



# Challenging Executive Authority: Legal Challenges to Trump Administration Actions

---

March 26, 2025

# Presenters



**Cody Harris**  
[charris@keker.com](mailto:charris@keker.com)



**Charlotte Kamai**  
[ckamai@keker.com](mailto:ckamai@keker.com)



**Cara Meyer**  
[cmeyer@keker.com](mailto:cmeyer@keker.com)

# Introduction and Background

- **~135 lawsuits filed to date** responding to the Trump Administration
- Challenging **many forms of policies and actions**: Executive Orders, regulations, agency statements, Dear Colleague letters, interpretative guidance, initiations of investigations, etc.
- The vast majority have been filed in **D.D.C.**, but other frequent courts include **D. Md. and D. Mass.**, as well as N.D. Cal., S.D.N.Y., and W.D. Wash.
  - Recurring plaintiffs include state Attorneys General, federal employee labor unions, and nonprofits affected by the executive actions
  - Defendants are generally the agencies, their leaders, and the president
- **Successes and failures** for preliminary relief; no case has yet reached Rule 12 stage



# Five Key Policy and Litigation Themes

- **DOGE** — Appointments Clause, Separation of Powers, access to information, FOIA, etc.
- **Federal workforce** — Mass firings, removal of independent agency heads, dismantling of agencies, etc.
- **DEI** — Federal contractor Executive Order, educational institutions Dear Colleague letter, etc.
- **Civil rights** — Transgender ban in military, ban on gender affirming care for youths, rescission of trans passport policy, free speech violations, etc.
- **Immigration** — Sanctuary cities, birthright citizenship, Guantanamo, immigration enforcement in religious institutions and schools, etc.
- There are many other cases beyond the scope of this presentation, including related to the environment, grants and loans, funding, and more.

# DOGE - Policies Announced and Actions Taken

- Executive Orders
  - EO 14158 - Establishing and Implementing the President's "Department of Government Efficiency"
  - EO 14219 - Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Regulatory Initiative
- Dismantling of federal agencies and federal grants by DOGE
  - Legal challenges under the Appointments Clause and the Federal Advisory Committee Act
- Disclosure of personal and financial records to DOGE
  - Legal challenges under the Privacy Act



# DOGE - Appointments Clause Challenges

- The Appointments Clause provides that the President “shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.” U.S. Const., art. II, § 2, cl. 2.
  - Plaintiffs argue that that Musk and the DOGE staff are exercising “significant authority” by controlling agency operations, making personnel decisions, and directing federal spending, all powers the plaintiffs claim can be wielded only by properly appointed officers of the United States.
  - Defendants argue that Musk does not occupy an office that is itself entrusted with any actual sovereign power, he is not an “officer” at all and cannot be working in violation of the Appointments Clause.



# DOGE - Appointments Clause Challenges

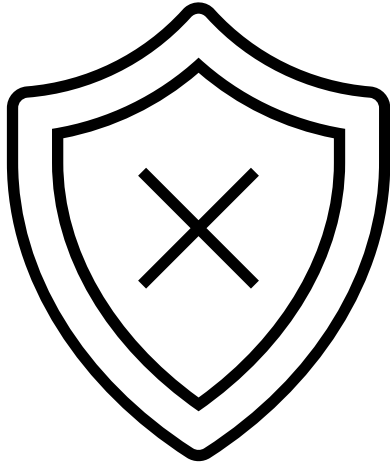
- On February 18, 2025 in *New Mexico et al. v. Musk*, Judge Chutkan (D.D.C)) **denied** 14 plaintiff-states' motion for TRO for lack of irreparable harm, but stated, "Plaintiffs raise a colorable Appointments Clause claim with serious implications." The case is now in discovery.
- On March 18, 2025 in *J. Does 1-26 v. Musk*, Judge Chuang (D. Md) **granted** a preliminary injunction on behalf of 26 current and former USAID employees, ordered DOGE to reinstate email and system access to current employees, and blocked DOGE from taking any actions relating to the agency. Defendants' appeal is pending before the 4th Circuit.

***"If a president could escape Appointments Clause scrutiny by having advisors go beyond the traditional role of White House advisers who communicate the president's priorities to agency heads and instead exercise significant authority throughout the federal government so as to bypass duly appointed officers, the Appointments Clause would be reduced to nothing more than a technical formality."***

# DOGE - Federal Advisory Committee Act Challenges

- Federal Advisory Committee Act (“FACA”)
  - Applies to a group “that is established or utilized to obtain advice or recommendations for the President or one or more agencies or officers of the Federal Government” 5 U.S.C. § 1001(3).
    - Balance: federal advisory committees’ membership be “fairly balanced in terms of points of view represented;”
    - Transparency: detailed notes of meetings be kept and that meetings be advertised and open to the public;
    - Charter: an advisory committee to file a charter with the head of the agency to whom it reports before it meets or takes action; and must designate a federal officer.
- 3 cases arguing that DOGE is a federal advisory committee subject to FACA are pending in D.D.C.

# DOGE - Privacy Act Challenges



## The Privacy Act of 1974

“No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains” with fourteen exceptions including for “officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties” 5 U.S.C. § 552a(b).

- The Act creates a private right of action, enabling citizens to sue when an agency fails to comply with those requirements “in such a way as to have an adverse effect on an individual.” *Id.* § 552a(g)(1)(D).
- Damages under the Privacy Act are limited to “proven pecuniary or economic harm” and recovery is not available for “general damages” such as “loss of reputation, shame, mortification, injury to the feelings and the like.” *F.A.A. v. Cooper*, 566 U.S. 284, 295-96, 299 (2012).

# DOGE - Privacy Act Challenges

**12 cases filed** against the Treasury Department, the Department of Labor, the Department of Education, the Department of Health and Human Services, the CFPB, the Office of Personnel Management, the Social Security Administration, and the IRS with mixed success:

- On February 14, 2025 Judge Bates (D.D.C.) **denied** a renewed motion for TRO against DOL, HHS, and the CFPB finding plaintiffs failed to show a likelihood of success on the merits on Privacy Act claims.
- On February 17, 2025 Judge Moss (D.D.C.) **denied** a motion for TRO against the DOE on the grounds that DOGE's mere "access" to data does not constitute irreparable harm.
- On February 21, 2025 Judge Alston, Jr. (E.D.V.A.) **denied** a TRO under the Privacy Act finding plaintiffs' injury was too speculative.
- On March 7, 2025 Judge Kollar-Kotelly (D.D.C.) **denied** a PI against the Treasury Department on the grounds finding plaintiffs did not show imminent plans to make private information public.
- On February 21, 2025 Judge Vargas (S.D.N.Y.) **granted** a limited PI enjoining the Treasury Department from disclosing access to DOGE-affiliated individuals to personal and confidential information based on plaintiff-states' APA claims, but found that States lacked Article III standing under the Privacy Act.
- On February 24, 2025 Judge Boardman (D. Md.) **granted** a TRO enjoining the DOE and OPM from disclosing plaintiffs' private information to DOGE.
- On March 20, 2025 Judge Hollander (D. Md.) **granted** a TRO enjoining the SSA from disclosing personal information to DOGE.
- On March 24, 2025 Judge Deborah Boardman (D. Md.) **granted** a PI enjoining the DOE from disclosing personal information to DOGE affiliates

# DOGE – Unique Considerations

- Catch-22 regarding DOGE's status
  - Is Senate approval required under the Appointments Clause?
  - Is it a Federal Advisory Committee?
  - Is it an agency permitted to review private documents under the Privacy Act?
- Standing issues for plaintiffs

# Workforce - Policies Announced and Actions Taken

- **Several actions taken to reducing the size of the federal workforce**
  - **Laying off** public employees through large scale RIFs ([Executive Order 14210](#))
  - **“Voluntary resignation”** program (“Fork in the Road” email)
- **Exercising control over agencies in various ways**
  - **Shuttering agencies and non-agency government programs** – USAID, Dep’t of Education, Voice of America, U.S. African Dev. Foundation, U.S. Institute for Peace, etc.
  - **Terminating independent agency heads** – NLRB, FLRA, MSPB, OSC, and U.S Privacy & Civil Liberties Oversight Board
  - **Termination of Inspectors General** – seventeen fired, eight sued
- At least 50 cases have been filed challenging actions related to federal employment.

# Workforce - Reducing the Federal Workforce

## Key legal issues:

- Did Congress intend to **preclude district court jurisdiction** of these challenges by establishing an alternative statutory scheme for administrative and judicial review?
  - *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200 (1994)
- The Civil Service Reform Act (CSRA) and the Fed. Service Labor Mgmt. Relations Statute (FSLMRS) create comprehensive administrative schemes for federal employees and their unions to challenge covered personnel actions.
  - Employees file first with the MSPB/OSC; unions file first with the FLRA. 5 U.S.C §§ 7105, 7701.
  - (Most) appeals may then be filed in federal circuit court. See 5 U.S.C. §§ 7123, 7703.
- Employees and unions are challenge the mass terminations and the voluntary resignation program.
  - Do these challenges fall under the CSRA or FSLMRS?

# Workforce - Reducing the Federal Workforce

At least **four cases have been filed** challenging these programs:

- Federal employee unions and state Attorneys General **filed ultra vires and APA claims**, asserting:
  - OPM government-wide programs cannot go through CSRA and FSLMRS processes.
  - OPM **cannot direct agencies** to fire workers.
- OPM argues:
  - **The agencies** conducted the terminations and resignations, and they **have the authority** to do so;
  - The **lawsuits should be “channeled”** through these administrative processes;
  - **Probationary workers do not have civil service protections.**
- Two cases **granted preliminary relief** and **reinstated probationary workers**: N.D. Cal. (Alsup, J.) and D. Md. (Bredar, J.).
- Two cases **denied preliminary relief** based on channeling (and organizational standing): D. Mass. (O’Toole, J.) and D.D.C. (Cooper, J.).

# Workforce - Exercising Control Over Agencies

## Shuttering Agencies:



USAID / US Africa Dev. Found. – stop work order, large scale RIF

- PI denied based on **channeling** and **lack of irreparable harm** to workers.



US Agency for Global Media / Voice of America - limiting grants

- Three cases filed by funding recipients, employees, nonprofits.
- Gov argued the funding recipients asserted a mere contractual issue, but **TRO was granted based on APA claims** on March 25.



Dep't of Education – paused investigations, large scale RIF, Exec. Order closing agency

- Three cases filed by state AGs, public schools, nonprofits; no decisions yet.

# Workforce - Exercising Control Over Agencies

## Terminating agency heads

- *Humphrey's Executor* provides that the president can only fire independent agency heads for cause.
- **Gov't seeks to overturn** this precedent.
- **Preliminary relief successful** in most cases; district courts find they must follow existing precedent.
- MSPB, FLRA, NLRB heads are reinstated; OSC dropped the case.

## Terminating Inspectors General

- Inspector General Act of 1978
- Dismissed IGs assert that the terminations violate the Act.
- Gov't asserts the president has authority to fire IGs under the Act.

# Workforce – Unique Considerations

- Plaintiff selection matters – state AGs and nonprofits seeing more preliminary success than federal employees or unions.
  - **“Channeling” as a significant hurdle** for claims brought by federal employees and their unions.
  - What about “government-wide” programs?
- The **“unitary executive theory”** and the limits (or not) of presidential authority with respect to agencies.
- Dismantling agencies (MSPB, FLRA) **affects workers in *other* agencies.**
- **Pending SCOTUS petition** seeking pause on reinstatement orders.

# DEI - Policies Announced and Implemented

## Two Executive Orders banning diversity, equity, and inclusion

- Public Sector EO 14151: Terminating the federal government's DEI and related mandates, policies, and activities and requiring federal agencies to terminate "equity-related grants or contracts"
- Private Sector EO 14173: Directing the Attorney General and Secretary of Education to encourage the private sector to end DEI programs and preferences; requiring contracts and grants to make "nondiscrimination" certifications for purposes of the False Claims Act

## Several Policy Statements

- February 5, 2025 DOJ Memo "Ending Illegal DEI and DEIA Discrimination and Preferences" mandating the investigation of all DEI and DEIA programs in the federally funded private sector
- February 14, 2025 Department of Education "Dear Colleague Letter"

## Implementation and Enforcement

- Agencies have suspended DEI programs
- Private Sector: Target, Meta, Disney, and other private companies have rolled back DEI policies and recruitment efforts.
- Education: On March 14, 2025 the Department of Education's OCR opened investigations into 45 universities for engaging in "race-exclusionary practices" in their graduate programs; 6 universities for awarding race-based scholarships; and 1 university for segregating students on the basis of race.

# DEI - Cases Filed and Legal Issues

- 9 cases challenging the DEI executive orders have been filed by a range of plaintiffs including: government employees fired for DEI participation; higher education and civil rights organizations; and state attorneys general.
- Plaintiffs assert First Amendment free speech and Fifth Amendment vagueness challenges as well as arguments that these orders violate separation of powers and are ultra vires.
- *Nat'l Association of Diversity Officers in Higher Ed. v. Trump* (D. Md.)
  - On February 21, 2025 the District of Maryland entered a nationwide injunction preventing the implementation of the EOs. On March 14, 2025 the Fourth Circuit stayed the injunction pending a merits decision in a three-way concurrence.
- *State of California v. U.S Department of Education* (D. Mass.)
  - On March 10, 2025 the District of Massachusetts issued a TRO on eight states' APA challenge to DOE's termination of equity-related TQP and SEED grants.

# DEI - Unique Considerations

- Ripeness and Standing Issues for Pre-Enforcement Challenges
  - When can you challenge a Dear Colleague Letter?
- First Amendment Arguments
  - The District of Maryland found that the Enforcement Provision of the EOs “expressly targets, and threatens, the expression of views supportive of equity, diversity and inclusion” and determined this to be “textbook viewpoint-based discrimination”
- Vagueness Arguments
  - “[T]he term ‘equity’ itself is broad. Although much of the J20 Order relates to DEI and DEIA, ‘equity’ is a concept that transcends issues of diversity, inclusion, and accessibility. It also extends beyond areas addressed by anti-discrimination efforts and civil rights laws”

# Civil Rights - Policies Announced and Actions Taken

- Four executive orders **restricting transgender rights**
  - **Prisons and Passports:** [Executive Order 14168](#) – defining “sex” and “gender” as binary
  - **Military:** [Executive Order 14183](#) – banning transgender military members
  - **Children’s Healthcare:** [Executive Order 14187](#) (w/context of [EO 14168](#))—bans gender affirming health care for children 18 and younger and cuts funding
  - **Sports:** [Executive Order 14201](#) (w/context of [EO 14168](#))—bans transwomen and transgirls from participating in sports
- **Proclamation from Press Secretary** related to freedom of the press
  - [Associated Press banned](#) from Oval Office and White House events
- **Deportations** of lawful permanent residents based on political activity

# Civil Rights - Trans Rights Cases

- Plaintiffs are mostly **individuals diagnosed with gender dysphoria**.
  - Health care cases also feature organizational plaintiffs, state AGs, and physicians.
- All cases assert **Fifth Amendment Equal Protection claims**, and most assert that **sex discrimination includes discrimination based on transgender status** (Fifth Amendment and Ultra Vires—conflicts with statutory law claims). *Cf. Bostock v. Clayton County*, 590 U.S. 644 (2020).
  - Also include claims not based on sex or gender, like First, Fifth (travel, privacy, parental rights), Eighth, Tenth, and Fourteenth Amendments; APA, Rehabilitation Act - disability discrimination; and *Ultra Vires*
- Government argues:
  - Prisons - **differential treatment is permissible** if “reasonably related to legitimate penological interests”
  - Healthcare - president is **directing implementation of policy**, not mandating spending requirements
  - Military - **foreign policy decisions** are beyond the purview of the courts

# Civil Rights - Trans Rights Cases

- **Preliminary relief has succeeded** so far in trans rights cases
  - **Eighth Amendment** (prisons), **ultra vires—funds authorized by Congress/separation of powers** (healthcare), **ultra vires—contrary to existing statutes** (healthcare), **Equal Protection** (healthcare, military)
  - Additional TRO/PI hearings scheduled for 3/25 in military case and passport case
  - No preliminary relief requested (yet) in sports case
- **New plaintiffs are being added** to existing cases with PIs; new cases are being filed with additional and more robust claims, defendants, and requested relief



# Civil Rights - First Amendment Cases

- *Associated Press* banned from White House events and press pool because “Gulf of Mexico” language
  - Sued for violation of First and Fifth Amendments; **TRO failed based on irreparable harm**
  - PI motion hearing on 3/27; **the judge has indicated the law favors the plaintiffs**
- Deportations of lawful permanent residents based on alleged political activity
  - **Two habeas petitions filed**: Mahmoud Khalil (detained) and Yunseo Chung (ICE attempted arrests)
  - Both assert that DHS/ICE actions are unlawful retaliation for **protected political speech**; both bring claims under the First Amendment, Fifth Amendment due process
  - Gov. asserts it can lawfully deport noncitizens who have **adverse foreign policy consequences** on the U.S.
  - Preliminary relief granted in part in *Khalil* - provide due process during deportation
  - TRO issued at oral argument in *Chung* on March 25

# Civil Rights - Unique Considerations

- Trans rights
  - **Disability discrimination claims** in place of gender-based claims?
  - Judicial branch authority to analyze **military / foreign policy decisions**?
- Journalism
  - Judge requested amicus briefs re: originalist research
  - Limits on press freedom?
- Noncitizens and political activity
  - Do noncitizens have free speech rights?
  - Foreign policy / First Amendment interactions



# Immigration - Policies Announced and Implemented

- Ending **birthright citizenship** for children born to parents who are unlawfully or temporarily in the U.S.
- Targeting “**sanctuary jurisdictions**” via funding cuts, civil actions, or threatened criminal prosecution
- Expediting **removal** of non-citizens
- Ending various programs for admission/asylum/Temporary Protective Status

# Immigration - Birthright Citizenship



KQED

NEWSLETTERS

SIGN IN

NPR SHOP

## Trump takes birthright citizenship to the Supreme Court

- “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.” - 14th Amend. Sec. 1.
- Trump EO focuses on phrase “subject to the jurisdiction thereof”
- Trump EO seeks to end birthright citizenship for children whose (1) mother was “unlawfully” in the U.S. and whose father was neither a citizen nor LPR; or (2) mother was lawfully but temporarily in the U.S. and whose father was neither a citizen nor LPR.

# Immigration - Birthright Citizenship

- 10 cases filed in 8 jurisdictions
  - 22 State AGs (W.D. Wash.)
  - ACLU (D. N.H.)
  - Casa, Inc. (D. Md.)
  - Lawyers for Civil Rights (D. Mass.)
- Pls/TROs were granted including 3 nationwide injunctions
- 14th Amendment long understood to grant citizenship to anyone born in the United States, other than children born to alien enemies in hostile occupation, Indian Tribes, and foreign diplomats. *See U.S. v. Wong Kim Ark* (1898).
- SCOTUS considering a partial stay of the nationwide Pls

# Immigration - Sanctuary Jurisdictions

- Executive Order and AG Memo targets “sanctuary jurisdictions” for reduced federal funding, civil lawsuits, or criminal prosecution
- *San Francisco v. Trump*
  - Tenth Amendment, Separation of Powers, Spending Clause, Due Process Clause, and the Administrative Procedures Act
  - PI Motion pending
- *United States v. Illinois*
  - Federal government sued IL, Chicago, and Cook County for violating the Supremacy Clause
  - Ds recently filed a motion to dismiss
- *United States v. New York*
  - Federal government sued NY and the DMV for violating the Supremacy Clause

# Immigration - Alien Enemies Act

- March 15 Presidential Proclamation: “**Invocation of the Alien Enemies Act Regarding the Invasion of The United States by Tren De Aragua**”

“Whenever there is a **declared war** between the United States and any foreign nation or government, or any **invasion or predatory incursion is perpetrated, attempted, or threatened** against the territory of the United States by any foreign nation or government, **and the President makes public proclamation** of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being of the age of fourteen years and upward, who shall be within the United States and not actually naturalized, **shall be liable to be apprehended, restrained, secured, and removed** as alien enemies.”

- Alien Enemies Act, 50 U.S.C. § 21.

# Immigration - Alien Enemies Act

*J.G.G. v. Trump*, 25-cv-766 (D.D.C.) (Boasberg, J.)

- March 15 order requiring defendants to “not remove any of the individual Plaintiffs from the United States”
  - Issued orally at hearing then reaffirmed in written order, which also certified the class.
  - Deportation flights departed the same evening.
- March 17 hearing and order requiring government to file a sworn declaration regarding the timing of flights
  - Government frames as “dispute . . . over the President’s authority to protect the national security and manage the foreign relations of the United States” and argues the Court’s orders presume “that the Judicial Branch is superior to the Executive Branch”
- March 24 gov’t notice seeks to invoke “state secrets privilege”

# Immigration - Unique Considerations

- Federal government generally has wide latitude over immigration policy and courts often defer to executive decisions
- Cases are teeing up complaints over nationwide preliminary injunctions
- Courting constitutional crises
- Delegitimization of judicial independence
- Potential to significantly remake what it means to be an American

# Conclusion and Takeaways

- Onslaught of executive actions → deluge of litigation
- Courts generally striving to apply the law, with wins and losses turning on application of established law to facts
- Many ways for courts to dodge or avoid deciding hot-button issues
- Maintaining the rule of law requires lawyers willing to challenge potentially unlawful orders and governmental overreach
- Trump's recent attacks on the private bar appear designed to cow attorneys from playing this vital role in our democracy

# Thank you!

---