to receive from states.

A.

Both the statutory definition and the ordinary meaning indicate that, as used in section 404, "State" refers to the sovereign entity, including all its component agencies.

To start, Congress explicitly defined what "State" means: "*Except as otherwise specifically provided*, the term 'State' means the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa." PRWORA § 103(a)(2), 110 Stat. at 2160 (codified at 42 U.S.C. § 619(5)) (emphasis added). PRWORA thus defines "State" by reference to sovereign entities without distinguishing between component state agencies. And "[s]tatutory definitions control the meaning of statutory words," unless context necessitates a different reading. *Burgess v. United States*, 553 U.S. 124, 129 (2008) (citation omitted). Applying PRWORA's definition of "State" to section 404(b) and (c) thus obligates the state as a sovereign unit to fulfill the reporting requirements.

Our 1998 Opinion argued that this definition illuminates only which sovereigns are included in "State"—clarifying that the District of Columbia and U.S. territories are included—but not whether all or only some state agencies are on the hook for reporting requirements. *See* 22 Op. O.L.C. at 208. To be sure, clarifying the status of D.C. and the U.S. territories for TANF, SSI, and HUD housing benefits is one important feature of the statutory definition. PRWORA's definition of "State" differs in geographic coverage from the Immigration and Nationalization Act—which provides the default definitions for PRWORA unless otherwise specified, *see* PRWORA § 431(a), 110 Stat. at 2274 (codified at 8 U.S.C. § 1641(a))—by including American Samoa and excluding the Commonwealth of the Northern Mariana Islands. *Compare* PRWORA § 103(a)(5), 110 Stat. at 2160, *with* 8 U.S.C. § 1101(a)(36). But the statutory definition also connotes comprehensive reach, encompassing each of the component parts of the sovereign. If Congress had meant to address not the entire state but only a specific state agency, it easily could have done so. *See Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 227–28 (2008) (drawing inferences from Congress's choice not to adopt alternative language). Indeed, other PRWORA provisions specifically identify administering agencies and agency heads. *See* Part II.B.

Congress did not do so here. It used the "unmodified" and "all-encompassing" word State instead. *Ali*, 552 U.S. at 227.

"When choosing among interpretations of a statutory definition, the 'ordinary meaning' of the 'defined term' is an important contextual clue." *Delligatti v. United States*, 145 S. Ct. 797, 808 (2025) (citation omitted). Dictionaries ordinarily define the word "State" as referring to a sovereign unit, not any specific state agency.[4] And the Supreme Court has interpreted the statutory term "State" comprehensively to include "local governmental units," even in the face of contrary textual indications. *City of Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 437 (2002) (citation omitted). "To the extent any doubt remains that Congress meant" the term State to sweep comprehensively, "the ordinary meaning of [that word] resolves it." *Delligatti*, 145 S. Ct. at 809.

The 1998 Opinion acknowledged that ordinary meaning but suggested that a term "as general and protean as 'State'" is inherently ambiguous because it has more than one definition. 22 Op. O.L.C. at 205–06.[5] That is not the test for ambiguity. Most words in the English language are susceptible to multiple meanings. But "the susceptibility of [a] word . . . to alternative meanings does not render the word[,] whenever it is used, ambiguous, particularly where all but one of the meanings is ordinarily eliminated by context." *Carcieri v. Salazar*, 555 U.S. 379, 391 (2009) (cleaned up).

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[4] *See, e.g.*, *Black's Law Dictionary* 1407 (6th ed. 1990) ("The organization of social life which exercises sovereign power in behalf of the people"; "[a] territorial unit with a distinct general body of law"; a term that "may refer either to body politic of a nation (*e.g.* United States) or to an individual governmental unit of such nation (*e.g.* California)."); *Webster's Third New International Dictionary* at 2228 ("[T]he political organization that has supreme civil authority and political power and serves as the basis of government"; "one of the bodies politic or component units in a federal system that is more or less independent and sovereign over internal affairs but forms with the other units a sovereign nation"; "a territorial unit in which the general body of law is separate and distinct from the law of any other territorial unit.").

[5] The cases cited by the 1998 Opinion for the proposition that "State" is susceptible to multiple meanings hold only that there is uncertainty as to *which* sovereigns are included in that word—not whether the word encompasses all component agencies within a sovereign. *See* 22 Op. O.L.C. at 205–06 & n.6; *see also District of Columbia v. Carter*, 409 U S. 418, 420 (1973); *Nat'l Mut. Ins. Co. v. Tidewater Transfer Co*., 337 U.S. 582, 587 (1949) (opinion of Jackson, J.); *Vermilya-Brown Co. v. Connell*, 335 U.S. 377, 388 (1948); *Puerto Rico v. Shell Co. (P.R.)*, 302 U.S. 253, 257–59 (1937); *Romero v. United States*, 38 F.3d 1204, 1208 (Fed. Cir. 1994).

B.

PRWORA's structure and context align with applying the statute's definition of "State." To start, both section 404's other reporting obligations on federal agencies and its other uses of "State" support a broad and uniform interpretation of that term. In addition, PRWORA elsewhere uses the phrase "State agency," further showing that Congress knew how to enact narrower reporting obligations when desired.

1.

Several provisions within section 404 use agency-specific language for other entities' reporting requirements, and other PRWORA provisions use the term "State agency" distinctly from "State." The 1998 Opinion did not acknowledge these structural features.

Section 404(a) mandates that "[e]ach Federal *agency that administers a program* to which section 401, 402, or 403 applies shall, directly or through the States, post information and provide general notification to the public and to program recipients of the changes regarding eligibility for any such program pursuant to this subtitle." PRWORA § 404(a), 110 Stat. at 2267 (codified at 8 U.S.C. § 1614) (emphasis added). This subsection—which the 1998 Opinion never addressed—contains the exact "agency that administers a program" language that the 1998 Opinion sought to read into neighboring subsections 404(b) and (c). Elsewhere in PRWORA—including in the provisions creating TANF—Congress repeatedly used the phrase "State agency" alongside, and distinct from, the term "State." *See, e.g.*, PRWORA § 103(a)(1), 110 Stat. at 2114 (codified at 42 U.S.C. § 602(a)(4)) (obligating a "State" that receives TANF funds to specify "which State agency or agencies will administer and supervise the program"); *id.* 110 Stat. at 2139 (codified at 42 U.S.C. § 608(a)(9)(B)) (requiring that any disclosure safeguards implemented by a "State to which a [TANF] grant is made" shall not prevent "the State agency administering the program" from sharing information with law-enforcement officers).

We usually "presume differences in language like this convey differences in meaning." *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 86 (2017). And it is "particularly inappropriate" to read language into a provision "when, as here, Congress has shown that it knows how to adopt the omitted language." *Corner Post, Inc. v. Bd. of Governors of* *the Fed. Rsrv. Sys.*, 144 S. Ct. 2440, 2446 (2024) (citation omitted); *see also Lamie v. U.S. Tr.*, 540 U.S. 526, 538 (2004). Sections 404(a) and 103 illustrate that Congress could have imposed an agency-specific reporting requirement if it wished and thus militate against a narrower interpretation of "State."

Section 404(c) showcases this contrast within the same subsection. It places a narrower reporting burden on the federal government that covers only the Social Security Commissioner and is keyed to the Commissioner's knowledge. 42 U.S.C. § 1383(e). In the same breath, section 404(c) requires agreements with participating states to impose reporting obligations on "the State" based on "the State['s]" knowledge. *Id.* The broad requirements on states stand in stark contrast to the specific requirements on the federal government, which are tailored not just to the administering agency but to the agency head. Section 404(d) similarly shows that Congress knew how to indicate a specific agency—there, a "public housing agency"—when it wanted to impose narrower reporting requirements. *Id.* § 1437y. When "Congress use[s] more open-ended formulations" in contrast to a "narrower phrase," the meaningful-variation canon teaches that there is a difference in statutory meaning. *Sw. Airlines Co. v. Saxon*, 142 S. Ct. 1783, 1789 (2022) (cleaned up).

2.

The multiple instances of "State" in sections 404(b) and (c) further support reading that term broadly. Each subsection addresses the reporting obligations of any "State" accepting federal funds under TANF and SSI. It then keys that obligation to "the State['s]" knowledge of whether individuals are not lawfully present. The "normal presumption" is that "when Congress uses a term in multiple places within a single statute, the term bears a consistent meaning throughout." *Azar v. Allina Health Servs.*, 139 S. Ct. 1804, 1812 (2019). And "that maxim" is "doubly appropriate where, as here, Congress employed the same term in multiple places at the same time in the same section of the same public law." *Monsalvo v. Bondi*, 145 S. Ct. 1232, 1242 (2025) (cleaned up).

Our 1998 Opinion assumed that the first use of "State" in section 404 referred to the sovereign unit receiving federal funds, rather than to the state agency administering them. *See* 22 Op. O.L.C. at 207. That reading was correct. It comports with the broad statutory definition of "State," and there are no contrary indicia supporting a narrower interpretation.

We conceded that identical words carry the same meaning "under normal rules of statutory construction," but contended that the canon against surplusage overcame that presumption here. *Id.* at 207–08.

Specifically, the 1998 Opinion claimed that reading "State" in section 404(b) to include all agencies within a state participating in TANF would functionally render superfluous the other reporting mandates in section 404(c) and (d) for SSI and HUD programs. *See id.* at 206. We recognized that "state participation in the TANF program . . . is in a strict sense 'voluntary'" but assumed that "all the States, as a practical matter, can be expected to participate." *Id.* So, the argument went, if all state agencies already have reporting obligations under section 404(b), there would be no need for the requirements in section 404(c) and (d). We then turned to section 434, which provides that, "[n]otwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the [INS] information regarding the immigration status, lawful or unlawful, of an alien in the United States." PRWORA § 434, 110 Stat. at 2275 (codified at 8 U.S.C. § 1644). We argued that this authorization would be "largely redundant" if Congress had "effectively" mandated such reporting for all state agencies under section 404. 1998 Opinion, 22 Op. O.L.C. at 207.

Our reliance on the canon against surplusage was misguided. The reporting requirements in sections 404(c) and (d) and the reporting authorization in section 434 retain independent force when "State" is read to include all state agencies. And even if they did not, the "preference for avoiding surplusage constructions is not absolute." *Lamie*, 540 U.S. at 536; *see also U.S. Postal Serv. v. Konan*, 146 S. Ct. 736, 746 (2026). Our 1998 Opinion never explained why the canon against surplusage should trump PRWORA's express statutory definition of "State" and the two interpretive canons cutting in the opposite direction—the ordinary-meaning canon and the presumption of consistent usage.

The most significant flaw in the 1998 Opinion's surplusage argument was that it discovered superfluity only through resort to extra-statutory assumptions. But the canon against surplusage "is primarily a tool of linguistic interpretation, reflecting an assumption" that a reading is "improbable" if it "arbitrarily ignores linguistic components or inadequately accounts for them." *Feliciano v. Dep't of Transp.*, 145 S. Ct. 1284, 1294 (2025) (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The*

Interpretation of Legal Texts 174 (2012)). Our 1998 Opinion made a "practical (not linguistic) superfluity argument" that "depend[ed] on a contingent factual assumption" about "modern governance," *id.* at 1295—that is, the prediction that all states would invariably and always choose to participate in TANF, *see* 22 Op. O.L.C. at 206. Such contingent factual assumptions are a weak foundation for finding surplusage, and the inaccurate prediction underlying our 1998 Opinion is a case in point. American Samoa, for instance, does not operate a TANF program despite its eligibility to do so. *See* Temporary Assistance for Needy Families (TANF) Carry-Over Funds, 74 Fed. Reg. 25,161, 25,161 (May 27, 2009). And even when practical surplusage arguments are based on "an assumption that prevailing factual conditions will never change," the Supreme Court has declined to "overlook the most natural linguistic interpretation of [a] statute's terms." *Feliciano*, 145 S. Ct. at 1295. Our prior opinion erred by grounding its reading of otherwise clear statutory language on pragmatic assumptions not reflected in the statutory text.

As a textual matter, section 404 does not cover every state—just those that participate in TANF, SSI, and certain HUD housing contracts. Even if states are unlikely to opt out of these programs, section 404 does not guarantee that every state will be covered by its reporting obligations. It was thus sensible for Congress to include the catch-all provision in section 434 to ensure that all states—including any that may not be bound by section 404—remain free to voluntarily exchange information with DHS. And by making the reporting requirements independently applicable to TANF, SSI, and HUD contracts, Congress ensured that federal agencies could withdraw funding for each program from a participating state that failed its reporting obligations. If the reporting condition had attached only to TANF, for instance, the remedy would be simply to cut off TANF funding—not SSI funding or HUD contracts.

Section 434 also serves an additional function beyond simply allowing states to provide information to DHS. It contains an express preemption and *non obstante* provision that applies "[n]otwithstanding any other provision" of federal or state law. 8 U.S.C. § 1644. Congress included this provision to clarify which law controls in case of a conflict between PRWORA and any other statute. *See PLIVA, Inc. v. Mensing*, 564 U.S. 604, 621–23 (2011) (plurality opinion) (explaining "notwithstanding" clauses). For example, privacy laws might otherwise be read to prohibit sharing information that PRWORA requires states to report to DHS. Section 434 provides both a conflict-resolution rule and ensures that DHS may share information with states—an authorization not otherwise covered by section 404's state reporting obligations. Properly understood, section 434 and section 404 both retain independent force when we give "State" its ordinary meaning.

Statutory context and the canons of construction thus support a broader interpretation encompassing the entire "State." The canon against surplusage provides no basis for grafting the words "agency administering the federal benefits program" onto the word Congress chose.

III.

None of the remaining counterarguments overcomes the strong textual and structural indicia that favor reading "State" to include all its component agencies.

A.

The 1998 Opinion relied on PRWORA's legislative history to support a narrowing construction of section 404. But it did so only because it determined there was "sufficient ambiguity" in the text "to justify" this recourse. 1998 Opinion, 22 Op. O.L.C. at 208. Because we determine that section 404 is unambiguous, legislative history cannot gloss our statutory analysis. To the extent PRWORA's legislative history diverges from the text Congress ultimately enacted, it is the statute that controls. *See Encino Motorcars, LLC v. Navarro*, 584 U.S. 79, 88–90 (2018). As this Office recently reaffirmed, "[l]egislative history cannot undermine a meaning evident from the plain text and structure of a statute." *Interpretation of "Federal Means-Tested Public Benefit" in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, 49 Op. O.L.C. __, at *15 (Dec. 16, 2025) ("*Means-Tested Benefits*") (citing *Oklahoma v. Castro-Huerta*, 142 S. Ct. 2486, 2496–97 (2022)).

In any event, the legislative-record excerpts cited in our 1998 Opinion are ambiguous at best. Our 1998 Opinion emphasized language in congressional reports describing PRWORA's section 404 as requiring "[a]gencies that administer" federal benefits programs—or "welfare agencies"—to provide information to DHS. 22 Op. O.L.C. at 208–09 (citation omitted). But references to "welfare agencies" and "[a]gencies that administer" TANF and SSI could just as well be understood to refer to the *federal* agencies administering these programs. *See* H.R. Rep. No. 104-651, at 1445 (1996); H.R. Rep. No. 104-725, at 382 (1996) (Conf. Rep.). After all, section 404 imposes reporting obligations on federal agencies too, not just states. We decline to load interpretive weight on such a broken reed.

B.

Our 1998 Opinion also argued that, because PRWORA is so-called Spending Clause legislation, we would expect Congress to be "more explicit" if it "had genuinely intended" to impose so broad a reporting obligation on "*all* state agencies, as opposed to the *administering* state agencies." 22 Op. O.L.C. at 207 (emphases in original). After all, when Congress exercises its spending power, it "must clearly and unambiguously alert a grant recipient to any condition on federal funds." *Landor v. La. Dep't of Corr. & Pub. Safety*, 146 S. Ct. 1931, 1941 (2026); *see also Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981).

But there is no notice problem here. Congress clearly and unambiguously imposed a condition on the states' receipt of TANF and SSI funds. Section 404(b) explicitly ties TANF grants to mandatory reporting requirements, while section 404(c) requires that reporting requirements be incorporated into state contracts for SSI. *See* 42 U.S.C. §§ 611a, 1383(e). What is more, the terms of that condition are clear on the face of the statute. The statute unambiguously defines "State" as a sovereign entity. *See id.* § 619(5). And in sharp contrast to the reporting requirements placed on federal agencies, *see* 8 U.S.C. § 1614, section 404 does not textually limit the states' obligations to the administering agencies. PRWORA puts states on clear notice that accepting federal TANF or SSI funds subjects the entire "State" to section 404 reporting obligations. The Executive Branch's underenforcement of that requirement since 1998 does not render it obsolete. The "authority actually granted by Congress" to require information in exchange for federal funding "cannot evaporate through lack of administrative exercise." *Bankamerica Corp. v. United States*, 462 U.S. 122, 131 (1983) (cleaned up).

Although our 1998 Opinion raised only a clear-notice argument, section 404 also does not violate the Spending Clause's prohibition on coercive conditions or its relatedness requirement. As to coercion, Congress may condition federal funds on actions that it could not directly require states to take, provided the financial incentives are not impermissibly coercive. *See NFIB v. Sebelius*, 567 U.S. 519, 576 (2012) (opinion of Roberts, C.J.). Section 404's reporting requirements attach to far less funding than the Medicaid expansion found coercive in *NFIB*, which involved roughly $3.3 trillion over a decade. *Id.* at 581. By contrast, TANF's total annual spending is capped at approximately $16.6 billion, *see, e.g.*, 42 U.S.C. § 603(a)(1)(C), and the annual appropriation for SSI federal benefits was approximately $62 million for fiscal year 2025, *see* Soc. Sec. Admin., *Justification of Estimates for Appropriation Committees for Fiscal Year 2026* at 28 (2025), https://www.ssa.gov/budget/assets/materials/2026/FY26-JEAC.pdf [https://perma.cc/2J5M-L34F]. TANF further differs from the Medicaid expansion at issue in *NFIB* because PRWORA simultaneously created the TANF program and attached reporting conditions to it, whereas the Medicaid expansion attached significant new conditions to that preexisting program and forced States to choose between dropping out entirely or shouldering the newly enacted burdens.

Section 404 also satisfies the Spending Clause's relatedness requirement. Congress has broad authority to condition the receipt of federal funds, but its conditions must relate "to the federal interest in particular national projects or programs." *South Dakota v. Dole*, 483 U.S. 203, 207 (1987) (citation omitted). Although the Supreme Court has declined to "define the outer bounds" of the relatedness requirement, *id.* at 208 n.3, its decisions show that relatedness is not a high hurdle. In *Dole*, the Court upheld a condition that required states to set the minimum drinking age at 21 to be eligible for federal highway grants. *See id.* at 205–06. The Court did not assess the specific grants or interests underlying them; rather, it concluded that the condition generally related to the purpose "for which highway funds are expended—safe interstate travel." *Id.* at 208. And in *Sabri v. United States*, the Court blessed a federal statute criminalizing bribery of state officials employed by the entities receiving federal funds, irrespective of whether the bribe was traceable to any expenditure of those funds. 541 U.S. 600, 603, 605–06 (2004); *see also Rumsfeld v. Forum for Acad. & Inst'l Rts., Inc.*, 547 U.S. 47, 59, 70 (2006) (upholding an education-funding condition that required universities to provide military recruiters with access equal to other recruiters on campus). Circuit courts have accordingly treated relatedness as a "low bar." *City of Los Angeles v. Barr*, 929 F.3d 1163, 1176 (9th Cir. 2019); *see also Kansas v. United States*, 214 F.3d 1196, 1199 (10th Cir. 2000) (articulating the degree of connection between a funding condition and federal program as "one of reasonableness or minimum rationality"); *Oklahoma v. Schweiker*, 655 F.2d 401, 406–07 (D.C. Cir. 1981) (rejecting a "rigid nexus test . . . that a condition must be precisely related to the purpose of the federal funds" to which it attaches).

Section 404's reporting obligation easily clears that bar. Congress has articulated a federal interest in preventing ineligible individuals—including those not lawfully present in the United States—from improperly receiving federal benefits, such as TANF and SSI. *See* PRWORA § 400(4)–(5), 110 Stat. at 2260 (codified at 8 U.S.C. § 1601(4)–(5)); *id.* § 401, 110 Stat. at 2261–62 (codified at 8 U.S.C. § 1611); *id.* § 431(b), 110 Stat. at 2274 (codified as amended at 8 U.S.C. § 1641(b)). Identifying persons not lawfully present in the United States rationally furthers those goals. The reporting requirement facilitates the federal government's ability to identify individuals who may be ineligible for federally funded benefits and prevents improper expenditures. The fact that a particular state agency does not itself administer a federally funded benefit does not sever the connection between section 404's reporting condition and the federal interest in preventing ineligible individuals from receiving federal benefits. Congress imposed that reporting condition "in a way reasonably calculated to address this particular impediment to a purpose for which the funds are expended." *Dole*, 483 U.S. at 209.

C.

We likewise do not find the concept of congressional acquiescence to be a persuasive reason to cling to the 1998 Opinion's erroneous statutory interpretation. The fact that subsequent congresses have not affirmatively corrected the 1998 Opinion's interpretation of section 404 does not alter the plain meaning of the statute. Indeed, it is constitutionally problematic to equate legislative inaction with action. "Congress may legislate . . . only through the passage of a bill which is approved by both Houses and signed by the President." *Cent. Bank of Denv., N.A. v. First Interstate Bank of Denv., N.A.*, 511 U.S. 164, 186 (1994) (citation omitted). Legislative "[s]ilence cannot satisfy the requirement of bicameralism" and reliance on it "circumvents the requirement of presentment." Amy

Coney Barrett, *Statutory Stare Decisis in the Courts of Appeals*, 73 Geo. Wash. L. Rev. 317, 339 (2005). Attributing binding legal effect to congressional inaction would allow Congress to "amend an existing statute without ever giving the President the opportunity to veto the amendment." *Id.*; *see also INS v. Chadha*, 462 U.S. 919, 955–56 (1983).[6]

More practically, "[i]t is impossible to assert with any degree of assurance that congressional failure to act represents affirmative congressional approval of [a court or agency's] statutory interpretation." *Cent. Bank of Denv.*, 511 U.S. at 186 (cleaned up). "Inertia is endemic to the legislative process, rendering congressional inaction a problematic interpretive guide," *Prostar v. Massachi*, 239 F.3d 669, 678 (5th Cir. 2001), and such inaction may result from "unawareness, preoccupation, or paralysis, rather than tacit assent," *Nat. Res. Def. Council, Inc. v. EPA*, 824 F.2d 1146, 1162 n.10 (D.C. Cir. 1987) (en banc) (cleaned up).

Similarly, we usually do not infer congressional ratification of a statutory interpretation merely from Congress's continued funding of a federal program created or affected by that statute. "While appropriation acts . . . can substantively change existing law, there is a very strong presumption that they do not." *Severability and Duration of Appropriations Rider Concerning Frozen Poultry Regulations*, 20 Op. O.L.C. 232, 240 (1996) (citation omitted). We generally do not treat that funding decision, without more, as indicating Congress's approval of every rule or regulation that the agency has promulgated. Indeed, "the [Supreme] Court [has] cautioned against inferring broad congressional acquiescence" to agency interpretations "from a general appropriation" for a federal program. *Schism v. United States*, 316 F.3d 1259, 1291 (Fed. Cir. 2002) (citing *Ex parte Endo*, 323 U.S. 283, 303 n.24 (1944)). "[A] contemporaneous administrative construction" of a statute "is only one input in the interpretational equation." *Id.* at 1289 (quoting *SEC v. Sloan*, 436 U.S. 103, 120 (1978)). Here, one cannot infer that Congress ratified our 1998 Opinion from the mere fact that Congress has generally continued to fund TANF and SSI.

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[6] In *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024), for example, a Supreme Court majority declined to infer from congressional inaction Congress's acquiescence to agency deference under the *Chevron* doctrine. *See id.* at 2265–66; *see also id.* at 2301 (Kagan, J., dissenting).

IV.

"[T]he reasoning with which we disagree was conspicuously shallow in its attention to the text and scope" of PRWORA's section 404, "among other flaws." *Reconsidering the Authority of the Department of Veterans Affairs to Provide Abortion Services*, 49 Op. O.L.C. __, at *12 (Dec. 18, 2025). Reversing that error "imposes no new, affirmative obligations" on states participating in TANF and SSI. *Means-Tested Benefits* at *20 (alteration accepted) (quoting *Illinois v. Sullivan*, 919 F.2d 428, 434 (7th Cir. 1990)). "It merely applies to them the text of the statute Congress enacted." *Id.* Faithful adherence to the text does entail some practical consequences: States will have increased reporting burdens compared to the status quo ante under which statutory requirements were underenforced. But fully enforcing the existing law does not create new legal obligations.

Our interpretation of section 404's reporting obligations is prospective. It cannot retroactively alter agreements for TANF or SSI funds entered under the auspices of our 1998 Opinion because the parties to those agreements had different understandings of states' reporting obligations. Equitable considerations independently preclude federal agencies from clawing back TANF or SSI funding if states complied with then-existing Executive Branch interpretations of their reporting obligations. *Id.* (citing *Bennett v. Ky. Dep't of Educ.*, 470 U.S. 656, 670 (1985)). Our opinion's prospective scope thus ameliorates any reliance interests engendered by states' acceptance of federal funding under our prior interpretation. And states remain free to reevaluate their participation in TANF or SSI going forward in view of today's opinion. In weighing reliance interests, we must also consider "the reliance interests of the American people," which are perhaps "the most important" of all. *Trump v. Slaughter*, 146 S. Ct. 2283, 2304 (2026) (citation omitted). Here, that means enforcing the law Congress enacted and "ensuring that [the American people's] tax contributions do not encourage illegal entry into the United States." *Means-Tested Benefits* at *20.

"[W]e are persuaded that the statutory language means what its terms most naturally suggest." *Feliciano*, 145 S. Ct. at 1296. Any participating state must report to DHS any person that the state knows to be not lawfully present. And "State," as used in section 404, includes all component agencies, not only the state agency administering a covered federal benefits program. This reading follows from PRWORA's express statutory definition of "State" and accords with well-established interpretive canons. It also finds ample support in statutory context and structure. We therefore determine that the mandatory reporting obligations in section 404(b) and (c) apply to all component agencies within a "State" and withdraw our contrary 1998 Opinion as inconsistent with PRWORA's unambiguous commands.

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