



JUDGE IN FOREIGN ASSISTANCE STOP-WORK/FUNDING FREEZE CASES ORDERS FULL AND PROMPT COMPLIANCE WITH HIS PREVIOUS TRO, NEW CASES CHALLENGE DEI AND DEIA EXECUTIVE ORDERS

23 FEBRUARY 2025

TRO Enforcement Order Nixes Blanket USAID/State Grant Suspensions and Mandates Resume Work Authorizations and Release of Funding

Since CHANGES's Judicial Update 4, there have been several developments in two foreign assistance freeze cases brought by [AVAC](#) and Global Health Council et al. that resulted in a [temporary restraining order](#) (TRO) dated Feb. 13, 2025. As described further below, following a Status Report from the Defendants and Plaintiffs' Emergency Motion to Enforce Temporary Restraining Order and to Hold Restrained Defendants in Civil Contempt, the Court issued a new TRO though March 10, denying the request to find Defendants in civil contempt, but finding defiance of the original TRO and ordering the Defendants to fully implement the earlier TRO and more specifically to resume funding.

The **initial TRO** in these two cases restrained the Defendants from:

- suspending, pausing, or otherwise preventing the obligation or disbursement of appropriated foreign-assistance funds in connection with any contracts, grants, cooperative agreements, loans, or other federal foreign assistance award that were in existence as of January 19, 2025; or
- issuing, implementing, enforcing, or otherwise giving effect to terminations, suspensions, or stop-work orders in connection with any contracts, grants, cooperative agreements, loans, or other federal foreign assistance award that were in existence as of January 19, 2025.

In its TRO decision, the Court noted Defendants' representation "that some contracts at issue may include terms that allow them to be modified or terminated in certain circumstances." It further stated "it would be overbroad to enjoin Defendants from taking action to enforce the terms of particular contracts, including with respect to expirations, modifications, or terminations pursuant to contractual provisions." Accordingly, the TRO clarified that "nothing in this order shall prohibit the Restrained Defendants from enforcing the terms of contracts or grants." The TRO further ordered that "the Defendants shall take all steps necessary to effectuate this order," that written notice of the order be provided to all foreign assistance recipients, and that the Defendants report on their compliance by Feb. 18, 2025.

On February 18, 2025, the Defendants filed their [Status Report on TRO Compliance](#) claiming:

- That "Department of State and the U.S. Agency for International Development (USAID) have begun an analysis of the thousands of contracts, grants, and cooperative agreements on which action was taken during the almost four weeks between the issuance of the Executive Order and the Court's order."

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Due to the fast moving pace of announcements from the USG, and several pending legal actions, this note has been prepared by WG 3 of CHANGE on the basis of available information and will be updated from time to time. This version is as of 23 February 2025.

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- That the analysis “confirmed that at least substantially all of the terminations, suspensions, and stop-work orders issued on USAID contracts, grants, and cooperative agreements were allowed by the terms of those instruments or terms implicitly incorporated into those instruments.”
- That the Department of State “understands it may terminate, suspend, or issue a stop-work order on those contracts and grants under its own authorities— independent of any authority conferred by the now-temporarily enjoined Executive Order or January 24, 2025 memorandum.”
- That the TRO did not limit the Department of State’s exercise of “authorities under statutes, regulations, and other legal authorities.”
- That the Department of State had suspended rather than terminated thousands of contracts and had not yet reviewed those contracts on an individually with respect to permitted grounds for termination (para. 17).

The Defendants also submitted a **Declaration by Pete Morocco** which reported that USAID had stopped enforcement of the challenged orders and issued notice of the order to foreign assistance recipients. It further stated that USAID was undertaking an “on-going” case-by-case review of foreign assistance programs. Morocco confirmed that it was withholding payments pursuant to targeted case-by-case reviews and that any outgoing payment had to be vetted pursuant to a new Payment Integrity Review Process, claiming USAID had “limited and insufficient payments control or review mechanisms,” which raised concerns about “waste, fraud, abuse, and even illegal payments.”

Morocco claimed the Executive Branch has “robust statutory and constitutional authority over the provision of foreign aid” and contractual and statutory authority to suspend or terminate awards in whole or part if continued funding would not be in the national interest of the United States or would be in violation of an applicable law. He detailed the termination of 498 USAID contract, grants, and related funding instruments, and the unquantified pause or suspension (stop work) of additional USAID funding agreements. Morocco further claimed that USAID’s Front office had undertaken a multi-level and “multistep, case-by-case review process” of terminated or suspended funding agreements, which included outreach to relevant intergovernmental and external stakeholders and considered consequences of terminations, reliance interests, and effects on third parties. The alleged grounds for terminations included: DEIA-orientation; unnecessary reliance on entities with accountability issues; [excess] operation expense or general waste; being unrelated to USAID’s Core Mission or Delivery of Life-Saving AID; regime change, civil society or democracy promotion; sustainability and climate change; and inconsistency with unrelated [and unspecified] Executive Orders or Presidential Decrees. Morocco described the post-hoc review and redress options for defunded foreign aid recipients.

The Department of State terminated 25 foreign-assistance funded contracts, 733 foreign assistance-funded grants, and suspended (stopped work) on 6,824 grants, pending individual reviews to ascertain whether those grants should be continued. It claimed contractual and statutory authority to do so. The Department of State asserted its right to unilaterally terminate the suspended grants on a case-by-case basis if it were not permitted to continue the work stoppages.

In their Status Report, the Defendants neglected to report to the Court that the USAID payment system was inoperable and that exceptions to stop-work orders under authorized, but unimplemented waivers had not been functionally implemented and that payments had not been made.



In response to the non-compliance the Defendants detailed in their Status Report, Plaintiffs filed an **Emergency Motion to Enforce Temporary Restraining Order and to Restrained Defendants in Civil Contempt**. Noting the “remarkable assertion that Defendants have reviewed thousands of affected State Department and USAID grants, contracts, and cooperative agreements” and their conclusion that “terminating nearly all foreign assistance was legal,” Plaintiff argued that “[t]he Court should not brook such brazen defense of the express terms of the order.” Plaintiffs expressed incredulity that the Defendants claimed to have conducted an internal review of thousands of grants, contracts, and agreements and found a reasonable and lawful basis for *en masse* suspensions, stop-work orders, and terminations consistent with the terms of each and every grant, contract, and cooperative agreement. Meanwhile, as documented by the Plaintiffs, Defendants had continued to suspend funding and enforced stop-work orders in violation of the Court’s TRO. Not only had USAID contracting officers failed to issue formal foreign-assistance reauthorization in writing as required, but no funding had been released. A USAID contracting officer declarant, **Jessica Doe**, explained that no implementing guidance had been issued nor had she seen any evidence that a thorough case-by-case analysis had taken place. Declarant Doe detailed a protracted period of chaos, confusion, and lack of operational implementation guidance. She detailed orders calling for mass terminations, ever larger mass suspensions, radio silence on external communications, and a USAID payment system that was still offline. Even more vividly, she documented the impacted of the loss of foreign assistance programming on the PEPFAR and other global health grants she managed. In conclusion, Plaintiffs argued that continued *en masse* terminations and suspension of foreign assistance by the Defendants under the fig leaf of contractual rights and independent authorities were pretextual and defied the TRO. Plaintiffs argued further that the Defendants’ contemptuous violation of the TRO was so egregious that Defendant should be held in civil contempt.

Deciding quickly, on Feb. 20, 2025, the Court issued a **new Order**, denying the motion to find the defendants in civil contempt but granting, in substantial part, the motion to enforce the TRO, finding that the Defendants had ignored the clear and unambiguous TRO it had issued. In its most telling phrase, the Order states, “the TRO does not permit Defendants to simply search for and invoke new legal authorities as a post-hoc rationalization for the enjoined agency action.” The Court granted the motion, “insofar as Defendants have continued their blanket suspension of funds pending review of agreements, the very action that the TRO enjoined. . .” The Court opined that by giving the Defendants the right to review its funding agreements, “the Court was not inviting Defendants to continue the suspension while they reviewed contracts and legal authorities to come up with a new, post-hoc rationalization for the *en masse* suspension.” Instead, the Court reclarified, Defendants “are ordered to **immediately cease [the blanket suspension] and to take all necessary steps to honor the terms of contracts, grants, cooperative agreements, loans, and other federal foreign assistance awards** that were in existence as of January 19, 2025, **including but not limited to disbursing all funds payable under those terms** (emphasis added).” The new Order is a clear rebuke of the Trump Administration’s blatant defiance of court orders, and the irreparable harm foreign-assistance freeze is causing foreign-assistance grantees and their intended beneficiaries in other countries.

Judge Denies Request for Preliminary Injunction to Prevent Evisceration of USAID Staff

As **reported by Public Citizen**, on Feb. 21, 2025, a U.S. District Court judge in the District of Columbia has **denied** a motion for a preliminary injunction on the Trump-Vance Administration’s attempt to shut down USAID. The judge regrettably found that the plaintiff had



failed to satisfy the requirements for a preliminary injunction though many would disagree with the court's reasoning in the assessment and balancing of harms. The lawsuit attempts to prevent the administration from imposing mass administrative leaves and repatriation of the USAID workforce. As a result of the decision, thousands of USAID employees now face cessation of work duties, uprooting, and other life disruptions. Even greater harm threatens foreign assistance grantees and contractors and the ultimate beneficiaries of U.S. foreign aid who are dependent on the USAID workforce for work approvals, payments, and ultimately service delivery. Despite this setback, Public Citizen lawyers are committed to continuing the lawsuit and seeking a permanent injunction.

Challenge to President Trump's DEI and DEIA Executive Orders

As admitted by the Defendants in the AVAC case, the Department of State and USAID are using President Trump's disreputable Executive Orders (EOs) decrying Diversity, Equity, Inclusion, and Accessibility to terminate, suspend, and modify foreign assistance grants. Two cases have been filed against the orders that have implications for trying to preserve PEPFAR's crucial anti-discrimination work, health services to key populations, and gender-related activities including gender-based violence.

President Trump's first DEI EO is entitled *Ending Radical and Wasteful Government DEI Programs and Preferencing*. Condemning DEI efforts as discriminatory, illegal, and immoral. It orders coordination in the termination "of all discriminatory programs, including illegal DEI and "diversity, equity, inclusion, and accessibility" (DEIA) mandates, policies, programs, preferences, and activities in the Federal Government, under whatever name they appear." It applies to "Federal grantees who received Federal funding to provide or advance DEI, DEIA, or "environmental justice" programs, services, or activities since January 20, 2021," which presumably includes recipients of foreign assistance. The second DEI EO is entitled *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*. It is even more hyperbolic claiming that critical and influential institutions have "adopted and actively use dangerous, demeaning, and immoral race- and sex-based preferences under the guise of so-called 'diversity, equity, and inclusion' (DEI) or 'diversity, equity, inclusion, and accessibility' (DEIA) that can violate the civil-rights laws of this Nation. ... Illegal DEI and DEIA policies not only violate the text and spirit of our longstanding Federal civil-rights laws, they also undermine our national unity, as they deny, discredit, and undermine the traditional American values of hard work, excellence, and individual achievement in favor of an unlawful, corrosive, and pernicious identity-based spoils system." In addition to ordering the termination of any discriminatory and illegal programs and activities, the EO instructs the head of every agency to include "A term requiring the contractual counterparty or grant recipient to agree that its compliance in all respects with all applicable Federal anti-discrimination laws is material ... [and] [a] term requiring such counterparty or recipient to certify that it does not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws. ... This order does not prevent State or local governments, Federal contractors, or Federally-funded State and local educational agencies or institutions of higher education from engaging in First Amendment-protected speech."

Pursuant to the EOs, several government authorities, including Department of Labor, the Centers for Disease Control and Prevention, and the Department of Education entered orders ceasing and terminating award activities that contain DEI and DEIA requirements. As previously stated, the Department of State and USAID justify their current terminations and suspensions of foreign assistance on President Trump's DEI/DEIA EOs.



Two court cases against enforcement of these DEI and DEIA EOs have been filed. In the first, [National Association of Diversity Officers in Higher Education v. Trump](#), 1:25-cv-00333, (D. Maryland), plaintiff diversity officer challenge the attack on DEI initiative in higher education and filed a motion for a TRO or preliminary injunction. On February 21, 2025, a [preliminary injunction](#) against enforcement of the offending EOs was entered based on several claims: violation of the spending clause and separation of powers, unconstitutional vagueness, “deterrence of principles,” and free speech content/viewpoint discrimination. The preliminary injunction addressed the EOs’ Contract and Grant Termination Provision, its certification Provision, and part of the Enforcement Threat Provision. In the second case, [National Urban League v. Trump](#), 1:25-cv-00471 (D.D.C), just filed on Feb. 19, 2025, federally-funded service providers, including the National Urban League, the National Fair Housing Alliance, and the AIDS Foundation of Chicago also challenged the impact of the EOs on their ability to serve vulnerable and marginalized populations and on their ability on advocate on behalf of those populations. The Plaintiffs allege that the EOs violate freedom of speech, equal protection and due process rights, and the Administrative Procedure Act. In addition, they assert that the EOs are intentionally discriminatory and stigmatizing suggesting the superiority of some group over others in terms of qualifications and competence.

These cases do not directly address Trump’s attempt to curtail DEI and DEIA-related activities and advocacy in foreign assistance, but the substantive content of these court challenges and the preliminary injunction can and should inform our own efforts to preserve anti-discrimination, key population, and gender-related programming in foreign assistance programs. In this regard, there is also a [recent memorandum](#) by leading constitutional lawyer scholars in the U.S. supporting DEI and DEIA initiatives, explicating the background U.S. authority that makes such initiatives lawful, and challenging the constitutionality of the EOs insofar as they would chill and curtail lawful DEI and DEIA activities. The legal working group in CHANGE will be issuing another more detailed update analyzing the lawful basis for continued key population and gender-based work in PEPFAR and other U.S. funded global health programming and challenging the government’s right to terminate or suspend foreign assistance contracts, grants, and agreements on the basis of the unlawful DEI and DEIA EOs.

