



**Judicial Update 8: Making Sense of the Latest Judicial Orders on Trump's Foreign Assistance Freeze and DEIA and Gender Executive Orders
Brook K. Baker, Senior Policy Analyst, Health GAP | March 23, 2025**

This memo provides an update on a number of legal challenges to the Trump Administration that affect U.S. Foreign Assistance programs.

1. Foreign Assistance Cases – Failure to Undo the Dismantling of Foreign Assistance and USAID

[Earlier CHANGE Legal Updates](#) have reported on the Temporary Restraining Orders (TROs) in two cases challenging the legality of the Trump Administration's funding freeze on foreign assistance brought by [AVAC et al](#) and by [Global Health Council et al](#) (the plaintiffs) against Trump Administration defendants. Since we published those updates, the judge assigned to the case, Judge Amir Ali, entered a preliminary injunction on March 10 that ordered expedited payment by the government to plaintiffs and other foreign assistance grantees for sums accrued between January 20 and February 13, 2025 (the date of the original TRO).

Judge Ali also ordered that the government was obligated going forward to expend appropriated foreign assistance funds for the purposes established by Congress. These moves, however positive, have not yet led to what is urgently needed: reversing the deadly funding freeze on foreign assistance.

To the contrary, the Court asserted that it could not yet determine whether the mass terminations of approximately 10,000 foreign assistance awards announced on February 25 were unlawful or lawful because supporting evidence was considered by the Court to be underdeveloped.

This means the Plaintiffs are not yet eligible for a determination that the mass award terminations flowed from the original unlawful government directives, which plaintiffs argued were in violation of separation of powers, the impoundment clause, and the Administrative Procedures Act.

Subsequently, the Court ordered status reports on whether the government was making its minimum ordered payments of at least 300 per day for work through February 13 (the minimum pace for payments ordered by Judge Ali. The Defendant has demonstrated such compliance thus far.

In their status reports, Plaintiffs have argued that Defendants were not making progress in terms of continuing to spend Congressionally appropriated foreign assistance and that the only practical way to do so was by rescinding the mass grant terminations. Plaintiffs have also questioned whether the Defendant had conducted meaningful, case-by-case reviews of foreign assistance grants. However, this challenge has not yet been addressed by the Court.

Comment: Although the original funding freeze orders have been determined to be unlawful and there is an additional ruling that appropriated foreign assistance funds must be spent for Congressionally mandated purposes, the court's decisions thus far have not responded to the government's ongoing defiance of Court orders or the illegality of their actions. For example, if it is against separation of powers to thwart Congressional will and spending power by temporarily freezing funds, it surely should be unlawful to terminate 83% of foreign assistance grants after a cursory-at-best review of existing grants. In fact, many experts have concluded that mass termination was an obvious and cynical move to avoid complying with Judge Ali's initial TRO.

If USAID is subject to further enforcement orders for self-imposed delays in making court-ordered payments, then near total dismantling of USAID's ability to function by terminating key staff, placing over 90% on administrative leave, closing USAID offices, and wrecking the payment system – all in violation of Congress's direct legislation creating USAID and preventing its unilateral demise – is clearly unlawful.

If it is arbitrary and capricious in violation of the Administrative Procedure Act to impose the original funding freeze and stop-work orders, then it is even more unlawful to terminate that vast majority of foreign assistance grants based on an illusory case-by-case review process, especially where that process includes constitutionally suspect Executive Orders on diversity, equity, inclusion, and accessibility (DEIA) and so-called "gender ideology extremism."

We hope that Plaintiffs in these two cases can convince Judge Ali to respond to the government's ongoing trenchant defiance and illegal dismantling of foreign assistance programming and of USAID with a comprehensive remedy. However, even if he does so, the Trump administration would likely appeal, potentially delaying any eventual remedy.

2. Cases Regarding the DEIA and Gender Executive Orders

Temporary Stay Pending Appeal Suspends TRO against Any Enforcement of EOs in One Case but a New TRO is Issued in a Separate EO Implementation Case

The news on court cases challenging President Trump's EOs on Diversity, Equity, Inclusion, and Accessibility and on Gender Ideology Extremism is mixed at best. The original Temporary Restraining Order (TRO) and preliminary injunction entered in the [National Association of Diversity Officers in Higher Ed. v. Trump](#) case has been stayed by the fourth Circuit Court of Appeals pending appeal, which means the EOs remain in effect.

Two judges wrote opinions espousing the legality of many DEI activities, but nonetheless supporting the stay because of the savings clause in the EOs and the absence of evidence about how the EOs were being enforced by agency action. The two judges noted that the implementation of the orders could give rise to cognizable First and Fifth Amendment (unconstitutional vagueness) claims and that the savings clause itself might ultimately be determined irrelevant given the plain language of the orders.

However, on March 10, 2025, a federal judge entered a [TRO](#) against the Department of Education in a different case, brought by California and seven other states. The states are challenging the unlawful implementation of President Trump's DEIA EOs, which directed the government to terminate DEI programs and offices, and "equity-related" grants and contracts, requiring federal grant recipients to certify that they do not operate DEI programs that violate anti-discrimination law, and a directive to the Secretary of Education to develop a plan to eliminate federal funding for "illegal and discriminatory treatment and indoctrination in K-12 schools."

Following the termination of Congressionally authorized Teacher Quality Partnership and Supporting Effective Educator Development grants totaling more than \$250 million, the States brought suit with evidence of how the EOs were being unlawfully implemented. The Department has appealed to the First Circuit, which has denied

Defendant's motion for a stay of the TRO pending appeal (meaning the EOs are on pause and state DEI programs may continue).

There are multiple other federal cases pending that challenge the Trump Administration's discriminatory EOs, with important decisions pending. Included are cases brought by federally supported organizations that provide HIV health servicesLGBTQ, gender non-binary people, and other key populations.

Comment: Given the stay of the DEIA TRO and the second TRO that only addresses unlawful implementation, our advice to U.S. Foreign Assistance Recipients on Answering Questions about Compliance with DEI/DEIA and "Gender Ideology Extremism Executive Orders in CHANGE Legal Update 7 is slightly modified as follows:

We are aware that DEI/DEIA and "Gender Ideology Extremism" Executive Orders upon which these survey questions are based have been challenged on their face and as applied in U.S. Courts on multiple grounds including unconstitutional vagueness. While reserving our rights to protection from unlawful enforcement or implementation/application of the challenged Executive Orders, we assert that our provision of services to people and populations based on their health needs and use of differentiated and self-standing services models is not discriminatory and is consistent with all applicable federal law.

3. USAID Employees Succeed in Challenging Musk's Dismantling of USAID but Fail to Prevent Official Agency Ratifications

In [J. Does 1-26 v. Musk](#), twenty-six current and former USAID employees sued Elon Musk and the Department of Government Efficiency (DOGE), alleging that Musk's appointment violated the Constitution's Appointment Clause and requesting the Court invalidate past and future DOGE efforts to destroy USAIDS. On March 18, the court [granted in part and denied in part](#) Plaintiffs' motion for a preliminary injunction.

The court found that Musk in fact exercised authority reserved for appointed federal officers and that he had not been appropriately appointed to such a position.

The court further found that without congressional authorization for the Executive Branch to abolish USAID, Musk and DOGE had likely violated Separation of Powers. The Court further opined that neither the President foreign affairs powers nor his Take Care Clause powers (which relate to his duties to enforce laws passed by congress) were constitutionally sufficient to justify DOGE's adverse action on internal government

affairs. The Court ordered DOGE to reinstate USAID employee access to email, payment, security notifications and other electronic systems.

However, the court did not enjoin the mass staff and foreign assistance terminations because of evidence showing that USAID officials had approved those decisions. Although DOGE was restrained from taking specific further actions with respect to USAID absent express authorization, USAID remained in a position to ratify most of DOGE's previous actions. Defendants have appealed this decision to the Fourth Circuit.

Comment: Although this case clarified the illegality of Musk putting USAID “into a woodchipper,” it failed thus far to prevent the administration from unilaterally dismantling USAID through other means. From our perspective, this would seem to fly in the face of the Court's analysis that Congress had not given the Executive any authority to abolish USAID on its own and similarly that Presidential powers were legally insufficient to justify the same.

4. Rehiring of Some Probationary Federal Workers

In [*American Federation Of Government Employees, AFL-CIO v. Office of Personnel Management and Ezell*](#) (N.D. Cal.), several labor and nonprofits challenged the OPM's order to terminate probationary employees en masse and under false pretenses. On February 28, Judge Alsup issued a [TRO](#) finding that the OPM had no legal authority to order other agencies to fire probationary employees and blocked the terminations at six agencies. On March 24, the Dept. of Justice filed an [emergency application](#) to the Supreme Court to allow the firings to go forward.

Regrettably, the decision does not apply directly to the Department of State or USAID. However, in another legal challenge to the illegal termination of probationary employees brought by multiple States, [*Maryland v. U.S. Dept. of Agriculture*](#), the judge entered a [TRO](#) on March 13 reversing the termination of employees at 18 federal agencies including USAID. The defendant agencies appealed to the Ninth Circuit Court of Appeals which [denied](#) a request for a stay of the TRO on March 21.

Comment: Although the second decision gives temporary relief concerning the firing of probationary workers, it does not presently lead to the comprehensive restaffing of USAID and foreign assistance administration more broadly that is needed to support even a partial restart of U.S. foreign assistance for health.

5. Illegal Deportation Case Challenges Judicial Defiance

In a case involving the alleged illegal deportation of suspected Venezuelan gang members to prison in El Salvador,, [J.G.G. v. Trump](#), Chief Judge James Boasberg entered a verbal and then written order that the Venezuelan nationals not be removed pursuant to the Alien Enemies Act. The judge ruled that any planes in flight should be turned around and returned to the U.S. On March 20, Judge Boasberg entered an [order](#) that the government declare whether it was invoking the state secrets privilege and to show cause that defendants had not violated the TRO to return deportees in flight. Judge Boasberg has been subject to impeachment threats from President Trump and others.

Comment: By all appearance, there was a blatant violation of order for planes to return resulting in several contentious hearings before Judge Boasberg who has castigated the government's refusal to clarify the sequence of events. This case is relevant to CHANGE because it presages a possible constitutional crisis when the government directly refuses to abide by court orders.