

# BEARING WITNESS: PURGES, PAYBACK, DISRUPTIONS, POWER GRABS – TRACKING THE DAMAGE, AND THE PUSHBACK

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Washington, D.C.

February 15, 2026 – edition #50 (Year Two, Week Four)



*Referring, in his January 27, 1838 address, “The Perpetuation of our Political Institutions” (later to be called his Lyceum Address), to the danger facing the United States, Abraham Lincoln feared not foreign powers as its source, but rather that danger “must spring up amongst us. If destruction be our lot, we must ourselves be its author and finisher. As a nation of freemen, we must live through all time, or die by suicide.”*

*As the breaking news chyrons often call out, “this is a developing story” and as podcasts frequently note, this briefing note is current as of its date. Developments and events likely will have happened thereafter to render some aspect of this in need of further updating.*

*Sign posted in a bookstore above a display of 1984, Animal Farm, On Tyranny, The Diary of Anne Frank, The Handmaid’s Tale and Fahrenheit 451 – “It’s a warning, not an instruction manual.”*

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## SIGNIFICANT DEVELOPMENTS SINCE THE LAST UPDATE

- Wall Street Journal [carries](#) a deep dive into Kristi Noem and her top senior adviser Corey Lewandowski.
- During his testimony before the Senate Foreign Relations Committee, Jeremy Carl, Trump's pick for State position, [pronounced](#) that a loss of a dominant white culture is weakening the country.
- With an eye to potential legal challenges, EPA [issued](#) its somewhat modified final rule rescinding the "endangerment" finding and the motor vehicle GHG standards under the Clean Air Act.
- ICE [is rolling](#) out a new detention center model expected to cost \$38.3 billion and be funded through Congress' allocation of funds through the OBBB. This new model will allow it "to create an efficient detention network by reducing the total number of contracted detention facilities in use while increasing total bed capacity, enhancing custody management, and streamlining removal operations."
- Three House Rs [sided](#) with all the House Ds to block a procedural move that would have reinstated a ban on House members forcing votes on repealing "national emergencies," and then six House Rs joined all the House Ds to rescind the "national emergency" that underpins the tariffs imposed last year on Canada.
- The American Association of University Professors and various civil society groups [file](#) a lawsuit challenging the "Gold Card" visa program, which plaintiffs allege unlawfully sells U.S. residency to wealthy individuals while pushing aside scientists, researchers, engineers and other professionals.
- Judge Boasberg, following up on his most recent order that found that the government had denied due process to a class of Venezuelans deported to El Salvador in defiance of his March 2025 court order, now [orders](#) the government to facilitate the return to the United States of those plaintiffs who so desire.
- Law students who sued the EEOC [secure](#) a significant victory after the EEOC backed away from its effort to collect sensitive demographic information from specific law firms about their attorneys and job applicants.
- Federal judge [rules](#) in favor of Christian church organizations that challenged DHS and ICE policy guidance on conducting immigration-enforcement operations, including searches, interrogations and arrests, at so-called "sensitive places" or "protected areas."
- Immigration judge [rules](#) (under seal) that DHS had failed to meet its burden of proving Rümeysa Öztürk's removability and thus terminated removal proceedings against her. Records unsealed this week.
- An Irish man, Seamus Culleton, who has lived in the United States for twenty years, is married to an American citizen, had a valid work permit and driver's license, had no criminal record and was applying for a green card, was arrested in Massachusetts in a random immigration sweep and has [spent](#) five months in ICE custody.
- Federal judge [orders](#) the administration to return Any Lucia Lopez Belloza, a college freshman, after she mistakenly was deported to Honduras.
- Internal DHS document not made public [shows](#) that less than 14% of the 400,000 immigrants arrested by ICE over the past year had charges or convictions for violent criminal offenses. Less than 2% had homicide or sexual assault charges or convictions and only 2% were accused of being gang members.
- NDNY Board of Judges [appoint](#) Donald T. Kinsella as the new U.S. Attorney for the Northern District of New York to replace John Sarcone, and only hours later Kinsella is fired by the White House.
- [Update](#) on the case against Don Lemon.
- More habeas petitions [have been filed](#) this past year (18,000 – on average more than 200 per day over the past six weeks) than under Obama, Biden and the first Trump administration.
- [Update](#) on broadening surveillance at the expense of civil liberties.
- [Update](#) on assaults on the free press
- [Update](#) on Bondi theatrics on the Hill.
- Minneapolis [update](#), two federal agents lied, judge finds ongoing violations of rights. Also [in Seattle](#).
- DC US Attorney [fails](#) to secure indictments against the six Dems over their unlawful order video.
- Trump [performs](#) again at Fort Bragg – a blatantly partisan speech.
- Dems [demand](#) Venezuelan oil proceeds audit.
- [Update](#) on whistleblower complaint.
- Affidavit underpinning Fulton County search warrant [unsealed](#).
- Trump [issues](#) more threats to the elections.
- Assistant Attorney General for Antitrust is [out](#).
- Trump [threatens](#) to shut down the Gordie Howe International Bridge.
- An essay on the [shrinking adherence](#) to ethics among senior government lawyers.



## INTRODUCTORY NOTE

Imagine if the events that have unfolded since Inauguration Day had taken place outside the United States. Columnist Garrett Graff captured the essence perfectly in his February 1 post “[Musk’s Junta Establishes Him as Head of Government](#).” Graff’s observations are as apt today as they were on February 1 when he published them.

Joyce Vance [characterized](#) the events since Inauguration Day as a “coup” – “a hostile, undemocratic takeover of government.” Ruth Ben-Ghiat similarly characterized the events as a “new kind of coup.” An equally apt characterization is “state capture” (ironically, the most recent high-profile example of which occurred in South Africa on an industrial scale).

And Heather Cox Richardson [framed](#) the situation as “the replacement of our constitutional system with the whims of an unelected private citizen. The U.S. president has no authority to cut programs created and funded by Congress, and a private citizen tapped by the president has even less standing to try anything so radical.” Dahlia Lithwick and Mark Joseph Stern come to a [similar conclusion](#) in Slate. And these were all early days observations.

Time Magazine [placed](#) Elon Musk on the cover of its February 24<sup>th</sup> issue, sitting behind the Resolute Desk. Time said, “No single private citizen, certainly not one whose wealth and web of businesses are directly subject to the oversight of federal authorities, has wielded such power over the machinery of the U.S. government. So far, Musk appears accountable to no one but President Trump, who handed his campaign benefactor a sweeping mandate to bring the government in line with his agenda.” Musk is now a “special government employee” and, according to CNN, was given a top-secret security clearance.

A coup typically brings to mind military action – tanks in the streets or violent mobs storming the presidential palace, but neither violence nor involvement of the military is a prerequisite. And, yes, Trump was democratically elected, but so many of his actions since then are end-runs around Congress, fly in the face of the rule of law and violate the Constitution. That is undemocratic. More on this below – *see* [Democracy Fights Back](#).

And, speaking of terminology, I recall Iranian friends distinguishing between their government (elected) and the regime (the unelected power structure around the mullahs and the IRGC), and, while I understand that “regime” is generally understood in a normative manner to connote a government regardless of its ideological leanings, I find little reason to not be labelling the current administration as a “regime.”

More broadly, we should not mince words, and we should not let others trivialize or normalize what is happening. Some of these actions may be highly technical – diversions of deferral disbursements, worthy of a James Bond thriller, for example, but the implications are catastrophic, unless you are part of the oligarch class. The old playbook called for capturing the radio station; now, it is control of the country’s digital infrastructure. And taking down the nonpartisan civil service, whose services touch virtually every aspect of life, though many will find the structure of government

Byzantine at best, will have profound adverse ramifications across every sector of society.

I started this tracker on Inauguration Day. I wrote then, and it remains equally true today, there is plenty to digest and unpack in the pages that follow. If there was one development that stood out in the early days as a harbinger of things to come, it was the [resignations](#) of Department of Justice prosecutors over the Trump administration's decision to drop charges against NYC Mayor Eric Adams. The resignations were on par with the "Saturday Night Massacre" during the Watergate scandal and highlighted how politics have overtaken the rule of law, and the oath elected officials and federal employees have taken to the Constitution.

For the legal world, the actions of Trump's political appointees at the Department of Justice (DoJ) were nothing short of seismic, and I urged all to see this not as a difference of opinion over legal precedent or charging details, and to not be distracted by accusations by Trump officials of "weaponization" by Biden era officials or federal employees of law enforcement or of government, but rather as the elevation of political opportunity over the rule of law. It was official corruption, pure and simple. And, as Dahlia Lithwick noted in her [Amicus Podcast](#), accusations of "weaponization" are merely a cynical way to call out anyone (regardless of party and regardless of whether they are partisan or nonpartisan) who does not agree with the Trump agenda.

### **Defenders of the Rule of Law**

As we think about remaining guardrails, we should celebrate those brave souls who are speaking out forcefully in support of the rule of law.

- As **Y1, Week Seven** drew to a close, I commended the [letter](#) written by Dean Treanor of the Georgetown University Law Center ("Georgetown-educated attorneys have, for decades, served this country capably and selflessly in offices such as yours, and we have confidence that tradition will continue) and the [memorandum opinion](#) issued by District Court Judge Beryl A Howell reinstating National Labor Relations Board (NLRB) member Gwynne Wilcox ("A President who touts an image of himself as a 'king' or a 'dictator,' perhaps as his vision of effective leadership, fundamentally misapprehends the role under Article II of the U.S. Constitution").
- **Y1, Week Thirteen**, I added three other names to the pantheon of those who are holding the line on the rule of law, [Chief Judge of the D.C. District Court James E. Boasberg](#), [District Court Judge Paula Xinis](#) and [Federal Appellate Judge Harvie Wilkinson III](#). These judges have been confronting an administration that is acting on the belief that it can detain anyone on the streets of this country, put them on a plane and render them to a prison in El Salvador without due process, and then claim they do not have the power to get them back. To add to the mix, and, sadly, not surprising given the figures in the mix, the administration engaged in a combination of blatantly mischaracterizing underlying facts and outright lying.
- **Y1, Week Fifteen**, I added one more name to the defenders of the rule of law, [District Court Judge Fernando Rodriguez](#) for his ruling finding Trump's

invocation of the Alien Enemies Act unconstitutional, and highlighted her second contribution to this august group, District Court Judge Howell's [opinion](#) in the Perkins Coie case.

- **Y1, Week Twenty-Three**, I added to the list former acting Deputy Director of the Office of Immigration Litigation, [Erez Reuveni](#), who filed a formal whistleblower complaint in which he details alleged “violations of law, rules or regulations, and the abuse of authority by DoJ and White House personnel, as well as the creation of substantial and specific health and safety threats to noncitizens. These high-level governmental personnel knowingly and willfully defied court orders, directed their subordinate attorneys to make misrepresentations to courts, and engaged in a scheme to withhold relevant information from the court to advance the Administration's priority of deporting noncitizens.”
- **Y1, Week Thirty-Six**, I added to the list former U.S. Attorney for the Eastern District of Virginia (EDVA), [Erik Siebert](#), who was fired for refusing to bring indictments against NY AG Letitia James and former FBI Director James Comey.
- **Y1, Week Thirty-Eight**, I added to the list [District Judge Karin Immergut](#) for her scathing rebuke to the deployment of National Guard to Portland and [District Judge William Young](#) for his scathing rebuke to the administration's assault on free speech as he ruled in favor of students targeted for support of Palestinian rights. **Y1, Week Fifty-One**, [Judge Young](#) steps up again.
- **Y1, Week Forty-One**, I added [Sen. Elissa Slotkin's](#) call to arms to list.
- **Y1, Week Forty-Three**, I added to the pantheon to the list Judge Mark Wolf and his [explanation](#) of why he was stepping down from the federal bench.

And, finally, way back when, I commended to you the speech given on March 4 on the floor of France's upper chamber by Senator Claude Malhuret, which so captures the moment (English translation available [here](#)) – “Never in history has a president of the United States capitulated to the enemy. Never has anyone supported an aggressor against an ally. Never has anyone trampled on the American Constitution, issued so many illegal decrees, dismissed judges who could have prevented him from doing so, dismissed the military general staff in one fell swoop, weakened all checks and balances, and taken control of social media.” I wrote at the time, if only American leaders were sounding the alarm, with such clarity and forcefulness. As we rolled past the six-month mark, I remained in search of the critical masses of voices that are fighting back with such clarity and forcefulness.

As we crested the nine-month mark and this tracker reached 400 pages in length, I saw this effort as bearing witness to carnage, as attempting to place into context actions that few could have imagined would blight this Republic, and as sifting through the firehose of assaults on norms, institutions, individuals and decency to call out harbingers of dangers that lie ahead (which, borrowing from the phrase used in the summer of 2001 by CIA Director George Tenet and that has since become a proxy for failing to connect dots, I label “system is blinking red” or **SIBR**).

## FLOODING THE ZONE

The time-honored pomp and circumstance of the presidential inauguration on Inauguration Day came and went. Behind the scenes, the transfer of power, not surprisingly, was executed with ruthless efficiency, from the refitting of the Oval Office to the removal from the internet of countless webpages reflecting policies of the outgoing administration and the first of the less than voluntary personnel transitions. And, as expected, on that first day the Trump White House published a flurry of presidential actions (26 Executive Orders (EOs), 12 memoranda, four proclamations and four staffing announcements)<sup>1</sup> consistent with the America First priorities [posted](#) shortly after Donald Trump was inaugurated.

The pace of new orders has continued (as of March 25, there were 104 EOs published in the [Federal Register](#)), along with chaos across the federal government and countless communities. Steve Bannon, who in 2019 framed the desired assault on the “deep state” as one of “flooding the zone,” had one other phrase in mind, “muzzle velocity.” And that is what we are now seeing. But more on muzzle velocity [below](#).

In brief, before his Day One had ended, Trump:

- ordered the promised massive crack down on immigration, including attempting to end birthright citizenship guaranteed by the Constitution;
- undertook to reverse significant portions of the Biden legacy;
- undertook to reshape the executive branch in fundamental ways and, in the process, remove career employees deemed part of the “deep state” or otherwise insufficiently loyal to him;
- directed the Justice Department to not enforce the TikTok ban;
- declared war on diversity, equity inclusion (“DEI”) and accessibility, not only in the federal government, but within the private sector as well, which could presage attacks on funding and tax-exempt status of universities and foundations; and
- pardoned (or commuted the sentences of) all the January 6<sup>th</sup> insurrectionists who were convicted, pleaded guilty or were, as of January 19, still under investigation.

Not quite dictator for a day, but catastrophic, nonetheless. It is hard to figure out where to start in highlighting and then assessing the damage that these EOs and the efforts they purport to authorize will do to our communities, to our society more broadly, to

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<sup>1</sup> As [summarized](#) by the Library of Congress, EOs are “directed to, and govern the actions by, government officials and agencies,” and have the force of law if the topic is “founded on the authority of the President derived from the Constitution or a statute.” Executive memoranda are similar to EOs, and proclamations tend to be ceremonial in nature. According to the [American Bar Association](#), EOs “are not legislation; they require no approval from Congress, and Congress cannot simply overturn them. Congress may pass legislation that might make it difficult, or even impossible, to carry out the order, such as removing funding. Only a sitting U.S. President may overturn an existing executive order by issuing another executive order to that effect.”



the rule of law and to our Republic. In addition to the appalling pardons of insurrectionists, there was the declaration of a national emergency at the southern border and orders to use the U.S. military to deal with the southern border. There remains the potential invocation of the Insurrection Act that would provide statutory bases for the use of the military in situations never before envisioned in this country and in circumstances that at best are manufactured, not the least of which because illegal border crossings are at their lowest levels in years. The designation of drug cartels as foreign terrorist organizations also raises the spectre of deploying the military for law enforcement purposes.

In addition, there are myriad consequences lurking just below the surface, embedded in EOs that by their very nature leave much to interpretation (some likened them to press releases) and are being rolled out in chaotic fashion that almost defies imagination given the four years of preparation under the watchful eyes of team that brought us Project 2025. Moreover, there is much sloppy drafting, and it is impossible to determine whether the sloppiness was intentional.

Suffice it to say that there are countless authorities that could lead either to unintended or, more worryingly, to intended consequences that rise to the level of the harms flowing from the headline items cited above. It also bears noting that, sloppy drafting or not, one of the dangers of the forces that have been unleashed is overly aggressive or rogue interpretations of the new order – with little opportunity for due process, with potential for significant damage before courts can intervene. Oh, and incidentally, according to an [analysis](#) by CNN, 36 of the 53 EOs and other actions taken by Trump before **Y1, Week Two** ended align with Project 2025. Two months into the new administration, the *Wall Street Journal* [concluded](#) that more than half the 92 EOs issued then to date aligned with Project 2025. Recall, on the campaign trail, Trump steadfastly maintained he had never heard of Project 2025.

A final introductory note. I have framed my summary of the Trump/Musk assault on the country's institutions in terms of EOs, but we should all view these only as the forward elements of the assault. Surveying the carnage in **Y1, Week Thirteen**, David Brooks, in his op-ed "[What's Happening Is Not Normal. America Needs an Uprising That Is Not Normal](#)," urges us not to view all of the attacks by Trump and his enablers separately. "[T]hat's the wrong way to think about it. These are not separate battles. This is a single effort to undo the parts of the civilizational order that might restrain Trump's acquisition of power. And it will take a concerted response to beat it back."

## DISMANTLING THE GUARDRAILS AND THE FEDERAL GOVERNMENT WORKFORCE

Those who warned in the run-up to the election of looming dangers often were met by responses along the lines of the U.S. government is a sprawling bureaucracy that moves slowly and will be hard to undermine, particularly if those on the inside are able to subvert attempted state capture by bureaucratic manoeuvring. How wrong this was.

### Centers for Disease Control and Prevention

**Y1, Week Twenty-Two**, the *New York Times* [reported](#) that Dr. Fiona Havers resigned her position at the Centers for Diseases Control and Prevention (CDC), saying she could no longer work at the federal agency as Health & Human Services Secretary Robert Kennedy was systematically dismantling the processes by which vaccination protocols are developed. In an interview with the *New York Times*, her warning was stark: “If it isn’t stopped, and some of this isn’t reversed, like, immediately, a lot of Americans are going to die as a result of vaccine-preventable diseases.” “CDC processes are being corrupted in a way that I haven’t seen before.”

Havers cited Kennedy’s video announcing that the CDC [would no longer recommend](#) Covid-19 vaccines for healthy children or pregnant women, his [firing](#) of all 17 members of the CDC’s Advisory Committee on Immunization Practices, accusing the group without evidence of having conflicts of interest necessitating a clean sweep to restore public trust and his [naming](#) of eight new members of the committee, at least half of whom appear to share his antipathy to vaccines, including two testified against vaccine makers in trials. The firings, she said, were “the last straw.”

Two weeks earlier, Dr. Lakshmi Panagiotakopoulos, who oversaw a working group on the Covid vaccine, resigned.

**Y1, Week Thirty-Three**, four CDC officials resigned just after news broke that the head of the CDC, Dr. Susan Monarez [has been removed](#) by HHS. Demetre C Daskalakis, director of the National Center for Immunization and Respiratory Diseases; Daniel Jernigan, director of the National Center for Emerging and Zoonotic Infectious Diseases; and CDC Chief Medical Officer Deb Houry submitted their resignations, according to emails shared with *The Hill*. *NBC News* reported that Dr. Jen Layden, director of the Office of Public Health Data, Surveillance and Technology, also resigned. Earlier in the day, FDA rescinded emergency use authorizations for COVID-19 vaccines.

In an email, Daskalakis said “I am not able to serve in this role any longer because of the ongoing weaponization of public health.” Houry wrote, “I am committed to protecting the public’s health, but the ongoing changes prevent me from continuing in my job as a leader of the agency,” adding that science should “never be censored or subject to political interpretations.” In interviews on Thursday with [Reuters](#) and the [Washington Post](#), Jernigan, whose department oversaw the vaccine safety group, said he was forced by Kennedy aides, Lyn Redwood and David Geier, anti-vaccine activists

who promote a debunked link between vaccines and autism, to re-examine the false claim that vaccines cause autism. The resignation letters of all three are available [here](#).

After the leaders were escorted out of the CDC headquarters, staff members [honored and saluted](#) them.

Monarez, who had been nominated by Trump and confirmed by the Senate July 29, reportedly was under pressure to change the CDC's vaccine policy and was unwilling to yield. HHS Secretary Kennedy had suggested she resign for not following Trump's agenda.

Counsel for Monarez, Mark Zaid and Abbe Lowell, confirmed that Monarez is fighting back – noting that she is yet to be fired by the President and does not intend to resign. For the record, only the President can fire her. That firing followed shortly thereafter.

Former CDC Director Tom Frieden [posted](#) on X, “For 80 years, CDC has been a beacon of health protection for the United States and the world. That beacon is now in grave danger of being extinguished, endangering all of our health. Eroding health protection capacity at the top further undermines trust at a time when it is most needed.” Sen. John Ossoff posted: “Tonight's events are yet more evidence that putting a quack like Bobby Kennedy in charge of public health was a grave error. The Trump Administration has been engaged for months in a campaign to destroy the CDC, America's preeminent disease-fighting agency. The Administration's extremism and incompetence are putting lives at risk.”

The White House announced that Kennedy's deputy at HHS Jim O'Neill has been selected to act as acting head of the CDC. Unlike Monarez, who was an infectious disease specialist, O'Neill does not have a medical or scientific background. O'Neill served as a former speechwriter for HHS during the George W. Bush administration, and then as a Silicon Valley investor and worked for Peter Thiel.

Meanwhile, on The Hill, a few GOP lawmakers have discovered a backbone. Sen. Bill Cassidy, who served as a physician before entering politics and was a crucial vote for Kennedy, posted a warning on X, “These high-profile departures will require oversight by the [Senate Committee on Health, Education, Labor and Pensions]. which he chairs. Cassidy also called for the postponement of a CDC vaccine adviser meeting.

Heather Cox Richardson [summarized](#) the state of play around the Kennedy testimony on developments at the CDC:

- Sen. Wyden the highest-ranking Democrat on the Finance Committee, asked that the committee swear Kennedy in before he testified. Committee chair Mike Crapo declined. Wyden responded: “This committee's unwillingness to swear this witness is basically a message that it is acceptable to lie to the Senate Finance Committee about hugely important questions like vaccines.”
- Kennedy insisted his actions are intended to restore faith in the CDC after it “failed miserably” during the pandemic. He called the CDC “the most corrupt agency at HHS, and maybe the government.” He denied the official tally that more than 1.2 million Americans died from Covid-19 and denied that new government guidelines for the COVID-19 vaccine mean that people cannot get

them. He repeatedly suggested Democratic senators were lying when they quoted facts or data that were inconsistent with his narrative.

- Sen. Cassidy said, “Effectively, we’re denying people vaccines.” Kennedy replied: “You’re wrong.”
- In an op-ed [published](#) in the *New York Times*, nine former directors of the CDC warned that Kennedy is “endangering every American’s health.”
- More than 1,000 current and former HHS employees (representing employees from the CDC, NIH and FDA) wrote a public letter to Kennedy as well as the Senate Committee on Health, Education, Labor and Pensions; Senate Committee on Finance and the House Committee on Energy and Commerce and the majority and minority leadership citing their oath to the Constitution and the imperative to speak out if it is being violated and lives are put at risk. They warn that Kennedy is endangering the health of the nation by spreading inaccurate information and called for Kennedy to resign or be fired.
- Former CDC director Monarez [published](#) an op-ed in the *Wall Street Journal* warning that Kennedy and his anti-vaxx colleagues “use a familiar playbook: discredit research, weaken advisory committees, and use manipulated outcomes to unravel protections that generations of families have relied on to keep deadly diseases at bay. Once trusted experts are removed and advisory bodies are stacked, the results are predetermined. That isn’t reform. It is sabotage.”
- Florida became the first state to take action to eliminate all vaccine mandates for public school students. If the Florida legislature agrees, it would end required vaccinations for polio, tetanus, chicken pox, hepatitis B, and MMR. The CDC [estimates](#) that between 1994 and 2003, childhood vaccinations prevented 32 million hospitalizations and 1,129,000 deaths among children and saved at least \$540 billion.

### Central Intelligence Agency

Trump sent buy-out offers to the entire CIA workforce. Our adversaries could never have imagined inflicting so much damage to our national security and defense with such speed and efficiency. The *Wall Street Journal* was the [first](#) to report to move.

In the what-were-they-thinking department, it has been widely reported that the CIA shared with the Office of Personnel Management (OPM) over unencrypted email a list of their employees hired in the last two years (meaning on “probation” and easier to fire) – first name and initial of their last names. The *New York Times* [quoted](#) one former intelligence officer as saying this was a “counter-intelligence disaster.” While apologists downplayed the risk, others noted that names and initials could be combined with other data, whether from driver’s license and car registration systems, social media accounts or publicly available information from colleges and universities that the CIA typically uses for recruitment, to assemble a more complete list of agents. Imagine not only the adverse impact on national security of firing young intelligence officers but think of the tremendous waste given the intense training they have been through.

Incidentally, according to the [Washington Post](#), when the FBI [was forced](#) to turn over to acting Deputy Attorney General Emil Bove the names of agents involved in investigations of January 6<sup>th</sup> or of Trump (numbering close to 6,000 of the 38,000-strong FBI workforce – an appalling move motivated simply by a desire for revenge), initially employee ID numbers, and eventually names, were provided through a classified system.

**Y1, Week Fifteen**, it was widely reported that the CIA had fired Dr. Terry Adirim, the director of Center for Global Health Services, its most senior doctor, after a far-right activist accused her of being the “architect of the Pentagon’s COVID-19 vaccine mandate. In 2021, she had served as the most senior medical official at the Pentagon when then Secretary of Defense Lloyd J. Austin mandated that all members of the military be vaccinated. The far-right activist is a former Green Beret who became a vocal critic of the COVID-19 vaccine and published a “Deep State Target List” of 350 individuals he accused of treason.

The CIA reportedly plans to cut more than 1,000 staff positions through attrition over the next few years but is not intending to undertake any more mass firings. Around 80 probationary employees [were terminated in March](#). The CIA also attempted to fire officers who had worked on diversity issues, although a federal judge has [temporarily enjoined](#) that effort.

### **Consumer Finance Protection Board**

Trump appointed his new Treasury Secretary, Scott Bessent, as the acting head of the Consumer Finance Protection Board (CFPB), which is an independent federal agency created by Congress in the aftermath of the global financial crisis to protect consumers against banking industry overreach. Bessent promptly [ordered](#) the CFPB to cease work. The prior CFPB director was fired only a few days before. Only days later, Trump [appointed](#) his newly installed OMB chief Russell Vought as acting head of the CFPB. DOGE apparently was granted “read only” access to CFPB data.

The Mayor and City Council of Baltimore and the Economic Action Maryland Fund [sued](#) the CFPB and Russell Vought to halt the defunding of the CFPB (02/12/25). The Trump administration [agreed](#) to pause the defunding pending the outcome of the lawsuit (02/13/25).

**Y1, Week Seventeen**, media reports (*see, e.g.,* [Reuters](#) May coverage and [Reuters](#) December coverage) that the CFPB is withdrawing a proposal to extend consumer protection to new digital payment technologies, which in effect would have limited the sale of private information of Americans and bring “data brokers” within the purview of CFPB regulatory oversight (05/15/25).

Coincidentally, the Belgian Court of Appeal (Market Court) [has ruled](#) that the Transparency and Consent Framework (TCF) that serves as the foundation for most online advertising is illegal in the European Union as it breaches the General Data Protection Regulation (GDPR). Advertisers participate in real-time bidding (RTB) to air their content online, based on information gathered from tracking activities of consumers online. (Every time a consumer visits a website, a slew of data is broadcast to the site owner including IP address and location. That can be combined with data



voluntarily provided by consumers and assumption based on browsing history.) THE TCF standardized how websites ask consumers to be tracked. The court determined that the consent collected by the TCF, and the data collected in the RTB process violate the GDPR. See [engadget](#) explainer.

### **Consumer Product Safety Commission**

**Y1, Week Sixteen**, Trump fired the three Democratic members of the five-member Consumer Product Safety Commission (CPSC). CPSC is an independent agency that issues standards for manufacturers, investigates product hazards, issues product recalls and bans products it deems a risk to consumers. Consumer Reports [condemned](#) the firings.

### **Cybersecurity and Infrastructure Security Agency**

**Y1, Week Sixteen**, the May 2 White House budget recommendation for FY 2026 calls for [cutting](#) the budget of the Cybersecurity and Infrastructure Security Agency (CISA) by \$491 million. The recommendation, per the government, “eliminates programs focused on so-called misinformation and propaganda as well as external engagement offices such as international affairs. These programs and offices were used as a hub in the Censorship Industrial Complex to violate the First Amendment, target Americans for protected speech, and target the President.” This budget recommendation also cuts \$247 million from the Transportation Security Administration (for screening) and \$646 million from FEMA.

**Y1, Week Twenty-Seven**, Sean Plankey, Trump’s nominee to lead CISA and a former Department of Energy and National Security Council cybersecurity official, appeared before the Senate Homeland Security and Governmental Affairs Committee. GovInfo Security [reports](#) that Plankey’s nomination remains blocked by Sen. Ron Wyden over an unreleased CISA 2022 report on telecommunications vulnerabilities linked to the Chinese Salt Typhoon hack.

Plankey told the Committee he has “not reviewed the cybersecurity posture of all 50 states” and deflected questions about the 2020 election, saying he had “not reviewed any of the cybersecurity of the 2020 election.” He avoided answering questions about whether the 2020 election was “rigged or stolen,” emphasizing instead that election security is handled by individual states. This prompted Sen. Richard Blumenthal to say, “If you can’t tell us with conviction and conscience that those elections were secure, I have very serious doubts about your ability to lead this agency.” Recall, that former CISA Director Chris Krebs had been fired by Trump for pronouncing the 2020 election secure and has since been targeted by Trump via EO.

Plankey voiced support for the State and Local Cybersecurity Grant Program, characterizing it as “one of the best ways” to bolster cybersecurity for rural communities, and support efforts to reauthorize the Cybersecurity Information Sharing Act of 2015, describing it as “very critical” for protecting liability in information-sharing between businesses and government. The Act, known as CISA 2015, expires September 30 (see [GovInfo Security](#) reporting on the implications of a failure to reauthorize the legislation). See also “[A State Agenda for Election Security and Resiliency](#)” published by the Brennan Center and R Street Institute.

Reporting by Jonathan Shoreman of States Newsroom, published by the Wisconsin Examiner, [highlighted](#) a Brennan Center [survey](#) (05/25) of 858 election officials that found that election officials across the country fear the loss of federal support for election security. Sixty percent of local election officials expressed some level of concern. The concern follows the [halt](#) in March by CISA of its election security work, the [firing](#) by DOGE of 130 cybersecurity workers at CISA and the EO targeting Krebs. Shoreman cites Lawrence Norden, vice president of the Brennan Center's Elections and Government Program, as saying that cuts at CISA mean state election officials are going to need more financial support from state and local governments, and that states will have trouble replicating the ability of the federal government to see the "big picture" and more easily share information with election officials across the country.

### **Department of Agriculture**

The Department of Agriculture said that it had "accidentally" [fired](#) a group of employees tasked with responsibility for responding to the H5N1 avian flu outbreak, which was spreading from poultry to humans.

### **Department of Defense**

#### ***Reshaping the Pentagon***

The *Washington Post* was the first [to report](#) that the Department of Defense (DoD) had been directed to begin taking steps to shut down the Civilian Protection Center of Excellence. According to [one post](#) by a military veteran and expert on urban warfare, those familiar with the office describe its mission "as a tool that provides commanders more information as they conduct operations, informing targeters or military planners about patterns of life in a particular area, identifying cultural sites and averting unintended deaths before they occur." The office was established by Congress and, thus, its closure legally needed Congressional approval. That said, as with other presumed guardrails, were Congress to block its closure, military and administration officials could eliminate its budget, fire or reassign personnel, or take other actions to neuter the office.

In another shake-up of who covers official Washington, the Pentagon as part of a media rotation replaced the *New York Times*, NBC News, National Public Radio and *POLITICO* with One America News Network, the New York Post, Breitbart and HuffPost.

**Y1, Week Five** saw the arrival at the Pentagon of the former chief information security officer (CISO) for acquisitions and sustainment return as DoD's CISO. She had been suspended from her prior position after she lost her security clearance for [allegedly](#) disclosing classified data.

The Department continues its whitewash of history. The removal of DEI milestones included, as reported by [Fox](#), [AP](#) and [PBS](#), among others, removal of images and stories of the first Black military pilots, the Tuskegee Airmen, the first woman to graduate from Marine infantry training, a Black Medal of Honor recipient, the Japanese-American 442<sup>nd</sup> Regimental Combat Team composed principally of American-born children of Japanese immigrants to the United States, the Navajo code

talkers and the aircraft that dropped the atomic bomb on Hiroshima, Enola Gay. Really? Some pages have been restored.

The Pentagon is not alone. **Y1, Week Eleven**, the *Washington Post* [reported](#) that on its webpage introducing the Underground Railroad, the National Park Service had removed a photo of Harriet Tubman and minimized references to slavery below a series of five postage stamps celebrating “black/white cooperation” and describing the Underground Railroad as “one of the most significant expressions of the American civil rights movement during its evolution over more than three centuries.”

**Y1, Week Eleven**, Stars & Stripes [reported](#) that the Army was planning to eliminate close to a dozen mandatory training programs and intend to leave to commanders whether soldiers are required to complete training in six categories, including Law of War training, which covers ethics on the battlefield, and Code of Conduct training, which covers ethics while in uniform.

**Y1, Week Fourteen**, Trump’s Secretary of Navy John Phelan, a GOP donor with no military experience (the founder of a private investment firm, he became only the seventh non-veteran to serve in the post, and the first in 15 years), twice [posted](#) on social media, after visiting Pearl Harbor, the wrong date for the attack on Pearl Harbor, referring to June 7, 1941 instead of December 7, 1941. Not to be outdone, in **Y1, Week Twenty**, during an exchange in the Oval Office with Chancellor Friedrich Merz on June 5, after Merz [noted](#) that the following day was June 6, the anniversary of D-Day, Trump chimed in “That was not a pleasant day for you? This is not a great day.” Mertz responded, “No, in the long run, this was the liberation of my country from Nazi dictatorship.” Incidentally, as widely [reported](#) Merz was not humiliated during his visit to the Oval Office; rather the opprobrium was directed at Musk.

See also [Politicization of the Military](#) and [National Guard is Weaponized](#), below.

**Y1, Week Thirty-Seven**, NPR [reports](#) that the Pentagon is changing its rules for journalists covering the Department of Defense. Those journalists will be required to sign a pledge not to gather information that has not been “approved for public release.” The pledge extends to unclassified material as well. In May, the Secretary of Defense [placed](#) new restrictions on access by credentialed media from many areas of the Pentagon unless accompanied by an approved escort. Among others, the National Press Club [denounced](#) the new restrictions, noting that independent reporting on the military is essential to democracy, [in that it] “allows citizens to hold leaders accountable and ensures that decisions of war and peace are made in the light of day.”

NBC News [reported](#) that, just days before the beginning of Black History Month, the Defense Intelligence Agency paused all activities relating to Martin Luther King Jr. Day, Black History Month, Juneteenth, LGBTQ Pride Month, Holocaust Remembrance Day and other “special observances.” And affinity groups and “employee networking groups” are immediately on hold.

Hanks has portrayed members of the U.S. military in “Saving Private Ryan,” “Forrest Gump,” “Greyhound,” “Band of Brothers” and “The Pacific.” He also was a leading proponent for creation of the World War II Memorial in D.C., supported efforts to build a national memorial for President Dwight D. Eisenhower and served as national

chairman for the fundraising campaign to establish what is now the National WWII Museum in New Orleans. See the [June announcement](#) of the award.

Hanks participated in 2020 fundraisers for Joe Biden and hosted “Celebrating America” organized by the Biden Inaugural Committee.

**Y1, Week Forty**, by Tuesday’s deadline, news outlets across the ideology spectrum declined to agree to the Pentagon’s restrictive press policy. The outlets included the Associated Press, the Atlantic, Breaking Defense, the Guardian, HuffPost, the New York Times, Newsmax, NPR, Reuters, Task & Purpose, the Wall Street Journal, the Washington Post and the Washington Times. The only publication that indicated it would sign the pledge is One America News. See [Guardian](#) coverage, [New York Times](#) statement and [NPR](#) press release. See also “[Why I’m handing in my Pentagon press pass.](#)”

**Y1, Week Forty**, *Breaking Defense* was the first [to report](#) that the Secretary of Defense and the Deputy Secretary of Defense have directed DoD personnel, with the exception of the Pentagon IG’s office and the comptroller, to coordinate all engagements with Congress and state elected officials ahead of time with the Office of the Assistant Secretary of Defense for Legislative Affairs. As the reporting notes, prior to the policy shift, military services, the combatant commands and other DoD agencies were able to manage their own interactions on the Hill. The reporting also notes that the policy shift may backfire when Congress is in the process of setting out the details of the annual National Defense Authorization Act and corresponding appropriations bills, the process for which often requires real time input from the military.

**Y1, Week Forty-One**, the Pentagon [announces](#) that over 60 journalists have taken the pledge and are accredited to cover the department. These are principally conservative media and right-wing influencers. See [Washington Post](#) coverage. **Y1, Week Forty-Four**, Laura Loomer is reportedly credentialled to cover the Pentagon.

**Y1, Week Forty-Eight**, the Washington Post [reports](#) that DoD is planning a major reshuffle of its command structure with a corresponding shift in the balance of authority among its top commanders. Among other changes, the plan reportedly contemplates placing Central Command, European Command and Africa Command under a new International Command. Southern Command and Northern Command would be folded into a newly formed Americas Command (Americom). The changes would complement a shift of resources and emphasis from the Middle East and Europe to the Western Hemisphere, in line with the [2025 NSS](#).

The plan would reduce the number of top military headquarters (combatant commands) from 11 to eight and would reduce the number of four-star generals and admirals who report directly to the Secretary of Defense. The remaining combatant commands would be Indo-Pacific Command, Cyber Command, Special Operations Command, Space Command, Strategic Command and Transportation Command.

The FY 2026 NDAA currently [pending](#) in Congress (the House has passed it) would withhold appropriations for the plan until at least 60 days after DoD has provided Congress with a detailed description of the plan, including its costs and the impact on our alliances.

## *Purges and Resignations*

The bombshell would drop at the end of **Y1, Week Five**, when Trump fired the Chairman of the Joint Chiefs of Staff (CJCS), General Charles Q. Brown, Jr., known as CQ (only the second African American to hold the position), and announced he would replace him with retired [Air Force Lieutenant General Dan Caine](#). Typically, the chairman of JCS remains in place when administrations change. Defense Secretary Hegseth, a former Fox News commentator and Army National Guard major, had attacked Brown for his “woke” focus on DEI in the military. Trump had already removed Admiral Linda Fagen, head of the Coast Guard, upon his inauguration. This has since been referred to as the “Friday Night Massacre.”

Hegseth’s [press release](#) announcing the replacement confirmed that more senior military leaders were being fired, namely the Chief of Naval Operations, Admiral Lisa Franchetti (the first woman CNO), and the Air Force Vice Chief of Staff, General James Slife, as well as the Judge Advocates General (TJAGs) for the Air Force and Army. The TJAGs are the senior most lawyers in each of their respective services and provide guidance to commanders on both domestic and international law relevant to military operations. Their appointments are subject to Senate confirmation.

It is noteworthy that [10 U.S. Code § 152](#), which governs the appointment of the CJCS, mandates the eligible pool of military officers that can serve as CJCS and Caine does not fit within them. That said, there is a carve out to that provision that allows the President to waive the eligibility requirement “if such action is necessary in the national interest.”

There is a well-founded reason for [10 U.S. Code § 152](#), and that is that it is critical for the CJCS, in fulfilling his/her duties, to be able to draw on personal experiences that only those officers that have achieved these few elevated ranks can bring to bear. The end-run by Trump around this requirement both undermines the finely balanced traditions that underpin Pol-Mil (civilian control of the military) and deprives the President of unvarnished, unfettered advice, that the President is then free to accept or ignore.

As Shane Harris and Jonathan Lemire, writing in The Atlantic, [noted](#), Caine’s appointment breaks with “a generation of norms and traditions governing promotion in the senior ranks of the military. In nearly 30 years, no one has risen to chairman without first serving as a member of the Joint Chiefs.” Caine has since been confirmed.

Harris and Lemire characterized the firings of Brown and Franchetti as having “rattled the foundations of the armed forces.” They added that “Brown’s dismissal, coupled with Caine’s improbable elevation, added to a sense of bewilderment that has prevailed across the national-security establishment since Inauguration Day, as the administration purges the upper echelons of career officers and civil servants. Trump also appears poised to remove several other top military leaders—focusing on Black and women officers—and replace them with his handpicked successors.” Senior officials at CIA, DHS and FBI, as well as at the other 17 intelligence agencies, are bracing to be fired.



Tom Nichols, also [writing](#) in *The Atlantic*, after noting that the assumed reason for Caine’s promotion (fealty) disqualifies him from the job of serving as the most senior officer in the US military and by law the principal military adviser to the President, best captured the ominous storm clouds looming on the horizon. “Now that Trump has captured the intelligence services, the Justice Department, and the FBI, the military is the last piece he needs to establish the foundations for authoritarian control of the U.S. government. None of this has anything to do with effectiveness, or “lethality,” or promoting ‘warfighters,’ or any other buzzwords. It is praetorianism, plain and simple.” The point of the firings, as one former senior military officer pointed out, was the firing. It sends a message.

Count Every Hero, a nonpartisan initiative of former secretaries of the Army, Navy and Air Force and retired four-star admirals and generals, [wrote](#) to the Chair of the Senate Committee on Armed Services (02/12/25) “to express deep concern” that the Secretary of Defense “is dismissing senior military officers without due cause. Such actions threaten the strength and stability of our Armed Forces.” In an [op-ed](#) (02/23/25), four former leaders of each of the four military services raised similar concerns.

Harris and Lemire cite a post by former Army Ranger and since 2018 Congressman Jason Crow who posted on X that while the purge of senior officers “is deeply troubling, ... purging JAG officers worries me most.” JAG officers interpret the law (under the Uniform Code of Military Justice) and the constitutionality of military actions/orders and would be at the forefront of determinations around lawful and unlawful orders. Retired military officers point out that JAGs are in place to keep their commanders out of trouble, not to override their decisions or undertake rogue crusades. Think of the toxic combination of a president no longer bound by concerns over civil or criminal liability due to the Supreme Court grant of presidential immunity and the absence of nonpartisan guardrails able to interpret whether an order is lawful or not (keeping in mind that while the president likely is immune, those tasked with carrying out unlawful orders would not be).

**Y1, Week Six**, in an [unprecedented public message](#) to Congress, five former Secretaries of Defense (William Perry, Leon Panetta, James Mattis, Chuck Hagel and Lloyd Austin) appealed to Congress to hold hearings to assess the national security implications of the dismissals of the senior military leaders, to demand that the administration justify each firing and explain why the administration violated Congressional intent that General Brown complete his four-year term, and to refuse to confirm any new Pentagon nominations in the meantime (02/27/25).

**Y1, Week Twelve**, General Caine was confirmed as CJSC by the Senate, and Col. Susannah Meyers, commander of Pituffik Space Base in Greenland, recently visited by Vice President Vance and his wife, was relieved of her command for sending an email to base personnel calling for unity – the flags of America, Canada, Greenland and Denmark “proudly” fly over a base staffed [by](#) personnel from each. *See also* [“Signalgate.”](#)

**Y1, Week Twenty-Seven**, the Superintendent of the Naval Academy, Vice Admiral Yvette Davids, was removed unexpectedly – another casualty of the campaign to root

out DEI and restore a “warrior ethos.” A Marine general has been nominated to lead the Academy, making him the first Marine to do so in the Academy’s nearly 180-year history.

Davids, the first woman to lead the prestigious Naval Academy, joins Admiral Lisa Franchetti, who was removed as the first woman Chief of Naval Operations, Admiral Linda Fagan, the first woman to lead the Coast Guard, and Vice Admiral Shoshana Chatfield, the U.S. military representative to, and sole female flag officer on, the NATO Military Committee, who all have been removed from their posts under Trump. Davids has been reassigned as Deputy Chief of Naval Operations, Plans, Strategy and Warfighting Development. According to USNI News, which [broke](#) the story, the Superintendent is a three-year position and the Navy Secretary is required by [federal law](#) to submit an explanation to Congress if the Superintendent leaves the post early. *See also* [Axios](#) coverage. Following these purges, there are no female four-star officers on active and no women with pending appointments for three-star or four-star positions. *See* [The Hill](#) coverage.

The Secretary of Defense faces other challenges as well. Gregg Jaffe, Eric Schmitt and Helene Cooper of the *New York Times* (“[A Clash Over a Promotion Puts Hegseth at Odds With His Generals](#)”) report on the continuing clash between the Secretary’s “highly partisan worldview, in which he has written that the Democratic Party ‘really does hate America,’ and the longstanding tradition of an apolitical military that pledges an oath to the Constitution.” They posit that the Secretary’s “insistence on absolute loyalty, backed with repeated threats of polygraphs, also creates uncertainty and mistrust that threaten to undermine the readiness and effectiveness of the force, officials said.”

The three reporters cite, in addition to the firings of the senior female officers and CQ Brown as CJSC, the story of Lt. Gen. Douglas A. Sims II, a 34-year veteran who led troops over five tours in Afghanistan and Iraq, who initially was denied a promotion as he was suspected of leaking sensitive information to the media, then promoted when he was cleared of the leak allegations, then demoted for being too close to Gen. Mark Milley. Incidentally, the White House reportedly directed the Secretary to cease using polygraph tests on his team. Sen. Thom Tillis, referring to the Secretary, [told](#) CNN’s Jake Tapper that, “With the passing of time, I think it’s clear he’s out of his depth as a manager of a large, complex organization.”

**Y1, Week Twenty-Eight**, the U.S. Military Academy at West Point rescinded an offer given to Jan Easterly, who led CISA under President Biden. She was to serve as the next Robert F. McDermott Distinguished Chair in the Department of Social Sciences. The firing came less than 24 hours after Laura Loomer [criticized](#) the hiring.

The *New York Times* [reported](#) that, in a significant departure from past practice, the Secretary of Defense has begun requiring all nominees for four-star positions to meet with Trump before the nominations are finalized, raising concerns in some quarters that the practice could lead to further politicization of the military. There currently are about three dozen four-star generals and admirals in the U.S. military. Historically, Presidents have met with nominees for CJCS, the generals leading each of the military services and the combatant commanders.

**Y1, Week Thirty-One**, only two years into his four-year term as Air Force Chief of Staff, Gen. David Allvin [announced](#) he would retire in November. The *Washington Post* [had reported](#) that the Secretary of Defense had asked him to resign. Gen. Allvin thus joins the CJCS, the CNO, the commandant of the Coast Guard and the Vice Chief of Staff of the Air Force, as well as a slew of other generals and admirals that have been purged.

I commend the article written by Eliot A. Cohen (“[The Sword and the Book](#)”) on the important role of civilians in military education, and why the Secretary of Defense efforts to purge them is wrong and even more damaging.

**Y1, Week Thirty-One** saw more purges of military ranks. As noted above, the Director of the DIA [was removed](#), though it is unclear if he has been reassigned or discharged. The Secretary of Defense reportedly also removed Vice Adm. Nancy Lacore, the chief of the Navy Reserve, and Rear Adm. Milton “Jamie” Sands, a Navy SEAL officer who oversaw Naval Special Warfare Command. Each had been in their leadership positions only one year. See [Washington Post](#) coverage and [Task & Purpose](#) coverage.

**Y1, Week Thirty-Four**, the alumni association of the U.S. Military Academy has cancelled an award ceremony honoring actor, director, producer and veterans advocate Tom Hanks. Hanks was to receive the Sylvanus Thayer Award, which recognizes an “outstanding citizen” who did not attend West Point and has a distinguished record of service that exemplifies the academy’s ideals: “Duty, Honor, Country.” The award ceremony was scheduled for September 25. The *Washington Post* [notes](#) that it is unclear whether the award has been revoked or if it will be presented some other way.

**Y1, Week Thirty-Eight**, in a sign of further turmoil at the Pentagon, the Secretary of Defense fired Jon Harrison, the Chief of Staff to the Secretary of the Navy. *POLITICO* described Harrison, a Trump appointee, as “an unusually powerful top aide who had orchestrated a reshuffle of the service’s bureaucracy.”

**Y1, Week Forty**, less than a year into his three-year posting as the head of U.S. Southern Command, Admiral Alvin (Bull) Holsey, is stepping down. He is the military commander overseeing the attacks against the fast boats in the Caribbean; SOUTHCOM overseas all operations in Central and South America. Admiral Holsey leaves three years short of retirement as a four-star.

The *New York Times*, in an update of its initial coverage, [reports](#) that “one current and one former U.S. official, both of whom spoke on the condition of anonymity to discuss personnel matters, said that Admiral Holsey had raised concerns about the mission and the attacks on the alleged drug boats.” The *New York Times* quotes Sen. Jack Reed as saying, “At a moment when U.S. forces are building up across the Caribbean and tensions with Venezuela are at a boiling point, the departure of our top military commander in the region sends an alarming signal of instability within the chain of command.”

Admiral Holsey becomes the latest in a line of more than a dozen military leaders, many of them people of color and women, who have left their jobs this year. Most were fired by the Secretary of Defense or were forced to resign.

**Y1, Week Forty**, *Defense One* [reported](#) that the Maj. Gen. Rebecca Vernon, who became the acting TJAG for the Air Force eight months ago, following the firing of Lt. Gen. Charles Plummer in February, stepped down. Vernon had served as the deputy TJAG for the Air Force from 2022.

**Y1, Week Forty-One**, Lt. Gen. Joe McGee, the director for Strategy, Plan and Policy on the Joint Staff, resigned his position earlier in October after frequent clashes with the Secretary of Defense and the CJCS. General McGee reportedly deployed 10 times to war zones

Separately, the *Navy Times* [reports](#) that the admiral in charge of the Office of Naval Research, Kurt Rothenhaus, has been replaced by civilian, Rachel Riley, who reportedly worked for DOGE as a staffer assigned to HHS. The office oversees research for the Navy and the Marine Corps with a budget over \$2 billion. As HHS, Riley led an effort in September to fire almost 8,000 HHS employees, according to POLITICO.

**Y1, Week Forty-Two**, the *New York Times* [surveyed](#) the damage done to the military by firings and forced resignations with little or no explanation. The reporting notes that these actions could reshape the military for years to come and often run counter to advice of top military leaders who had served alongside the purged officers in combat. They picked up a few more I had missed. The Secretary of Defense has delayed or cancelled promotions of at least four senior military officers because they previously worked for Gen. Mark A. Milley.

One of them is Maj. Gen. James Patrick Work, reportedly one of the Army's most combat-experienced officers who played a crucial role leading U.S. and Iraqi troops to victory over ISIS and was expected to be the deputy commander at U.S. Central Command. General Work, who stepped down in August as the commander of the 82<sup>nd</sup> Airborne Division, spent nearly six years in combat zones. It is unclear what his professional fate will be.

Rear Adm. Milton Sands, the commander of the Navy SEALs, who pushed to have female instructors in SEAL training, was fired in August.

**Y1, Week Forty-Four**, the Coast Guard, which comes under the authority of DHS, reportedly drafted a new policy under which it would no longer classify the swastika as a hate symbol. Instead, it would be classified as "potentially divisive." The policy also downgrades the Confederate battle flag and nooses. On Thursday though, DHS reversed itself and [issued](#) a memorandum banning divisive or hate symbols and flags, which "include, but are not limited to, the following: a noose, a swastika, and any symbols or flags co-opted or adopted by hate-based groups as representations of supremacy, racial or religious intolerance, antisemitism, or any other improper bias."

**Y1, Week Forty-Eight**, the Washington Post was the first [to report](#) that the Coast Guard has allowed a new workplace [harassment policy](#) (Harassing Behavior Prevention, Response and Accountability) to take effect that downgrades the definition of swastikas and nooses from overt hate symbols to "potentially divisive." But on Thursday, the Coast Guard abruptly deleted the language that downgraded swastikas and nooses from "overt hate" to "potentially divisive." The change allowed Adm.

Kevin Lundy, who announced the policy change, to be confirmed as the Commandant of the Coast Guard. Sens. Duckworth and Rosen had put holds on his nomination citing concern with the downgrade, which they withdrew following the retraction of the policy change. It remains unclear how the downgrade came about and why it remained in the manual despite assurances it would be taken out. The Coast Guard is overseen by DHS.

Sen. Rosen maintains her hold on the nomination of Sean Plankey to head CISA.

### ***GOFOs Convene in Quantico***

**Y1, Week Thirty-Seven**, the Secretary of Defense ordered a rare (if not unprecedented) and urgent meeting of hundreds of senior military officials from around the world, comprising virtually all of the top military commanders worldwide – generals and admirals (GOFOs: grade O-7 through O-10) and their general officer senior enlisted advisers. No reason was given for the gathering on short notice at a Marine Corps base in Quantico, Virginia. Talk about creating a security vulnerability not to mention an operational one. What happened to the vaunted secure videoconferencing facilities available to the military regardless of location.

To add to the mystery and the security nightmare, Trump is [reported](#) to also be speaking at what was very recently being described as a one-hour speech by the Secretary of Defense. *Time* [suggests](#) that, as late as Thursday, Trump was unaware of the gathering. Military law expert Eugene Fidell had this to say about the event: “It’s the mother of all photo ops.” The likely politicization of the event, on top of other events pointing to further politicization of the military, “is tremendously concerning and should be tremendously concerning to the American people.”

**Y1, Week Thirty-Eight**, the mystery is solved. My takeaways: photos of the assembled audience looked as if they wished they were anywhere else. Reports suggest the military leaders were quiet, certainly not the exuberant crowd Trump usually draws. Maggie Haberman notes that Trump tried to get his audience to laugh when mocking Biden or using political lines, but it barely worked.

Trump’s [remarks](#) were rambling and at times incoherent – Gulf of America, tariffs, Biden (11 times), the autopen, the border, CNN, ending eight military conflicts (assuming Gaza is ended!), his signature, Canada as the 51<sup>st</sup> state, finding \$31 million on the “tariff shelf,” concerns he will not get the Nobel Peace Prize, battleships. He rified on having cleared out crime from D.C., the most dangerous city in America and the world (even saying it was worse than Afghanistan), and Portland had become a “war zone,” looking like WWII. Worryingly, but not surprisingly, Trump [referred](#) to “some of these dangerous [American] cities as “training grounds” for our “military National Guard” to counter the enemies “within.” “We’re under invasion from within, no different than a foreign enemy, but more difficult in many ways because they don’t wear uniforms” – apparently he forgot about Islamist extremists – ISIS, Al-Qaeda, including the 19 hijackers. He reprised the “they-opened-the prisons” riff, this time adding the Congo to the litany.

Hegseth, who we all recall fired the Army and Air Force TJAGs (among at least 12 senior officers), railed against “stupid rules of engagement.” “We are overhauling an



inspector general process – the IG that has been weaponized, putting complainers, ideologues, and poor performers in the driver seat.” This was part of the broader rollback of the ability of troops to report unequal treatment based on race, gender, sexuality or religion. He defended the firing of military leaders, many of them people of color and women, and criticized complaints about toxic leadership (not the toxicity itself). He attacked “dudes in dresses.”

He promised a review of DoD’s “definitions of so-called toxic leadership, bullying and hazing, to empower leaders to enforce standards without fear of retribution or second guessing.” He seemed obsessed with standards for grooming and fitness, and his war on woke: “No more climate change worship, no more division, distraction or gender delusions.” All of these are inconsistent with a “warrior ethos.” Now, under his leadership, DoD has one mission: “preparing for war and preparing to win.” Apparently that had not been the mission since 1947 when the then Department of War became the Department of Defense. Going forward, troops in combat roles must meet the “highest male standard only.”

The eleven memoranda referenced by Hegseth during his speech were [released](#) shortly after the program.

As Marine veteran and the national organizing director for progressive veterans advocacy group Common Defense told the Independent, “Your new ‘highest male standard’ for fitness tests doesn’t restore readiness – it erases the contributions of thousands of us who have fought, led, and sacrificed alongside our brothers in arms. This rollback to outdated norms ignores decades of evidence that diverse, capable forces win battles.” According to the Independent: all combat roles were opened to women in 2016. Women now make up roughly 17% of the active-duty forces and more than 21% of the selected reserve. In 2022, as the overall number of service members dropped by 2.7% percent from the previous year, the percentage of women service members increased.

Army Maj. Gen. (ret.) Paul Eaton told the Independent, “At a time when American families – military families included – are struggling with exploding inflation, Pete Hegseth spent millions to fly in all of our generals and admirals to rant about facial hair and brag about how many pull-ups he can do, and have Donald Trump sleepwalk through a list of partisan gripes. By dismissing and marginalizing servicemembers who do not fit his narrow vision, Hegseth insulted those who serve honorably and eroded the cohesion that makes our military strong.”

General Barry McCaffrey, [appearing](#) on Morning Joe said, “The president sounded incoherent, exhausted, rabidly partisan, at times stupid, meandering, couldn’t hold a thought together.” See also [POLITICO](#) coverage and [Axios](#) coverage.

**Y1, Week Thirty-Nine**, *The Hill* [reports](#) that the Quantico performance may lead to accelerated departures of senior military officers. The reporting cites two departures announced within hours after Hegseth’s speech: Gen. Thomas Bussiere, the head of Air Force Global Strike Command, and Gen. Bryan Fenton, head of U.S. Special Operations Command. As noted above, Air Force Chief of Staff, Gen. David Allvin,

announced in August he would retire in November after serving two years of his four-year term.

See also the analysis by Helene Cooper of the *New York Times* “[‘Dangerous Cities,’ the Military, Trump and the Founding Fathers.](#)” Cooper aptly captures the moment by noting that neither Hegseth nor Trump spoke about the national security threats we face – from China, from Russia, to name just two. How about the recent incursions into the airspace of NATO members Poland, Romania, Estonia and then Denmark? No, instead Trump chose American cities assaulted by the “enemies within.” See also [American Soldiers in American Cities.](#)

Founding Chief Prosecutor of the US Special Court for Sierra Leone, David M. Crane, writing in *JURISTnews* (“[The Laws of Armed Conflict: A Norm and Standard US Armed Forces Must Follow](#)”) starts by quoting an excerpt of the Secretary of Defense’s exhortation at Quantico (“We unleash overwhelming and punishing violence on the enemy. We also don’t fight with stupid rules of engagement. We untie the hands of our warfighters to intimidate, demoralize, hunt, and kill the enemies of our country. No more politically correct and overbearing rules of engagement, the military will kill people and break things for a living.”) This language in his words represents a “stark departure from established norms governing warfare, particularly those enshrined in the Laws of Armed Conflict (LOAC).”

Crane argues that Hegseth’s words represent a dangerous signal that the US military is not bound by the LOAC. But Hegseth is part of the National Command Authority and, accordingly, is liable for violations of the LOAC committed by U.S. troops as well as by the President as the Commander-in-Chief. Members of the armed forces that violate the LOAC can be held criminally liable for war crimes. Casting aside LOAC principles could likely lead again to friction with allied military.

**Y1, Week Thirty-Nine**, in an op-ed in the Washington Post, a Marine officer [explained](#) why he resigned from the Marine Corps. “I voluntarily gave up my rank as the president suggested, but the future of our country is more important than any individual’s career, wealth or power. I have no regrets about my decision. I have given up the service I loved for the freedom to do the right thing, the freedom to speak my mind and the freedom to speak in defense of our country.”

Also making the rounds in **Y1, Week Thirty-Nine** was an article written in the early 1990s by Lt. Col. Charles P. Dunlap Jr. (“[The Origins of the American Military Coup of 2012](#)”). Dunlap projects to 2012 and sets out the developments that led to his fictionalized military coup, in effect warning of the dangers of the politicization of the armed forces as a contributing factor to his fictional coup. He concludes in saying that democracy is a fragile institution that must be continuously nurtured and scrupulously protected. Moreover, the military “must speak out when they see the institution threatened. ... The catastrophe that occurred on our watch took place because we failed to speak out against policies we knew were wrong.”

**Y1, Week Thirty-Eight**, the Marine Corps [scheduled](#) a live fire exercise to mark their 250<sup>th</sup> anniversary. Just so happened to coincide with the No Kings! rallies across the country. Gov. Newsom [closed](#) a stretch of Interstate 5 over which M777 howitzer

shells were to be fired. Recall that the first No Kings! rallies coincided with the Trump military parade in D.C. in June. The *New York Times* was the first [to report](#) that one shell exploded prematurely dropping fragments on a California Highway Patrol vehicle and motorcycle that were part of the Vice President's protective detail.

**Y1, Week Forty-One**, the Associated Press was the first to [report](#) that the Secretary of Defense has ordered the military to provide “48 lawyers and 4 paralegals” to DoJ to act as special U.S. attorneys. The lawyers and paralegals are intended to go to Memphis, West Texas and Las Cruces, New Mexico.

### **Department of Education**

**Y1, Week Three**, the *Wall Street Journal* [reported](#) that the Department of Education is the likely next target of shutdown efforts. Apparently, administration officials are discussing an EO “that would shut down all functions of the agency that are not written explicitly into statute or move certain functions to other departments, according to people familiar with the matter. The order would call for developing a legislative proposal to abolish the department.”

In the meantime, the Department of Education launched its own war on DEI, then backtracked. The Department's efforts started with the [EO](#) directing the Department of Justice and the Department of Education to issue guidance on how to comply with the Supreme Court's ruling in 2023 (*Students for Fair Admissions v. Harvard*) that banned race-conscious admissions at Harvard University and the University of North Carolina at Chapel Hill. The Department interpreted the case as applying beyond admissions to every aspect of education – discipline, scholarship, hiring, compensation, financial aid, housing and so on. As reported (see the *Washington Post* [report](#)) after directing schools and universities via a [Dear Colleague Letter](#) (02/14/25) to eliminate diversity initiatives and racial preferences in the foregoing, or risk loss of federal money, the Department (in a [FAQ](#) (02/28/25)) walked part of that back by acknowledging that the federal government cannot mandate what is/is not in school curricula. The Department also narrowed what was covered by DEI.

The Department launched an online [portal](#) for parents, students, teachers and the general public to report “illegal discriminatory practices.”

Note there is a preliminary injunction in effect enjoining certain parts of the “[Ending Radical and Wasteful Government DEI Programs and Preferencing](#)” EO and the “[Ending Illegal Discrimination and Restoring Merit-Based Opportunity](#)” EO. See [DEI Plaintiffs](#).

At the end of **Y1, Week Seven**, the Joint Task Force to Combat Anti-Semitism (comprised of the DoJ, Department of Health and Human Services (HHS), Department of Education and the General Services Administration) [announced](#) they were cancelling close \$400 million in federal grants to Columbia University “due to the school's continued inaction in the face of persistent harassment of Jewish students.” (See [reporting](#) from NBC News.) The announcement went on to say that “[t]hese cancellations represent the first round of action and additional cancellations are expected to follow. The Joint Task Force is continuing to review and coordinate across federal agencies to identify additional cancellations that could be made swiftly.”

**Y1, Week Ten**, the interim president of Columbia, Katrina Armstrong, [resigned](#), one week after the university reportedly bowed to various demands from the government as a condition to the restoration of the cancelled federal grants ([reportedly](#) representing a fifth of its operating revenues). Armstrong succeeded Minouche Shafik, who resigned last summer following controversy over the university's handling of pro-Palestinian demonstrations. The Joint Task Force [issued](#) a statement characterizing the departure as an "important step towards advancing negotiations."

At the end of **Y1, Week Eight**, the Education Department's Office for Civil Rights [announced](#) it was initiating investigations into 45 universities under Title VI of the Civil Rights Act for "partnering with 'The Ph.D. Project,' an organization that purports to provide doctoral students with insights into obtaining a Ph.D. and networking opportunities, but limits eligibility based on the race of participants." The [PhD Project](#) was formed in 1994 to help historically underrepresented students earn PhDs and increase workplace diversity.

The Office for Civil Rights is also investigating six other universities for allegedly awarding impermissible race-based scholarships and one university for allegedly administering a program that segregates students on the basis of race.

There are two dangerous themes here – one the dismantling of programs using DEI as an excuse and the second the attacks on centers of higher learning on the basis of combating anti-Semitism (ironic given some of the [fellow travellers](#) in the right-wing orbit). These efforts need to be seen within the wider lens of an outright attack on democracy, for these are barely disguised efforts to stifle dissent, to stifle the unfettered exchange of information and ideas, to stifle research and, ultimately, to stifle free speech.

The National Association of Education [sued](#) the Department of Education seeking declaratory and injunctive relief in respect of the [Dear Colleague Letter](#) (03/05/25). The complaint was [amended](#) to add additional plaintiffs (03/21/25).

**Y1, Week Fourteen**, District Judge Landya McCafferty [granted](#) plaintiffs' motion for a preliminary injunction and enjoined the Department of Education from enforcing and/or implementing the Dear Colleague Letter and the related certification requirement pending further court order (04/24/25). The NAACP [brought](#) a similar action (04/15/25) and District Judge Dabney L. Friedrich similarly [granted](#) a preliminary injunction (04/24/25).

**Y1, Week Twenty**, District Judge Edgardo Ramos [granted](#) a preliminary injunction in favor of a group of 19 states (06/03/25) that had [sued](#) the Department of Education to block it from enforcing a directive ordering states to certify they are complying with civil rights laws as a condition to receiving federal funds for education (04/25/25). The complaint for injunctive and declaratory relief characterizes the certification requirement as a means of weaponizing Title VI of the Civil Rights Act to root out DEI programs. At issue according to the complaint is more than \$13.8 billion of funding for youth education.

## Department of Homeland Security

*CBS News* [reported](#) that DHS has terminated several advisory committees, including the Cyber Safety Review Board (which was conducting the investigation into the Salt Typhoon hack of the U.S. telecom infrastructure by Chinese intelligence) and the Homeland Security Advisory Council (comprised of former secretaries of DHS, the Drug Enforcement Agency (DEA), police union presidents and CEOs of Fortune 500 companies).

As part of an evaluation of its election security mission, DHS announced that personnel within the Cybersecurity and Infrastructure Security Agency (CISA) who focused on misinformation, disinformation and foreign influence operations aimed at US elections had been placed on administrative leave.

**Y1, Week Five**, and the strains of meeting [elevated quotas](#) for the mass deportation of undocumented migrants are showing. Only one month into the job as acting director of Immigration and Customs Enforcement (ICE), Caleb Vitello, a veteran ICE official, was removed.

**Y1, Week Nine**, *The Intercept* reported that USCIS has proposed that persons applying for asylum, permanent residency or naturalization be required to provide social media identifiers to USCIS. This requirement currently only applies to persons seeking visas to visit the United States. The rulemaking request cites the Day One [EO](#) that directed federal agencies to identify immigrants who hold “hostile attitudes” towards the United States.

**Y1, Week Seventeen**, the Brennan Center and Knight First Amendment Institute [submitted](#) comments to DHS urging it to withdraw its [proposed rulemaking](#) to collect social media identifiers from persons applying for immigration-related benefits. The brief notes that the proposed rule could apply to over 3 million people, which would include U.S. citizens and legal permanent residents, as well as those who otherwise have legal status in the country and are physically present in the United States.

**Y1, Week Twenty**, it was reported that several senior ICE officials are leaving their roles, the third major change in senior leadership in recent months. The context is that ICE continues to struggle to meet goals of the Trump mass deportations in terms of daily arrests. The struggle should come as no surprise – *see* my previous briefing note (01/09/25), available [here](#). The *New York Times* [reports](#) that in spite of goals of 3,000 arrests per day, the average is about 660, representing 66,000 arrested in the first 100 days.

**Y1, Week Twenty-Two**, DHS [issued](#) new guidance in respect of visits by members of Congress and their staffs to ICE detention facilities, calling for advance notice and appearing to curtail visits to ICE field offices, despite the fact that migrants have been detained in some of those offices. As the *New York Times* [reported](#), members of Congress have the right under federal law to make unannounced oversight visits to ICE facilities that “detain or otherwise house aliens.” They are not required to provide “prior notice of the intent to enter a facility” to conduct oversight, though members of their staff must request a visit at least 24 hours in advance. The guidance appears to be an attempt to override the law.



Democrats in California, Illinois and New York had been turned away from ICE field offices and processing centers the days preceding the guidance. Rep. LaMonica McIver was [charged with assault](#) in May after visiting a Newark detention center, and Sen. Alex Padilla was [detained](#) after trying to question DHS Secretary Noem during a news conference last week. Rep. Bennie Thompson, ranking member on the House Homeland Security [criticized](#) the DHS efforts to restrict House member oversight of ICE. JD Vance must have thought he was being funny, but he just ended up further demeaning the Office of the Office of the Vice President and coming across as racist, when he referred to his former colleague in the Senate, Alex Padilla as “Jose Padilla” – “I was hoping Jose Padilla would be here to ask a question. I guess he decided not to show up because there wasn’t a theatre.” For the record, the real Jose Padilla was an American citizen [convicted](#) in August 2007 as an enemy combatant aiding terrorist in a plot to plant a dirty bomb.

**Y1, Week Twenty-Five**, in her July 12 Substack, Heather Cox Richardson succinctly [ties](#) the tragedy in Texas to the consequences of the Trump administration’s cuts at FEMA and obsession with immigration. Richardson writes, citing [reporting](#) by Maxine Joselaw of the *New York Times*, that the day after the deadly floods hit Texas, FEMA received 3,027 calls from survivors and answered 3,018 of them, about 99.7%. However, on that same day, DHS Secretary Noem did not renew contracts for the four call centers that answered the vast majority of those calls, and the staffs at the centers were fired. The next day FEMA received 2,363 calls and answered 846, or about 35.8%. On Monday, July 7, FEMA received 16,419 calls and answered 2,613, around 15.9%.

Richardson quotes Marcy Wheeler of *EmptyWheel*, who suggests that one of the reasons for the cuts at FEMA is that Noem has run through the money allocated by Congress due to her single-minded focus on immigration. In May, Sen. Richard Blumenthal [called out](#) Noem’s expenditure of \$200 million on an ad campaign pushing Trump’s agenda and \$21 million to transport close to 400 migrants to Guantánamo Bay only to have many of them transferred back out. Sen. Chris Murphy [warned](#) Noem: “You are spending like you don’t have a budget.... You’re on track to trigger the [Anti-Deficiency Act](#). That means you are going to spend more money than you have been allocated by Congress. This is a rare occurrence, and it is wildly illegal. Your agency will be broke by July, over two months before the end of the fiscal year. ... And this obsession with spending at the border... has left the country unprotected elsewhere.”

As for support the mood of the country, Richardson summarizes the most recent polling: according to a recent [Gallup poll](#): 79% of adults say immigration is good for the country, and only 17% say it is bad for the country. The shift is attributable primarily to Republicans, 64% of whom now agree that immigration is good, up from below 40%. The percentage of adults who say immigration should be reduced had dropped from 55% in 2024 to 30%. Only 35% approve of Trump’s handling of immigration, while 62% disapprove. Moreover. While 21% strongly approve, 45% strongly disapprove. Among independents, 14% strongly approve of Trump’s handling of immigration, while 45% strongly disapprove.

**Y1, Week Thirty-One**, USCIS [issued](#) updated guidance on determining “good moral character” for purposes of naturalization. It calls for a more “holistic” approach, looking at not only disqualifying conduct but positive attributes as well. The guidance calls on USCIS officers “to review the complete history of aliens seeking naturalization, where no regulatory or statutory bars exist, and require such aliens to present their full story, demonstrating how their life aligns with a pattern of behavior that is consistent with the current ethical standards and expectations of the community in which they reside.”

**Y1, Week Thirty-Three**, the *Washington Post* [reports](#) that DHS will now prohibit states and NGOs that receive federal disaster assistance funds from assisting undocumented migrants and requiring the NGOs as a condition to receiving such funds to cooperate with DHS on immigration enforcement. Specifically, by accepting federal grants and awards, volunteer organizations that help after disasters must agree to not “operate any program that benefits illegal immigrants or incentivizes illegal immigration.” These conditions could put volunteer organizations that provide food, housing, mental health support and other assistance in disaster-stricken states in the position of having to verify aid recipients’ legal status before providing assistance.

**Y1, Week Thirty-Four**, DHS officials [refused to meet](#) with Sens. Duckworth and Durbin and Rep. Brad Schneider at the Naval Station Great Lakes in North Chicago. The officials reportedly locked the doors to the office that the Senators and Congressman intended to view and then went home. ICE agents have been granted the right to use office and parking space at the Naval Station.

**Y2, Week Three**, District Judge Jia M. Cobb [granted](#) a temporary restraining order requested by 12 members of Congress<sup>2</sup> who [sued](#) (07/30/35) DHS for access to ICE facilities and enjoined DHS from enforcing their oversight visit policy or otherwise requiring advance notice from them before conducting oversight visits to any DHS facility used to detain noncitizens (02/02/26). Plaintiffs were represented by Democracy Forward Foundation and American Oversight. See [Court Listener](#) docket.

**Y2, Week Four**, the *Wall Street Journal* chronicles how Kristi Noem and her top adviser Corey Lewandowski, have gone on a tear to [uplift](#) her personal public profile, participating in ICE raids in a flak jacket and [appearing](#) in front of wrongfully deported Venezuelan men in CECOT. Overall, they describe an agency in “constant chaos.” They have pushed for ICE arrests to be captured on video for social media. They have also famously sidelined rivals and have decimated DHS. Reportedly around 80% of the career ICE field leadership in place in early 2025 has been fired or demoted. Various officials who declined to issue Lewandowski a badge and gun have been placed on administrative leave or passed over for promotions. They reportedly berate senior staff and fired employees, including a U.S. Coast Guard pilot after Noem’s blanket was left behind on plane when she had to change planes due to a maintenance issue. The pilot was told to fly back commercial, but was reinstated when it dawned on the group that there was no pilot available to fly them back.

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<sup>2</sup> Reps. Neguse, Espaillat, Thompson, Raskin, Garcia, Correa, Crow, Escobar, Goldman, Gomez, Ruiz and Torres.

## Department of Justice

### *Dysfunction at Justice*

During **Y1, Week One**, the *Washington Post* [cited](#) two DoJ internal memoranda, one halting all new cases in the Civil Rights Division and a second suggesting that ongoing consent decrees with police forces on police department reforms are in jeopardy. The Post article cited Damon Hewitt, president and executive director of the Lawyers' Committee for Civil Rights Under Law, who had this to say about the actions: "It's beyond unusual — it's unprecedented. We've never seen this before at this scale with any transfer of power, regardless of the ideology of any incoming president or administration. This should make Americans both angry and deeply worried. This is more than just a changing course of philosophy – this is exactly what most people [in the civil rights community] feared: a Justice Department that was created to protect civil rights literally abdicating its duty and responsibility to protect Americans from all forms of discrimination."

The *Washington Post* [reported](#) that DoJ had removed several key career senior officials in the National Security and Criminal Divisions. Some were transferred to the newly formed Office of Sanctuary Cities Enforcement. Another irony – defenders of democracy being transferred to an office designed to further undermine democracy. See also Ruth Marcus' [op-ed](#), reporting on the transfer of senior officials in the divisions that oversee civil rights and environmental enforcement to the Sanctuary Cities Enforcement office, and the firing of a chief immigration judge and other officials involved in the immigration court system.

**Y1, Week Two**, acting Attorney General James McHenry [fired](#) more than a dozen career federal prosecutors who worked under Special Counsel Jack Smith on the January 6<sup>th</sup> and classified documents prosecutions. It is unclear what legal authority he relied upon to dismiss the prosecutors. McHenry justified the firings on the grounds that those who prosecuted Trump could not be relied upon "to assist in faithfully implementing the president's agenda."

As lawyer, legal analyst and expert on ethics and anti-corruption Norm Eisen pointed out, while the president has the power to hire and fire federal employees, there are legal hurdles to fire career federal employees. The firings came on the heels of the [reported](#) issuance by Trump's pick for U.S. Attorney in Washington, D.C., Ed Martin, of a memorandum announcing a "special project" to review the prosecution of the January 6<sup>th</sup> insurrectionists and reportedly characterizing the charges against insurrectionists as a "great failure." Associate Deputy Attorney General Bradley Weinsheimer, appointed during Trump's first term, who was also the DoJ's most senior career official and a key overseer of ethics issues, was also removed and offered a transfer to the Sanctuary Cities Enforcement office.

**Y1, Week Three**, speaking of sanctuary cities, with the new Attorney General in place, the DoJ has now sued Chicago, the State of Illinois and Cook County over sanctuary cities programs.

Trump's new Attorney General also is scaling back enforcement under the Foreign Corrupt Practices Act (FCPA) and its mirror image, the Foreign Extortion Prevention Act, as well as the Foreign Agents Registration Act (FARA).

- Per one of the Attorney General's February 5<sup>th</sup> [internal memorandums](#), the Criminal Division is to focus its FCPA efforts on foreign bribery that facilitates the criminal activities of drug cartels and transnational criminal organizations (TCOs), and to shift away from other forms of bribery. The FCPA has, for decades, been the gold standard in anti-bribery legislation. Incidentally, I am not sure that US businesses with overseas operations will welcome this change in light of the fact that for decades they could resist demands for bribes by waving the threat of FCPA enforcement. Note that the FCPA still remains the law, and the shift may only be temporary. Note too that the Securities and Exchange Commission (SEC) has civil enforcement powers in respect of the FCPA.
- Per a second February 5<sup>th</sup> [internal memorandum](#), "Recourse to criminal charges under [FARA] and 18 U.S. Code § 951 shall be limited to instances of alleged conduct similar to more traditional espionage by foreign government actors. With respect to FARA and § 951, the Counterintelligence and Export Control Section, including the FARA Unit, shall focus on civil enforcement, regulatory initiatives, and public guidance."

Worryingly, the National Security Division's Corporate Enforcement Unit is also disbanded. Equally worryingly, but not surprisingly given the oligarchy growing around this administration, money laundering investigations and asset forfeiture enforcement actions likewise will focus on drug cartels and transnational criminal organizations, and various kleptocracy task forces will be disbanded.

A third AG [internal memorandum](#) calls for investigating, eliminating and penalizing "illegal DEI and DEIA preferences, mandates, policies, programs and activities in the private sector and in educational institutions that receive federal funds."

Altogether, [14](#) internal memoranda were issued on February 5.

Ed Martin, in a second [letter](#) posted on X to Musk, threatened to "chase to the end of the Earth" people who have broken the law or even acted unethically, presumably referring to the "individuals and networks who appear to be stealing government property and/or threatening government employees" which Musk had called his attention to. He ironically concludes by exclaiming that "noone [sic] is above the law" and conveniently ignores all the threats made by Musk and his henchmen against government employees who resisted the hostile takeovers of their agencies. As former prosecutor Joyce Vance [noted](#), Martin's letter violates "violates DoJ policy by publicly discussing criminal case referrals to his office and saying he is opening cases, both actions prohibited by the [Principles of Federal Prosecution](#)."

**Y1, Week Five**, the acting Solicitor General, Sarah Harris, [notified](#) the Senate that the DoJ has concluded that the multiple layers of removal restrictions for administrative law judges is unconstitutional and, thus, the DoJ would no longer defend them in court. In effect, the DoJ is trying to make it easier to remove these judges. The multilayer

system refers to provisions of federal law that provide that these judges can only be removed for “good cause,” a determination that is made by the Merit Systems Protection Bureau (MSPB), which protects federal employees from being subject to unfair personnel practices. In turn, MSPB members are Senate-confirmed for seven-year terms, and may be removed by the President only for “inefficiency, neglect of duty or malfeasance.” Trump already tried to remove Cathy Harris, chair of the MSPB, without providing a reason. She sued the Treasury Secretary and was [reinstated](#) pending the outcome of the litigation (02/18/25). See [NLRB update](#) below.

As **Y1, Week Eight** came to a close, Trump further debased the office of the President by appearing at “Main Justice” and delivering a blatantly partisan [speech](#). As *POLITICO* [noted](#), the speech was, “even by Trump’s standards, a stunning show of disregard for decades of tradition observed by his predecessors, who worried about politicizing or appearing to exert too much control over the nation’s most powerful law enforcement agency. Trump, instead, called himself the “chief law enforcement officer in our country” and accused the DOJ’s prior leadership of doing “everything within their power to prevent” him from becoming the president.” He accused the DoJ of spying on his campaign, launching hoax and disinformation operations, persecuting his “family, staff and supporters” and breaking “the law on a colossal scale.” He attacked private attorneys by name. He described *CNN* and *MSDNC* (*MSNBC*) as “really corrupt” and “illegal.”

Rep. Jamie Raskin, speaking in front of Main Justice shortly after Trump’s speech, called that speech “an absolute desecration of the culture and history of the Department of Justice.”

**Y1, Week Fourteen**, *Reuters* [reported](#) that the DoJ had reassigned close to a dozen senior career attorneys from its Civil Rights Division, including at least three senior career attorneys who managed offices that investigated abuse by police and handled violations of voting and disability rights. *Reuters* noted that the unit was established in 1957 following the passage of the Civil Rights Act of 1957 and initially focused on protecting the voting rights of Black Americans. Since then and following passage of the Civil Rights Act of 1964, Congress expanded the unit’s responsibilities to include discrimination on the basis of race, national origin, sex, disability, religion, sexual orientation, gender identity and military status. One former attorney in the unit was quoted as saying, “They are going to eliminate the Civil Rights Division as it was built to exist. The only purpose now will be to victimize the very people it was created to protect.”

In her April 24 Substack, Joyce Vance [notes](#) that the official nominated to run the Civil Rights Division is [Harmeet Dhillon](#), an attorney with a history of attacking voting rights. Vance quotes Marc Elias as [saying](#) that Dhillon worked on legal actions challenging laws that make it easier for more people to vote and defended against efforts to disqualify Trump from appearing on several states’ ballots in 2024. Vance also cites a Yale Law Journal [article](#) that tracks the successes of the storied unit.

**Y1, Week Fifteen**, a [report](#) in *The Hill* quotes former DoJ officials as characterizing recent Trump administration shifts in staff and policy changes as striking at the “heart of the mission” of DoJ. Prosecutors have been directed to focus on EO policies on



keeping men out of women's sports and eradicating anti-Christian bias. The clearest casualty of these shifts is the historical mission of the Civil Rights Division in enforcing federal civil rights laws. A dozen career prosecutors were reassigned, leading some to resign.

In her April 28 Substack, Joyce Vance [reports](#) on the admission by Dhillon on a Glenn Beck podcast that as many as 100 lawyers have left the Civil Rights Division since she arrived and directed the Division to focus on Trump's priorities. Vance also cites [reporting](#) in *The Guardian* that Trump's political appointees have "removed all of the senior civil servants working as managers in the department's voting rights section and directed attorneys to dismiss all active cases."

The combination of the [Strengthening and Unleashing America's Law Enforcement to Pursue Criminals and Protect Innocent Citizens](#) EO and the decimation of the unit responsible for countering police excessive force and misconduct (from Ferguson to Minneapolis), in Vance's words, means there will be no one to protect citizens from police forces being unleashed "from the wise constraints of the Constitution."

End of **Y1, Week Fifteen**, DoJ filed lawsuits against [Hawaii](#) and [Michigan](#), preemptively, over their plans to bring legal actions against fossil fuel companies for harms caused by climate change (4/30/25) and filed lawsuits against [New York](#) and [Vermont](#), challenging their [climate superfund laws](#) that would force fossil fuel companies to pay into state-based funds based on prior greenhouse gas emissions (05/01/25).

The DoJ [asserts](#) the "burdensome and ideologically motivated" state actions are unconstitutional. In March, the Supreme Court rejected an effort by 19 Republican-led states to block the ability of five Democratic-led states (California, Connecticut, Minnesota, New Jersey and Rhode Island) to bring legal actions against major oil companies alleging public deception about the contribution of fossil fuels to climate change. The case (*Alabama v. California*) was filed directly with the Supreme Court, which declined to hear it, allowing the states to pursue their legal actions.

**Y1, Week Seventeen**, there are rumors that DoJ is considering removing a key check on prosecutions of members of Congress. Specifically, the 93 U.S. attorneys' offices across the country would no longer need to get approval from the Public Integrity Unit (known as PIN), which was created in the aftermath of Watergate, before proceeding with their public corruption cases. Interestingly, this week there are [reports](#) that the FBI is disbanding the unit in its Washington Field Office responsible for investigating public corruption by members of Congress and other federal officials.

**Y1, Week Eighteen**, as a result of the family separation policy applied during Trump 1.0 (and as a result incidentally that as of January 2025, an estimated 1,000 families have yet to be reunited), legislation was passed granting members of Congress the right to inspect federal immigration facilities, with or without advance notice. See [ICE Guidance](#) and [Consolidated Appropriations Act of 2020](#).

On May 9, three members of the Democratic House delegation from New Jersey, including Rep. LaMonica McIver, together with the Mayor of Newark Ras Baraka, visited an ICE detention facility near Newark to conduct an inspection. The delegation

was met by a group of enforcement officers. Baraka was arrested on trespassing charges, but the charges later were dropped.

On May 19, charges were announced by *interim* U.S. Attorney for New Jersey Alina Habba against Rep. McIver. The announcement was made on X. McIver was charged with two felony counts of assaulting law enforcement officers under [18 U.S. Code § 111\(a\)\(1\)](#), which makes it a crime to “forcibly” assault, resist, oppose, impede, intimidate, or interfere with certain federal employees including law enforcement officials who are performing their official duties. The *Washington Post* [reported](#) that Rep. McIver declined to a deal offered by prosecutors to resolve the matter before it goes to court.

Joyce Vance in her Substack [Civil Discourse](#) (05/22/25) posited the following:

“It’s hard to imagine a conviction here. The Congresswoman was engaged in statutorily and constitutionally protected congressional oversight work. The agents were in the wrong for interfering with her. In fact, given her federal status, they could just as easily have been charged for assaulting her under the statute (although they would enjoy qualified immunity). The case is likely to be dismissed by a judge in the preliminary stages.

Even if the case were to go to trial, it’s hard to imagine a unanimous jury verdict on these facts. The government bears the burden of proof beyond a reasonable doubt. But this sort of prosecution by the federal government achieves an entirely different goal, one reminiscent of the charges against Wisconsin Judge Hannah Dugan. This is how autocrats discourage people from getting out of line. It’s how they chill dissent. It’s another step on the path toward autocracy.”

See also David Graham, writing in *The Atlantic* (“[Trump's Newest Crackdown on Dissent](#)”).

Some history on Alina Habba – in 2023, she was [sanctioned](#) by a federal judge sitting in Florida for bringing a frivolous lawsuit on behalf of Donald Trump that he characterized as having been brought in bad faith. The judge characterized the complaint she filed as “a hodgepodge of disconnected, often immaterial events, followed by an implausible conclusion. This is a deliberate attempt to harass; to tell a story without regard to facts.” , her law firm and Trump were ordered to pay close to \$1 million in legal costs to the 31 targets of that frivolous lawsuit.

And rich to think that this is the administration that pardoned the January 6<sup>th</sup> insurrectionists.

**Y1, Week Nineteen**, DoJ [sued](#) the North Carolina Board of Elections under the Help America Vote Act. As Marc Elias [explained](#), while historically DoJ bought cases to protect voting rights, under AG Bondi, the Voting Rights unit is carrying out Trump’s agenda by leveraging federal voting laws to disenfranchise voters. The DoJ suit picks up where the GOP’s ultimately unsuccessful effort to overturn an election by challenging 60,000 votes based on alleged incomplete information on voter registration forms left off. Thousands of voters who were nearly disenfranchised last November (for not providing complete contact information, in response to a question that was optional) will now need to provide additional information.

**Y1, Week Twenty-Five**, *Axios* [reported](#) that 20 DoJ employees, including lawyers, support staff and U.S. Marshals had been fired for ties to Special Counsel Jack Smith's investigation of Trump. Those fired reportedly identified by the Weaponization Working Group. As many as 37 may be fired in this round. The 20 ousted Friday included lawyers, support staff and U.S. marshals, one Justice official said. In some cases, the staffers had volunteered for duty to investigate or prosecute Trump. Before Attorney General Bondi was confirmed, 14 other DoJ officials tied to Smith's investigations were [fired](#). See also [Reuters](#) and [Washington Post](#) coverage.

**Y1, Week Twenty-Six**, Assistant Chief Immigration Judge Jennifer Peyton, who oversees Chicago's immigration judges, [reportedly](#) was fired over the July 4<sup>th</sup> Y1, Weekend after giving Sen. Dick Durbin a tour. That tour prompted an email from DoJ warning the Judge "immigration judges should not directly communicate with members of Congress and congressional staff."

Meanwhile, according to a LinkedIn post by Joseph Tirrell, who until last Friday was the senior DoJ ethics lawyer, he has been fired. According to the post, Tirrell "led a small, dedicated team of professionals and coordinated the work of some 30 other full-time ethics officials, attorneys, paralegals and other specialists across the Department of Justice, ensuring that the 117,000 Department employees were properly advised on and supported in how to follow the Federal employee ethics rules." See [Democracy Docket](#) coverage.

Senator Adam Schiff, joined by Sens. Hirono, Blumenthal, Padilla, Welch and Booker, [sent](#) a letter to the Attorney General requesting that she provide the justification for the removal of Tirrell (07/16/25). The Democratic lawmakers noted in the letter that during their confirmation hearings the Attorney General and other DoJ political appointees had said that they would consult with career ethics officials prior to making decisions on matters that raise conflicts of interest. "However, your removal of remaining career ethics officials renders these commitments meaningless and leaves the Department without the institutional expertise necessary to provide rigorous, impartial ethical guidance."

*The Hill* [notes](#) that two other senior ethics officials at DoJ had left - Brad Weinsheimer resigned shortly after the inauguration after he was reassigned to a new working group focused on cracking down on sanctuary cities, and Jeffrey Ragsdale, the head of the Office of Professional Responsibility, which reviews the conduct of attorneys in the department, was [fired](#) in March.

A reminder that firings typically are done by short email that, rather than setting forth performance-related justifications or any other similar rationales, simply cite Trump's Article II powers. "Pursuant to Article II of the United States Constitution and the laws of the United States, your employment with the Department of Justice is hereby terminated, and you are removed from federal service effective immediately."

**Y1, Week Twenty-Eight**, Senators Blumenthal, Booker, Klobuchar and Warren raised concerns with the DoJ IG over the circumstances surrounding the settlement of a lawsuit blocking Hewlett Packard Enterprises from acquiring Juniper Networks. The settlement comes preceding the firing of two senior officials in the Antitrust Division,

Roger Alford, the principal deputy attorney general, and Bill Rinner, deputy assistant attorney general and head of merger enforcement. The settlement reportedly was approved only after Chief of Staff to the Attorney General overruled the head of the Antitrust Division, Gail Slater. DoJ had sued to block the merger in January. In June, DoJ announced a settlement, allowing the acquisition to go forward as long as HPE divests its division for small- and medium-sized businesses and licenses Juniper's software to independent competitors. See [Axios](#) coverage.

ProPublica [reports](#) that the Civil Rights Division has halted litigation to stop civil rights abuses of prisoners in Louisiana and mentally ill housed in South Carolina group homes. These cases were brought by the Division's [Special Litigation Section](#), which historically has been tasked with enforcing federal law that guarantee religious freedom, access to reproductive health services, constitutional policing, and the rights of people in state and local institutions, including jails, prisons and health care facilities for people with disabilities. As has been happening across DoJ, that unit has suffered a massive exodus – ProPublica sets out that the unit had more than 90 at the start of 2025, including about 60 front-line prosecutors. By June, those figures dropped to about 25, including around 15 front-line prosecutors. Some were reassigned to other areas of DOJ, while others quit in protest against the direction of the office, found new jobs or took early retirement.

The report notes that, since January, DoJ has [dropped](#) racial discrimination lawsuits, [abandoned](#) investigations of police misconduct in Louisville, KY and Minneapolis, MN and [cancelled](#) monitoring of troubled [law enforcement](#) agencies in Louisville and Minneapolis.

**Y1, Week Thirty-Three**, six months ago, about 12 lawyers from the civil rights and national security divisions agreed to transfer to the sanctuary cities task force. Now, [per](#) the *Washington Post*, all have quit DoJ. The task force apparently was designed to do nothing but frustrate and eventually force out lawyers the administration felt it could replace with people more loyal to the president. The tactic was intended to avoid lawsuits had the lawyers been fired.

**Y1, Week Forty-Four**, District Judge Mae A. D'Agostino [dismissed](#) a lawsuit filed by the administration against New York State seeking to allow ICE agents to conduct arrests in state and local courthouses in New York. The Court found that a 2020 state law (Protect Our Courts Act) and two executive orders (State Policy Concerning Immigrant Access to State Services and State Policy Concerning Immigrant Access to State Services and Buildings) limiting civil arrests near or in courts and in state facilities were not unconstitutional. The government had claimed the state law violated the Supremacy Clause. The ruling has no effect on arrests made in immigration courthouses, as they are federal property.

### ***Appointments of U.S. Attorneys***

**Alina Habba**

**Y1, Week Twenty-Seven**, invoking a rarely used power to appoint a candidate of their own, a panel of federal judges sitting in New Jersey declined to allow Alina to remain in her position as interim U.S. Attorney, and [appointed](#) Desiree Leigh Grace, a

prosecutor whom Habba had named as her first assistant. A similar rejection of a Trump appointee [occurred](#) the week before when a panel of judges decline to make permanent the appointment of John A. Sarcone III to lead the U.S. attorney's office in Albany. The federal judges in both instances acted under [28 U.S. Code § 546 - Vacancies](#).<sup>3</sup> That move did not end the saga.

Shortly after Grace was appointed, she was fired by DoJ. The following day, Habba was appointed as *acting* U.S. Attorney. For this to happen, the White House had to withdraw [her previous nomination](#) as U.S. Attorney in a permanent capacity. Then, the Attorney General appointed Habba as First Assistant U.S. Attorney, typically the second-highest ranking official in the office, but as the senior position is vacant, Habba can fill the role on a temporary basis. Habba could now lead the New Jersey U.S. Attorney's office for 210 days. See [POLITICO](#) coverage and [MSNBC](#) coverage.

Incidentally, this episode represents another trampling of tradition. Historically, a state's two Senators have significant influence over federal judicial and U.S. Attorney nominations in their state – a process known as the “blue slip courtesy.” Both Senators Kim and Booker withheld their blue slips. Recognizing that what goes around, comes around, Senator Chuck Grassley spoke out in support of the blue-slip process, earning a rebuke from Trump. Sen. John Kennedy backed Grassley in pushing back against Trump. Senator Chuck Schumer withheld blue slips for Jay Clayton's nomination to be U.S. Attorney for SDNY and for Joseph Nocella Jr.'s nomination to be the U.S. Attorney for EDNY.

**Y1, Week Thirty**, the newly formed Washington Litigation Group [filed](#) an *amicus* brief on behalf of the Association of Criminal Defense Lawyers of New Jersey challenging Habba's appointment as acting U.S. Attorney for New Jersey (08/13/25). Their *amicus* brief argues that the executive branch circumvented statutory limitations as to who may serve as an acting U.S. Attorney and thus that her appointment is invalid.

**Y1, Week Thirty-One**, District Judge Matthew W. Brann [ruled](#) that, “Faced with the question of whether Ms. Habba is lawfully performing the functions and duties of the office of the United States Attorney for the District of New Jersey, I conclude that she is not (08/21/25). Judge Brann found that the administration made Habba the U.S. attorney for the District of New Jersey through a “novel series of legal and personnel moves,” disagreeing with the district court's judges in that district about who should lead the office. In particular, he noted that she was ineligible to assume the duties of the U.S. Attorney because she was not the first assistant when the vacancy occurred upon the incumbent's resignation on January 8, 2025.

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<sup>3</sup> Legal experts are split as to whether the manoeuvring to keep Habba in place is legal. The move exploits the difference between the role of “interim” officer and “acting” officer. Federal law allows a president to make “interim” appointments pending Senate confirmation of the officer selected to fill the role permanently. Interim appointments last only 120 days, after which federal judges in the district can fill the vacancy.



Habba also attacked Sen. Grassley for honoring the blue slip convention. And **Y1, Week Thirty-Two**, Trump [weighs in](#) as well. This is Trump’s take on the blue slips and convention: “We’re ... going to be filing a lawsuit on blue slipping. You know, blue slips make it impossible for me as president to appoint a judge or U.S. Attorney because they have a gentlemen’s agreement. It’s nothing memorialized; it’s a gentlemen’s agreement that’s about 100 years old.”

**Y1, Week Thirty-Six**, DoJ [urged](#) the Third Circuit to reverse Judge Brann’s order disqualifying Habba from prosecuting two cases after the clock ran out on her interim appointment.

**Y1, Week Forty-One**, District Judge J. Michael Seabright [ruled](#) that Bilal Essayli “unlawfully assumed the role of Acting U.S. Attorney for the Central District of California. He has been unlawfully serving in that capacity since his resignation from the interim role on July 29, 2025. Essayli may not perform the functions and duties of the U.S. Attorney as Acting U.S. Attorney. He is disqualified from serving in that role.” The Court cited the Federal Vacancies Reform Act (FVRA) and found that Essayli’s appointment was tantamount to an end-run around the express limits of the FVRA. This then is the third ruling (the others being [Alina Habba](#) and [Sigal Chattah](#)) that unconfirmed appointees had remained beyond the FVRA 120-day limit, thereby undermining the Senate’s Article I power to confirm key administration officials. See [Washington Post](#) coverage.

**Y1, Week Forty-Six**, the Third Circuit [upheld](#) the District Court’s disqualification of Alina Habba (12/01/25), holding, first, that Habba is not the Acting U.S. Attorney for the District of New Jersey by virtue of her appointment as First Assistant U.S. Attorney because only the first assistant in place at the time the vacancy arises automatically assumes the functions and duties of the office under the FVRA; second, because Habba was nominated for the vacant U.S. Attorney position, the FVRA’s nomination bar prevents her from assuming the role of Acting U.S. Attorney; and, third, the Attorney General’s delegation of all the powers of a U.S. Attorney to Habba is prohibited by the FVRA’s exclusivity provision. See [New York Times](#) coverage.

Alina Habba [has resigned](#). She continues to work at DOJ as a Special Adviser to the Attorney General.

**Y1, Week Fifty-One**, DoJ [petitioned](#) the Third Circuit for a rehearing *en banc* in respect of the three-judge appellate ruling that upheld the District Court’s finding that Habba’s continued tenure was unlawful (01/13/26).

### Lindsay Halligan

See the discussion [below](#) of the dismissals of the Comey and James indictments based on a finding that the interim U.S. Attorney was unlawfully acting in that capacity.

**Y1, Week Fifty-Two**, Halligan [tells](#) a federal judge she is entitled to continue to call herself a U.S. Attorney notwithstanding the ruling finding that she was unlawfully serving in her position. Her position [was set out](#) in a formal response to the Court’s January 6, 2026 order (01/13/26). The week before she had been [ordered](#) by District Judge David Novak to explain why she continues to assert she is the U.S. Attorney and

why her representations in court papers don't amount to a "false or misleading statement," which he suggested could result in disciplinary sanctions.

### Other U.S. Attorneys

Similar stories are playing out in the Central District of California where interim U.S. Attorney Bill Essayli was re-designated as "acting" head of the U.S. Attorney office there, and in Nevada where Sigal Chattah was re-designated as "acting" head of the U.S. Attorney office there, allowing both to stay on in that role for 210 days. Essayli as reported above played a role in the suppression of protests in Los Angeles and [moved](#) to dismiss fraud charges against a Trump donor after the line prosecutor was removed following criticism from Laura Loomer. As for Chattah, 116 retired state and federal judges, in a letter the Chief Judge of the District Court for Nevada, [urged](#) that Chattah not be appointed, citing her "racially charged, violence-tinged, and inflammatory public statements," her "extreme partisan bias" and "her history of attempting to undermine confidence in the judiciary."

**Y1, Week Forty-Seven**, Julianne Murray, Acting U.S. Attorney for the District of Delaware, [announced](#) that she had resigned. Her 120-day period had run out, and she attributed her resignation to the blue slips process.

### The Toll

**Y1, Week Fifty-Two**, the office representing U.S. Attorneys across the country (United We Stand) [posted](#) a photo of the group, which included four of the five prosecutors whom federal judges had rules were serving in their roles as such unlawfully (Alina Habba was not in the photo). The Wall Street Journal [reported](#) that while gathered at the White House Trump criticized the group, calling them weak and ineffective, and complaining that they were not moving sufficiently quickly to prosecute his targets, including Sen. Schiff. According to the DoJ alumni network Justice Connection, more than 230 career lawyers, agents and other employees at DoJ [have been fired](#) under Trump 2.0 and more than 6,400 employees [have left](#) DoJ.

### Department of State

Darren Beattie, a former Trump speechwriter who was fired in 2018 after CNN [revealed](#) he spoke at a conference attended by White nationalists, has been appointed to serve as the acting Under Secretary for Public Diplomacy and Public Affairs, which is responsible for helping shape US messaging abroad related to counterterrorism and violent extremism. In a 2022 post, Beattie called on "China to give up dirt on corrupt and illegitimate American ruling class, relinquishing any claim to American property that it has purchased directly through intermediaries and \$400 billion of reparations for fentanyl destruction. In exchange, Taiwan."

**Y1, Week Twenty-Seven**, Beattie was appointed as acting Director of USIP. See [New York Times](#) coverage.

**Y1, Week Nineteen**, it was widely reported that, in a cable to U.S. embassies and consulates, the State Department had ordered consular officers to pause all visa appointments for foreign students and exchange visitors (F, J and M visas), in

preparation for the expansion of social media screening and vetting. See [POLITICO](#) and [Guardian](#) coverage. See also [Foreign Students, Generally](#), below.

The *Washington Post* [reported](#) that Trump had fired all members of the Advisory Committee on Historical Diplomatic Documentation (known in the foreign policy community as the “HAC”). The HAC reviews foreign policy records to make recommendations to the State Department’s Office of the Historian and Foreign Service Institute, which publishes the “Foreign Relations of the United States.” More than 450 volumes have been printed since 1861, when Congress demanded an accounting of President Lincoln’s foreign policy during the Civil War. Much of the work of the HAC involves recommending the declassification of foreign policy records. The HAC is congressionally mandated, having been [established](#) in 1991 under the Foreign Relations Authorization Act. See [Office of the Historian](#).

**Y1, Week Twenty-Five**, as part of Secretary of State Rubio’s reorganization plan and following the Supreme Court’s [green light](#) to the administration to fire federal employees, the State Department starts [laying off](#) over 1,100 of its civilian employees and close to 250 foreign service officers. See [ABC News](#) and [The Hill](#) coverage. See also CNN’s “[State Department firings will hit Trump admin’s ability to tackle its own priorities, sources say](#)” and retired Admiral William McRaven’s “[Cutting the State Department and USAID will put every American at risk](#).” The CNN reporting identified various Trump priority areas, such as counterterrorism, countering drug trafficking, energy diplomacy and mitigating passport and visa fraud, that are likely to be adversely affected.

McRaven writes,

“This is no time to weaken *any* element of America’s power. The dismissal of highly trained diplomats at the State Department and the dismantling of USAID will jeopardize national security and make the military’s job much more difficult. Our national security has never depended on military strength alone; rather, it relies on collaboration with a strong Foreign Service and diplomatic corps. I’ve stood shoulder to shoulder with these dedicated public servants in some of the world’s most dangerous places, and I have seen firsthand how they advance our national interests.”

**Y1, Week Thirty**, the State Department [released](#) its long-awaited, congressionally mandated and, in its words “streamlined,” 2024 reports on human rights practices. The reports cut way back on the repression and abuse that now merit criticism by the United States government.

As NPR [reports](#), gone are references to poor prison conditions in El Salvador, with the summary reporting that “there were no credible reports of human rights abuses.” Same goes for Hungary, with extensive reporting on government corruption deleted. NPR also notes that, [the U.S. has compiled these reports](#) since 1977 on every country in the world, tracking abuses such as restrictions on free assembly, unfair elections and punishment of minority groups. None of these categories are documented in the new reports.

NPR further notes that release of the 2025 reports was delayed for months while the State Department spent additional time deleting thousands of violations from drafts prepared last year by foreign service officers and their contacts abroad. Roughly two-

thirds of the content was cut from the report. *POLITICO* [had reported](#) back in March that the contents would be cut back significantly.

*Reuters* [characterized](#) the reports as “dramatically softening criticism of some of the countries that have been strong partners” of Trump. CNN [called out](#) the omission of “details on abuses in politically allied countries.”

Human Rights Watch called out mixing “facts, deception, political spin” and warns that “[b]y undermining the credibility of the report, the administration puts human rights defenders at risk, weakens protections for asylum seekers, and undercuts the global fight against authoritarianism.”

See also Anne Applebaum’s article (“[Trump has a New Definition of Human Rights](#)”), in which she notes, among other surprising passages, that the report on Germany cites “significant human rights issues,” including “restrictions on freedom of expression,” and makes specific reference to German law “requir[ing] internet companies, including U.S. internet platforms, to take down hate speech within 24 hours or face stiff fines.” Germans, in other words, she notes “are being called human-rights abusers because they continue to outlaw Nazi propaganda, as they have done since 1945. The Trump administration’s motives are clear here too. The goal is to please U.S. tech companies, notably X, that find it convenient or profitable to spread Nazi propaganda, and perhaps to help the Alternative for Germany, the far-right party publicly praised and courted by J. D. Vance.”

Applebaum also draws an apt parallel, noting that the State Department’s official stance on human rights “puts the U.S. directly in alliance with China, whose diplomats have been [campaigning for years](#) to change the diplomatic discourse about human rights.” She cites [author](#) and NED scholar Christopher Walker, who exclaims that “From Beijing’s point of view, the more such language is emasculated, the greater the CCP’s competitive advantage. Russians, North Koreans, Iranians, Cubans, and others will also find this shift an immense relief.”

**Y1, Week Thirty**, the *Washington Post* was the first to [report](#) that the lead in the State Department Press Office on Israel-Palestine was fired over differences on how to characterize various aspects of U.S. policy towards the war in Gaza. Reportedly, the press officer had drafted a sentence for a press release that said, “We do not support forced displacement of Palestinians in Gaza.” The sentence was struck by State leadership despite similar language being used by both Trump and Middle East envoy Witkoff. Another dispute followed the proposed insertion of the sentence “We mourn the loss of journalists and express condolences to their families,” in reference to the killing of six Palestinian journalists in a press tent in Gaza. That sentence was struck as well.

**Y1, Week Thirty-Seven**, Salon [reports](#) that Jeremy Carl, nominee for Secretary of State for International Organizations deleted thousands of inflammatory social media posts, espousing hatred for Democrats (repeatedly calling the Democratic Party a “treason party” and calling Democrats “evil”) and supporting racist conspiracy theories (in particular “great replacement”). One post reportedly called for the death penalty for Randi Weingarten, President of the American Federation of Teachers. Carl

was the subject of a [CNN KFile](#) investigation, and while he reportedly attempted to delete the posts, a number were retrievable using the digital archive of the web, [Wayback Machine](#).

**Y1, Week Forty-Six**, according to a December [Report](#) by the American Foreign Service Association (AFSA), under the current administration, 25% of the foreign service workforce has resigned, retired, seen their offices dismantled or been removed from their posts. AFSA found that 86% of FSOs reported that changes in the workplace this year hamper their ability to advance the interests of the United States, 98% reported poor morale, 46% report new obstacles in dealing with their foreign counterparts and nearly one-third reporting changing career plans since January 2025. In the introduction, the Report notes:

“From the time they swear an oath to support and defend the Constitution of the United States, members of the U.S. Foreign Service are trained to provide honest, unfiltered input to leadership to allow for the best decisions to be made. Unfortunately, in the present environment, speaking truth to power is being turned into an occupational hazard. When recalcitrant leadership visits retribution on the heads of earnest subordinates, a “vicious cycle” develops, manifesting itself through increasingly uninformed decisions, short-circuited deliberations, and short-sighted policies—not to mention diminishing ranks, as this survey indicates.”

As **Y1, Week Forty-Eight** winds down, POLITICO was the first [to report](#) that the State Department has recalled 29 career ambassadors, including 13 in Africa and six in Asia. Some of the affected ambassadors were posted in countries for which Trump has engaged in trying to end armed conflict. With 80 ambassadorial posts already vacant before the recall order, close to half the U.S. ambassadorial posts will be vacant. The *Wall Street Journal* [quotes](#) current and former veteran State Department officials as saying that the recall, together with the existing vacancies, “is without modern historic precedent.”

The Democratic members of the Senate Foreign Affairs Committee [wrote](#) to Trump urging him to rescind the recall order, “before it damages America’s credibility and the ability to advance U.S. interests.” The letter warned that the “vacuum in U.S. leadership poses a significant threat to our national security and unnecessarily risks the safety of U.S. citizens and businesses overseas.” Sen. Shaheen was quoted by the *Wall Street Journal* as pointing out that China has more than 170 ambassadors serving around the world while the United States has fewer than 85 – “With this decision, President Trump has given our rivals an open field.”

**Y2, Week Four**, during his testimony before the Senate Foreign Relations Committee, Jeremy Carl, Trump’s pick for Assistant Secretary of State for International Organization Affairs, pronounced that a loss of a dominant white culture is weakening the country. Carl, a fellow at the [Trump-aligned think tank](#), the Claremont Institute, and author of “The Unprotected Class: How Anti-White Racism Is Tearing America Apart,” has been described as a proponent of the “national conservatism” movement that argues that the country has lost its way since it drifted from the political structure founded by Christian white men. Carl reportedly has made disparaging comments about Blacks and Jews, and promotes the Great Replacement Theory. See [New York Times](#) coverage.



## Department of the Treasury

The highest-ranking career official at the Treasury Department stepped down following a clash with Musk allies at DOGE over access to Treasury's payment system that controls the disbursement of more than \$6 billion annually to businesses and households.

It remains unclear to what extent Musk and his minions have accessed the system. According to Wired [reporting](#), a 25-year-old engineer who previously worked for Space X and X obtained direct access to Treasury's payment systems. He had privileges to write code on Bureau of Fiscal Service programs that control a fifth of the US economy, including Social Security benefits, veterans' pay and veterans' benefits. This could mean the ability to cut off disbursements to specific agencies or individuals, and to do so without leaving a trail.

Senator Patty Murray had this [to say](#) about the Musk hack of the government, "it is illegal." "An unelected, unaccountable billionaire with expansive conflicts of interest, deep ties to China and an indiscreet axe to grind against perceived enemies is hijacking our nation's most sensitive financial data systems and its checkbook so that he can illegally block funds to our constituents based on the slightest whim or wildest conspiracy." The 2015 hack of 22 million records of federal employees stored by OPM and the recent Chinese "Salt Typhoon" hack pale by comparison.

**Y1, Week Seven**, the Treasury Department [announced](#) that it was suspending enforcement of beneficial ownership reporting under the Corporate Transparency Act (CTA) against US citizens and domestic reporting companies. As I set out in a prior briefing note (available [here](#)), the CTA is an anti-money laundering regime and is intended to provide law enforcement and others with data necessary to identify those that currently benefit from financial anonymity to shield corruption, drug trafficking, other criminal acts, and terrorism. That anonymity is based on malign actors doing business through shell companies. As Treasury Secretary Yellen noted at the time of enactment, "Unmasking shell corporations is the single most significant thing we can do to make our financial system inhospitable to corrupt actors."

## DOGE

The *New York Times* [reported](#) (02/18/25) that DOGE had posted on its website a list of government contracts it had cancelled allegedly representing \$16 billion of savings. Close to half the line-item savings could be attributed to a single \$8 billion contract for ICE. That contract it turns out was for \$8 million, \$2.5 million of which had already been spent.

**Y1, Week Thirteen**, Jenna McGlaughlin of NPR [broke](#) the story of a whistleblower complaint detailing an alleged hack by DOGE employees of sensitive data stored on NLRB servers. As McGlaughlin explained, the NLRB "investigates and adjudicates complaints about unfair labor practices. It stores reams of potentially sensitive data, from confidential information about employees who want to form unions to proprietary business information." She cites the whistleblower disclosure and other sources as saying that "technical staff members were alarmed about what DOGE engineers did when they were granted access, particularly when those staffers noticed

a spike in data leaving the agency. It's possible that the data included sensitive information on unions, ongoing legal cases and corporate secrets.”

Her reporting goes on to note that, “according to the disclosure and records of internal communications, members of the DOGE team asked that their activities not be logged on the system and then appeared to try to cover their tracks behind them, turning off monitoring tools and manually deleting records of their access – evasive behavior that several cybersecurity experts interviewed by NPR compared to what criminal or state-sponsored hackers might do.” The whistleblower disclosure reportedly highlighted NLRB staff concerns that “the NLRB's confidential data could be exposed, particularly after they started detecting suspicious log-in attempts from an IP address in Russia.”

McGlaughlin reminds us that the hack at the NLRB did not occur in isolation. She cites reporting on a dozen lawsuits in federal courts [around the country](#), in which “judges have demanded that DOGE explain why it needs such expansive access to sensitive data on Americans, from Social Security records to private medical records and tax information. But the Trump administration has been unable to give consistent and clear answers, largely dismissing cybersecurity and privacy concerns.” *See, e.g.,* [ruling](#) by U.S. District Judge Jeannette Vargas that blocked DOGE from accessing Treasury systems, finding “a real possibility ... that sensitive information has already been shared outside of the Treasury Department, in potential violation of federal law.”

Democratic lawmakers on the House Committee on Oversight and Government Reform announced that DOGE access to IT systems is [area of focus](#) for them (03/21/25). Ranking Democrat on the Oversight Committee Gerald Connolly [announced](#) that he had sent a [letter](#) to the acting Department of Labor (DoL) IG and the NLRB IG requesting information on DOGE access to sensitive information stored on DOL and NLRB servers (04/15/25) and then [announced](#) two days later that he had sent a [letter](#) to acting Inspector General of the Social Security Administration (SSA) requesting information on DOGE access to sensitive information stored on SSA servers (04/17/25).

### **Environmental Protection Agency**

The Environmental Protection Agency (EPA) is [demoting](#) career employees who oversee scientific research, the enforcement of pollution laws, hazardous waste cleanup and the agency’s human resources department, and intends to replace them with political appointees. The changes specifically affect:

- the Office of Research and Development, the agency’s scientific research arm;
- the Office of Enforcement and Compliance, which is responsible for enforcing the country’s environmental laws;
- the Office of Land and Emergency Management, which oversees cleanups at some of the nation’s most contaminated lands and responds to environmental emergencies; and
- the Office of Mission Support, which manages human resources but also grants and contracts.

Employees in the EPA's Office of Environmental Justice have been [placed](#) on administrative leave.

**Y1, Week Six**, in a move that could wreak havoc on efforts to fight climate change, the head of the EPA, Lee Zeldin, [reportedly](#) has urged the Trump administration to reconsider the 2009 [“endangerment finding”](#) under the Clean Air Act that is the basis on which the federal government regulates greenhouse gas emissions. Zeldin [referred](#) to the “endangerment finding” as the “holy grail of the climate change religion.” It undeniably is the bedrock of federal regulation to counter the effects of climate change.

In 2007, the Supreme Court ruled in [Massachusetts v. EPA](#) that the EPA has the authority to regulate greenhouse gases because they meet the definition of air pollutants under the Clean Air Act. In 2009, the EPA [found](#) that six greenhouse gases “endanger both the public health and the public welfare of current and future generations.”

Trump, at a Cabinet meeting, announced that EPA was cutting 65% of its workforce, after which the White House walked that back to 65% of EPA's spending. One of DOGE's targets of “waste, fraud and abuse” [reportedly](#) is a \$20 billion Greenhouse Gas Reduction Fund (*see also* [Senator Sheldon Whitehouse Press Release](#) (03/12/25)). Senator Whitehouse sent a [letter](#) to Attorney General Bondi and FBI Director Kash Patel seeking information from the DoJ and the FBI regarding their investigation into the GGRF (03/11/25), setting out his belief that “the Trump administration is purposefully misusing the tools of law enforcement, and pursuing false allegations of criminal conduct, with the improper purpose to wrongfully freeze assets appropriated by Congress and obligated to designated recipients, all to humor President Trump's vindictive political whims.”

There are media reports (*see, e.g.,* [MSN](#)) that the FBI is moving to bring criminal charges against Habitat for Humanity for receiving grants from the EPA during the Biden administration as part of the GGRF. The reporting was based on a suit brought by Climate United Fund against Citibank and the EPA for a temporary restraining order to enjoin the freezing of bank accounts (*see* [Citibank response](#)). Citibank says the FBI “recommended placing a 30-day administrative freeze on the accounts in light of ‘credible information’ of possible criminal violations.”

**Y1, Week Eighteen**, the *New York Times* [reported](#) that the EPA is planning to remove all limits on greenhouse gas emissions from coal-fired and gas-fired plants. EPA is reportedly planning to repeal the Biden-era limits on coal-fired plants [promulgated](#) in March 2024. The report also cites closure by EPA of offices responsible for regulating climate change and air pollution as part of [reductions-in-force](#), and EPA efforts to repeal more than two dozen climate policies and regulations.

**Y1, Week Twenty-Four**, the EPA reportedly [suspended](#) 144 employees for [signing](#) a declaration of dissent (06/20/25) voicing concerns that the EPA was undermining public trust, was ignoring scientific consensus to benefit polluters, was reversing progress in the country's most vulnerable communities by backtracking on

environmental priorities, was taking action that would undermine the health of all Americans and was promoting a culture of fear.

**Y1, Week Twenty-Seven**, the *New York Times* reports that a proposed EPA rule would rescind the 2009 “[endangerment finding](#).” The proposed rule flows from an EO directing the EPA administrator to make recommendations on the “legality and continued applicability” of the endangerment finding, which is the principal regulatory tool to reduce emissions from vehicles, factories, industrial power plants and other sources. The reporting quotes Georgetown professor Vicki Arroyo, “The White House is trying to turn back the clock and re-litigate both the science and the law” and references Joseph Goffman, who led the air office at EPA, who notes that EPA’s proposed rule conflicts with [Massachusetts v. EPA](#), which held that greenhouse gases are a pollutant under the Clean Air Act and was the predicate for the 2009 endangerment finding.<sup>4</sup>

Expect the publication of the proposed rule to unleash a torrent of legal challenges. See [Mother Jones](#) coverage. As Grist staff writer Naveena Sadasivam [noted](#), rescission of the “endangerment finding” would likely be challenged in court based on provisions of the [Inflation Reduction Act](#) that included provisions amending the Clean Air Act to explicitly define greenhouse gases as “air pollutants,” as well as case law.

Professor of Law Emeritus Patrick Parenteau [posits](#) not only that eliminating the “endangerment finding” will not be straightforward, but that its elimination could backfire on the fossil fuel industry. This is because cities and states have filed lawsuits against major oil companies, the strongest defense against which has been that states have been pre-empted by the Clean Air Act. If the “endangerment finding” is rescinded, the pre-emption defense presumably falls away, says Parenteau. Industry has [expressed](#) its misgivings about the proposed EPA rule.

**Y1, Week Thirty-Three**, the Associated Press [reported](#) that EPA had fired eight of the signatories to the June open letter criticizing the direction of EPA.

**Y2, Week Four**, with an eye to potential legal challenges, EPA [issued](#) its somewhat modified final rule rescinding the “endangerment” finding and the motor vehicle GHG standards under the Clean Air Act. The New York Times quotes Harvard law professor Richard Lazarus, author of “The Rule of Five: Making Climate History at the Supreme Court,” who said that the EPA’s justification for the rescission was a “frontal attack” on the holding set out in [Massachusetts v. EPA](#).

### **Equal Employment Opportunity Commission and National Labor Relations Board**

Trump fired Democratic members of two independent federal commissions, in what the *Washington Post* [described](#) as “an extraordinary break from decades of legal precedent.” He fired two of the three Democrats on the Equal Employment Opportunity Commission (EEOC) and its general counsel and fired the Democratic chair of the NLRB. These removals leave both five-member boards without enough

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<sup>4</sup> The dissenting justices in the case were Chief Justice John G. Roberts Jr. who wrote the dissent, joined by Antonin Scalia, Clarence Thomas and Samuel Alito.

members to conduct business. The boards now have only two members; Trump must fill the vacancies and await Senate approval. See [Democracy Fights Back](#), below.

### **Federal Aviation Administration**

**Y1, Week Six**, the *Washington Post* [reported](#) that the FAA was on the verge of terminating a contract with Verizon to overhaul the air traffic communications system and in place awarding the contract to Musk's Starlink.

### **Federal Bureau of Investigation**

Notwithstanding pledges by Kash Patel that he would not undertake political retribution at the agency he has been tasked to lead, were he to be confirmed, multiple senior officials at the FBI have been ordered to leave or be fired (*see Washington Post reporting*). At least eight senior officers have been ordered to quit or be fired, and hundreds (if not thousands) across regional offices, field divisions and headquarters who were involved in the investigations of Trump or the January 6<sup>th</sup> insurrection are bracing for facing the same consequences. If the Justice Department (directed by the acting Deputy Attorney General) carries out these purges, as The Guardian framed the impact, "it would mark a seismic moment for the nation's premier law enforcement agency, which has no political appointee other than the FBI director and eviscerate civil service protections for career officials."

Incidentally, NPR [reported](#) that, in 2021 following the January 6<sup>th</sup> insurrection, acting Deputy Attorney General Bove at the time was co-chief of the terrorism and international narcotics unit at the US Attorney's Office for the Southern District of New York and took the lead among prosecutors in the office to assist the FBI in identifying, investigating and arresting insurrectionists.

At the end of **Y1, Week Two**, the senior agent at the FBI's NYC field office, James E. Dennehy, fired back and vowed "to dig in" to defend the agency and praised the agency's interim leadership for trying to maintain the independence of the agency against the Trump-directed purge. The *New York Times* [reports](#) that the threatened purge could affect 6,000 of the 38,000 employees at the FBI. The President of the Society of Former (FBI) agents, characterizing removals as likely illegal, took issue with the notion that an acting Deputy Attorney General was directing an acting Director of the FBI to take action and urged that all employees be fired only for cause and treated with due process. He also noted that the forced retirement at the FBI of the Director, the Deputy Director and all five Executive Directors, and the firings of special agents in charge and requests for lists, are disruptive, at a time of elevated threats to the country.

**Y1, Week Seven**, Dennehy was given a choice of retiring or being fired, and [chose](#) to retire. Related reporting suggests that Dennehy's resistance prevented the mass firing of FBI agents who worked on January 6<sup>th</sup> cases. The head of the Washington Field Office, David Sundberg (who was heavily involved in the January 6<sup>th</sup> investigations), was fired in late January – at that time he was the highest-ranking agent to be fired since Inauguration Day.

We should all pause and consider what is happening across the Department of Justice and the FBI, not only from the perspective of each of the individuals involved, who



will have been fired or forced to retire simply for undertaking investigations lawfully assigned to them, but also from the perspective of the nation as a whole.

Consider the impact from a public safety perspective of the aforementioned disruptions—the loss of hundreds of highly trained and experienced professionals, be they in specialized areas such as national security, cybersecurity or counterterrorism, to name just a few, or more general areas of law enforcement. As summarized in *Washington Post* [reporting](#), many of those who could be under investigation for their roles in the January 6<sup>th</sup> cases or Trump investigations “have full cases loads unrelated to those matters.” People familiar with the efforts said, “removing the nation’s most experienced law enforcement officials and agents could result in massive staffing shortages, interrupt ongoing criminal cases and investigations and create public safety dangers across the country.” All to satisfy the grievances of one man!

Separately, the FBI will disband the [Foreign Influence Task Force](#) (FITF), the unit tasked with combatting foreign interference in U.S. elections. This action is pursuant to one of the Attorney General’s February 5<sup>th</sup> [internal memoranda](#), cited above. The FTIF was established in 2017 by Director Christopher Wray to address the targeting of U.S. officials and other U.S. persons through traditional intelligence tradecraft; criminal efforts to suppress voting and provide illegal campaign financing; and cyberattacks against voting infrastructure, along with computer intrusions targeting elected officials and others.

To add to the concerns at the Bureau, the Deputy Director slot, which historically is filled by a senior FBI agent (and not a political appointee, since the Director is typically an outsider), was filled by a former Secret Service Agent, NYPD officer and right-wing podcast host, Dan Bongino, who [accused](#) the FBI of staging the attack on the Capitol, and claimed that the FBI lied when it said it still did not know who planted pipe bombs on January 6<sup>th</sup> near the DNC and RNC offices and called the FBI “irredeemably corrupt.” The Deputy Director runs the operations of the Bureau and oversees the Special Agents that lead the field offices across the country. The appointment prompted [shock](#) by current and former agents. The arrest in **Y1, Week Forty-Six** of a suspect in the planting of the pipe bombs [would put](#) Bongino in an awkward spot.

**Y1, Week Twenty-Four**, in an extraordinarily damning explanation of why he resigned from the FBI (“[Goodbye to All That](#)”), former Special Agent in Charge of the Norfolk Field Office and longtime counter-intelligence agent, Michael Feinberg, sounds another alarm over policies that underscore the dangerous drift of this administration and the risks implementation of those policies of retribution pose to all Americans. Feinberg joins a growing list of special agents with years of critically needed expertise and experience [purged](#) from the FBI “on mere suspicion of political unreliability.” His crime? A long-standing friendship with former Deputy Director of the FBI’s Counterintelligence Division, who led the investigation into Russian interference in the 2016 election and was a frequent target of Trump’s ire, Pete Strzok.

The *New York Times*, among others, [reported](#) that former FBI agent Jared Wise, who was charged with encouraging the mob that stormed the Capitol on Jan. 6<sup>th</sup>, to kill police officers (allegedly shouting “kill ‘em”) has been named as an adviser to the

DoJ's Weaponization Working Group, as an adviser to the group's director, Ed Martin. See also [Guardian](#) coverage. Christina Hines, former prosecutor and candidate for Congress, [called](#) out the dangers of weaponizing the DoJ.

**Y1, Week Twenty-Five**, it was widely reported that, notwithstanding another Kash Patel pledge of not looking to relitigate historical grievances, and in all likelihood in an effort to distract the MAGA base from the acknowledgements that there is “no there, there” regarding the [Epstein files](#), former CIA Director John Brennan and former FBI Director James Comey are under criminal investigation. Apparently the basis for the Brennan investigation is that he misled Congress about the early days of the Russia investigation; none is apparent for the Comey investigation.

The Brennan investigation appears to have followed a referral to the FBI by CIA Director Ratcliffe based on a declassified CIA report, ordered by Ratcliffe, that criticized Brennan's oversight of the intelligence community (IC) assessment undertaken in 2017 that found that Russia interfered in the 2016 presidential election because Putin wished to see Trump beat Secretary Clinton. The report did not challenge that conclusion but criticized Brennan because a classified version of the assessment included a two-page summary of the “Steele dossier.” Brennan testified to Congress that he opposed citing the dossier in the assessment, but it was included at the FBI's urging. Ratcliffe has long been a critic of the Russia investigation. Recall that Special Counsel John Durham had undertaken a lengthy investigation of the intelligence assessment and the broader Russia investigation, but did not suggest there was any basis for pursuing Brennan.

Comey reportedly was interviewed by the Secret Service after posting on Instagram a photo of seashells arrayed on a beach that formed the numbers 8647, which some in Trump world characterized as a threat of violence (86) against Trump (47).

**Y1, Week Thirty-Five**, three senior agents of the FBI (Brian Driscoll, Steven Jensen and Spencer Evans) [sued](#) the FBI alleging they, as a result of seeking to perform their duties free from political bias or influence, were the subject of retribution for “fail[ing] to demonstrate sufficient political loyalty” (09/10/25). In August, the three were fired – at the time they had combined 60 years of service in federal law enforcement.

The complaint sets out that that Director Patel acknowledged that “his superiors” had directed him to fire any agent who had worked on a criminal investigation of Trump and that his ability to keep his own job depended on the removal of the agents who had worked on Trump cases. The complaint also alleges that Patel understood that his actions were in violation of internal processes designed to prevent retaliation and that the firings were likely illegal.

The complaint sets out questions that allegedly were posed as part of vetting for a senior position: “Who did you vote for”? “Do you agree that the FBI agents who ‘stormed’ Mar-a-Lago, to include the rank-and-file, should be held accountable”? “What are your thoughts on DEI”? “When did you start supporting President Trump”? “Have you voted for a Democrat in the last five elections”? It also lays out in detail efforts to fire agents deemed insufficiently loyal to Trump.

The complaint implicates various political appointees, including Bove, with the ultimate pressure coming from Stephen Miller. The complaint alleges that Bove admitted that “the creation of panic and anxiety in the workforce ‘was the intent’” of the “Fork in the Road” email and the media coverage of possible termination of all probationary employees. The complaint also underscores the chaos in the appointment process as one of the plaintiffs was expected to be the acting deputy director but a typo in the White House announcement named him as acting director, and rather than fix it the White House stuck to the incorrect appointments. His close colleague of 17 years ended up wrongly as the deputy.

The agents seek relief for violation of Fifth Amendment rights to due process and First Amendment rights to free association and speech. The agents are represented by Koskoff Koskoff & Bieder, Lowell Associates, Law Offices of Mark S. Zaid and Burakiewicz & Depriest.

Patel is coming under increasing fire from the MAGA base, first because of the FBI’s handling of the Epstein files and then because in the hours after the Charlie Kirk assassination, Patel falsely claimed in a hurried social media post that a “subject” was in custody. The suspected assassin would be in custody 33 hours later. Christopher Rufo, an influential right-wing journalist and activist, called for Patel’s removal – “it is time for Republicans to assess whether Kash Patel is the right man to run the FBI. He performed terribly in the last few days, and it’s not clear whether he has the operational expertise to investigate, infiltrate, and disrupt the violent movements – of whatever ideology – that threaten the peace in the United States.” See [NewsY1, Week and The Hill](#) coverage.

Patel will face Congress next week where he will be grilled not only about his handling of the assassination investigation, but also the purge of senior FBI agents, his role in the release of the Epstein files, his role in carrying out Trump’s retribution over the Russia investigation, the shift in FBI resources away from traditional cases to prioritize immigration and street crime, the use of polygraphs to identify disloyalty, and the addition of a co-Deputy Director Andrew Bailey alongside Dan Bongino. See [Associated Press](#) coverage.

**Y1, Week Thirty-Six**, plenty can be said about Patel’s testimony before the Senate Judiciary Committee on Tuesday and the House Judiciary Committee on Wednesday, but perhaps the most glaring example of the competence at the head of the FBI was Patel’s failure to [recognize](#) the name of the white supremacist, Dylann Roof, who murdered nine Black parishioners in Charleston in 2015. In [exchanges](#) with Reps. Dan Goldman and Jamie Raskin, Patel claimed that court orders prevented release of witness interviews in the Epstein files, but he could not cite any such order. Experts are similarly perplexed. Were any such orders in effect, there appears to be no reason why the FBI could not seek to have the orders rescinded. This is not the same situation as grand jury testimony under seal.

Two other senior FBI agents who were fired, Walter Giardina and Chris Meyer [spoke](#) to the *New York Times* about their removal and shed further light on the dysfunction at the top of the FBI.

**Y1, Week Forty-Two**, Bloomberg Law was first [to report](#) that Steven Palmer, an FBI agent with 27 years of experience became the third head of the Critical Incident Response Unit (which includes FBI pilots, as well as hostage rescue, bomb detection and coordination at major events) to be fired or removed under Kash Patel's reign. Apparently Palmer fell victim to social media posts and news coverage that Patel had used his FBI jet to visit his girlfriend. Due to his position, Palmer supervised the FBI's aviation units, but Patel's flight path was [traceable](#) through online tracking services and Patel [reposted photos](#) taken at the event on his personal X account. Palmer assumed the acting director role when his predecessor, Brian Driscoll, was fired. Wes Wheeler led the unit until he was told to resign in March. (Incidentally, Patel had this to [say](#) in a 2023 podcast "I want to ground Chris Wray's private jet travel that he pays for with taxpayer dollars to hop around the country," referring to him as a "#government gangster." FBI directors are legally required to use government aircraft for all travel to maintain secure communications and to respond quickly to emergencies.)

CNN [reports](#) that D.C. U.S. Attorney Jeannine Pirro intervened to try to save four FBI agents from being purged, including some involved in the crackdown on crime in D.C., but to no avail. They were fired, reinstated and fired again. Those removed were involved in the "Arctic Frost" investigation, which had delved into use by Trump allies of fake electors to overturn the 2020 election. *The Daily Beast* [suggests](#) that some of the firings may ultimately have been rescinded. The Senate Judiciary Committee led by Senator Grassley has been releasing records from Arctic Frost that include the names of DoJ and FBI personnel who were involved. *Reuters* [notes](#) that most of those named have since been terminated, and many of them have also been targeted online by pro-Trump social media accounts.

**Y1, Week Forty-Four**, it emerges that Patel's girlfriend (who lives in Nashville; Patel lives in Las Vegas) has a protective detail comprised of SWAT team members. First, it is unusual for partners who are not married and do not live with an FBI Director to receive protective details and, second, it is unusual for a detail to have SWAT team members. See [MS NOW](#) coverage.

**Y1, Week Forty-Four**, David Maltinsky, a 16-year veteran of the FBI who was 16 Y1, Weeks into a 19-Y1, Week training course to become an FBI special agent, [sued](#) the FBI, alleging he was fired for displaying a Progress Pride flag. The complaint cites a letter signed by FBI Director Patel that said he was dismissed from the program and federal service and "exercised poor judgment with an inappropriate display of political signage" at his previous assignment." See [Wall Street Journal](#) coverage.

**Y1, Week Forty-Six**, the FBI announces that it has arrested a suspect in the attempted pipe-bombing of the DNC and RNC headquarters on January 6<sup>th</sup>. As David Graham, writing in *The Atlantic* ("[Dan Bongino Admitted He Was Lying](#)"), noted, the arrest puts the Deputy Director in an awkward position. Voices in conservative circles long maintained that the pipe bombs were an "inside job," made to make Trump look bad, which is why no arrests had been made by the FBI. Now it [appears](#) that the suspect told FBI investigators that he was a Donald Trump supporter who believed Trump's claims that the 2020 election was stolen. One of the most prominent purveyors of the

[right-wing](#) narrative was Bongino, while a podcaster and radio host. When asked by Sean Hannity, Bongino said, “I was paid in the past, Sean, for my opinions, that’s clear, and one day I will be back in that space – but that’s not what I’m paid for now. I’m paid to be your deputy director, and we base investigations on facts.”

**Y1, Week Forty-Seven**, a complaint [was filed](#) on behalf of 12 former FBI agents who, to de-escalate a febrile situation while facing a hostile crowd on the streets of D.C. in June 2020 during the George Floyd protests, took the knee and were fired by Kash Patel as a result (12/08/25). Following the incident, FBI and DOJ leadership reviewed the actions of the agents and determined that they were consistent with FBI policy and warranted no adverse action of any kind. The agents are represented by John Kuchta Law and the Washington Litigation Group.

**Y2, Week Two**, the New York Times interviewed 45 current and former FBI employees, who illuminated how senior leadership is undermining the agency and ultimately making Americans less safe. See “[A Year Inside Kash Patel’s F.B.I.](#)”

### **Federal Emergency Management Agency**

**Y1, Week Sixteen**, it was widely reported (see, e.g., [POLITICO coverage](#) and [NYT coverage](#)), that Cameron Hamilton, the acting director of FEMA and a former Navy SEAL, was fired a day after he [testified](#) before the Homeland Security Committee of the House Appropriations Committee that FEMA was vital to communities and should not be disbanded. He testified that “communities look to FEMA in their greatest time of need, and it is imperative that we remain ready to respond to those challenges.” “I do not believe it is in the best interests of the American people to eliminate the Federal Emergency Management Agency.” Trump has pushed for FEMA to be shuttered. While state officials, including Republicans, have urged that FEMA is not dismantled, DHS Secretary Noem had no qualms about eliminating the agency. *POLITICO* reported that Hamilton had considered quitting two months ago but was convinced by FEMA staff to stay on.

*POLITICO* also reports that FEMA provides approximately \$45 billion in disaster relief to states and individuals.

**Y1, Week Seventeen**, the *Wall Street Journal* [reported](#) that David Richardson, the newly appointed head of FEMA (a Kristi Noem loyalist, close ally of Corey Lewandowski and a former senior DHS official with no emergency management experience (he led the Countering WMD office) who replaced fired interim Director Hamilton), admitted in private meetings that FEMA does not yet have a fully formed disaster-response plan, two weeks before the start of hurricane season, and in fact was unaware that the United States even had a hurricane season (05/15/25). *The Hill* reported that some GOP Senators are unsettled by the firing of acting FEMA Director Hamilton.

**Y1, Week Forty-Four**, Richardson announced he would step down following hurricane season (ironic, as last summer, he did not know there was such a thing). Reportedly, there were plans in the works to fire him. See [CNN](#) coverage.

A task force set up by Trump to consider the future of FEMA has recommended that FEMA not be abolished. Recall that Trump had called back in February for



dismantling or drastically scaling back the operations of FEMA, while shifting responsibility for disaster response to the states. See [New York Times](#) coverage.

### **Federal Trade Commission**

**Y1, Week Nine**, Trump attempted to fire the two Democratic commissioners of the Federal Trade Commission (FTC), Alvaro Bedoya and Rebecca Kelly Slaughter. The FTC, among other roles, is the antitrust enforcer. The firings violate the Supreme Court's ruling in [Humphrey's Executor](#). The firings may be part of Trump's strategy to provide the basis for the Supreme Court to overrule its own precedent in *Humphrey's Executor*. See interviews with [Bedoya](#) and with [Slaughter](#).

**Y1, Week Eighteen**, the FTC reportedly sent a civil investigative demand to Media Matters, the media watchdog, as part of a civil investigation into Media Matters, presumably about alleged collusion. The letter reportedly demanded materials related to a lawsuit brought by Musk against Media Matters, communications with other media groups, including the Global Alliance for Responsible Media, and information about Media Matters technology, methods and policies. Musk sued Media Matters after it published a report, which Musk claimed was defamatory and deceptive, showing ads of major advertisers appearing on X alongside far-right extremist content, after which certain advertisers suspended their advertising on X. See [Reuters](#) coverage.

**Y1, Week Twenty-One**, the *Wall Street Journal* [reports](#) that advertisers are under significant pressure to resume buying ad space on X, resulting in at least six advertisers that had been threatened with a lawsuit or otherwise motivated by pressure tactics to resume advertising on the platform. The threat is an antitrust suit alleging collusion among advertisers, presumably to get lower ad rates. Recall that shortly after the Musk takeover of Twitter, major advertisers left the platform over content moderation concerns and staff cutbacks.

Last August, X sued the World Federation of Advertisers (WFA) and several advertisers, [repeating](#) conclusions reached by Jim Jordan's Judiciary Committee that the defendants had engaged in an illegal boycott by conspiring to withhold advertising. The target of the suit was the non-profit Global Alliance for Responsible Media (GRAM), an initiative of WFA to protect brands from what it deemed "unsafe" online content. WFA disbanded GARM. The pressure, as well as the FTC investigation and the lawsuit against Media Matters, continue.

**Y1, Week Twenty-Six**, District Judge Loren AliKhan [ruled](#) that Trump's attempt to fire Democratic appointee Rebecca Kelly Slaughter was illegal and restored her to her position as a commissioner of the FTC (07/27/25). Judge AliKhan found the attempted removal violated the Federal Trade Commission Act and *Humphrey's Executor*. The Court dismissed Alvaro Bedoya's claim as moot as he had resigned.

The FTC [announced](#) that it had approved the acquisition by Omnicom of Interpublic Group, subject to the condition that the merged entity is prohibited from declining to place ads based on "political or ideological reasons." The two agencies are the third- and fourth-largest media buying advertising agencies in the United States, and the

combined entity will be the largest media buying agency in the world. Specifically, the proposed consent order [prohibits](#) the combined entity from:

- directing advertisers' advertising spend based on the Media Publisher's political or ideological viewpoints, or the political or ideological viewpoints expressed in content that the Media Publisher sells advertising to run alongside of (other than as required by applicable laws);
- refusing advertisers' requests to direct advertising spend to a Media Publisher based on political or ideological viewpoints or political content (other than as required by applicable laws); or
- declining to deal with Advertisers based on political or ideological viewpoints of that Advertiser (other than as required by applicable laws);

in each case, unless an advertiser directs its ad spend by agreement with Omnicom. See Julia Angwin's op-ed in the *New York Times* ("[Trump Moves to Silence New Target](#)"), in which she notes that the administration is now trying to stop advertisers and brands from boycotting conservative media and platforms.

**Y1, Week Thirty**, District Judge Sparkle L. Sooknanan [issued](#) a preliminary injunction in favor of Media Matters (8/15/25) following the filing of its [motion](#) seeking that injunction to halt what it characterized was the FTC's retaliatory investigation ("a campaign of retribution") and in doing so to vindicate its First Amendment rights (07/14/25).

The Court found that Media Matters had "engaged in quintessential First Amendment activity when it published an online article criticizing Mr. Musk and X." That ruling came as no surprise when the Court opened its opinion by stating, "Speech on matters of public concern is the heartland of the First Amendment. The principle that public issues should be debated freely has long been woven into the very fabric of who we are as a Nation. Without it, our democracy stands on shaky ground. It should alarm all Americans when the Government retaliates against individuals or organizations for engaging in constitutionally protected public debate. And that alarm should ring even louder when the Government retaliates against those engaged in newsgathering and reporting."

**Y1, Week Thirty-Seven**, the Supreme Court [cleared the way](#) (6-3) in a short unsigned order for Slaughter's removal, for now, by granting a stay requested by the government (09/22/25). The majority set in motion arguments for a decision on the merits of her firing and what could be the overturning of *Humphrey's Executor*. See coverage in [SCOTUSblog](#).

**Y1, Week Forty**, in the legal equivalent of a shot across the Supreme Court's bow, one of the country's leading conservative legal scholars and former law clerk to Justice Thomas, Caleb Nelson, penned an article ("[Must Administrative Officers Serve at the President's Pleasure?](#)") arguing that neither the text nor the history of Article II supports unlimited authority of the President to remove executive officers. He writes "neither the Vesting Clause nor anything else in Article II compels the inference that after officers have been duly appointed, and after the President has issued the commissions that the Constitution requires, the President must be able to terminate the

appointments and rescind the commissions at will, or to dictate how all such officers must use any discretion that the law attempts to give them.” As for the Take Care Clause, Nelson notes that “[it] does not imply that the President must be able to fire all executive officials at will, any more than it guarantees the President the ability to imprison officials who do not do what the President says.”

Nelson concludes by saying that he is “an originalist, and if the original meaning of the Constitution compelled this outcome, [he] would be inclined to agree that the Supreme Court should respect it until the Constitution is amended through the proper processes. But both the text and the history of Article II are far more equivocal than the current Court has been suggesting. In the face of such ambiguities, [he hopes] that the Justices will not act as if their hands are tied and they cannot consider any consequences of the interpretations that they choose.

Nelson’s article was published by New York University Law School’s [Democracy Project](#), which launched a “100 ideas in 100 days” “to promote understanding and analysis of the challenges facing American democracy, including putting them in the context of the similar challenges facing most Western democracies.”

Adam Liptak, writing in the *New York Times* (“[Originalist ‘Bombshell’ Complicates Case on Trump’s Power to Fire Officials](#)”), quotes another prominent “originalist,” William Baude (who recall was one of the two conservative legal scholars who argued that that Trump should have been disqualified from appearing on the 2024 ballot under the Fourteenth Amendment (section 3)), who characterized Nelson’s position against the unitary executive interpretation of the Constitution as a “bombshell!”

Although, as Nelson himself acknowledged, the Supreme Court “appears to be moving toward a sweepingly pro-president position,” perhaps there is some glimmer of hope that *Humphrey’s Executor* survives.

## **Holocaust Memorial Museum**

**Y1, Week Fifteen** and less than a Y1, Week after Holocaust Remembrance Day, the Trump administration began firing members of the board that oversees the Holocaust Memorial Museum who had been appointed by President Biden at the end of his term, including First Gentleman Doug Emhoff, Ron Klain, Biden’s first chief of staff; Tom Perez, former labor secretary and senior adviser to Biden; Susan Rice, the national security adviser to former President Obama and Mr. Biden’s top domestic policy adviser who led a major national strategic effort to counter antisemitism; and Anthony Bernal, a senior adviser to Jill Biden.

## **Inspectors General**

During **Y1, Week One**, inspectors general (IGs) in nearly all Cabinet-level agencies (DoJ and Department of Homeland Security (DHS) were spared), in what Senator Chuck Schumer labelled a “chilling purge,” were [fired](#). The offices of IGs were established as federal agency watchdogs in 1978 as part of post-Watergate reforms. As of January 30, according to [an email](#) from the Council of Inspectors General, of the 37 federal IG positions that are Senate-confirmed, 11 were vacant, and of the remaining 26, 15 were fired and a further three interim IG also were impacted.

Incidentally, many of the fired IGs were holdovers from the first Trump administration.

The firings were in apparent violation of [federal law](#) that requires 30 days' notice to Congress together with detailed and case-specific "substantive rationales" for the dismissal (as they are all Senate confirmed). The law was [toughened](#) as part of the [2022 National Defense Authorization Act](#) (partly in reaction to firings by Trump of IGs during his first term) by replacing the mandated "reasons" for a firing with a "substantive rationale, including detailed and case-specific reasons" for a firing.

So, on his fifth day in office, Trump broke the law (claiming "[the firings of IGs] are a very common thing to do"). He ignored the rules designed to rein in his actions – no notice, no explanation let alone detailed rationales for the firings. As one of the participants in the Brennan Center [tabletop exercises](#) this summer, a former member of the Trump administration, regularly reminded the participants when legal roadblocks were cited as a bulwark against illegal action, "they just don't care." This is the crux of the problem. As Jennifer Rubin (formerly of the *Washington Post* and now at The Contrarian) noted in an [interview](#) with The New Republic, "whether it's an executive decree that attempts to repeal birthright citizenship, which is in the Constitution, or it's violating the inspector general's rule, or it's coming up with the DOGE. He does all of these things because he thinks he can get away with it."

A January 27, 2025 [Congressional Research Service update](#) notes that following removals of IGs by President Reagan in 1981, the "practice has disfavored removal of IGs during presidential transitions." The update concludes that Trump's removal of IGs "appears to be a direct challenge to the enforceability of Congress's removal procedures under" the IG Act."

I commend to you the *New York Times* interview with seven fired IGs (see "[They Saved Taxpayers Billions. Trump Fired Them Anyway](#)").

### **Internal Revenue Service**

The Internal Review Service (IRS) reportedly is looking into revoking the tax-exempt status of Harvard University as part of the broader assault against elite universities. This follows a funding freeze of \$2.2 billion and the cancellation of \$3 million in grants targeting Harvard, together with a demand that Harvard turn over records of foreign student activity, all instigated by DHS. Note that [26 U.S. Code § 7271](#) prohibits executive branch officials, including the President and Vice President, from directing the IRS to conduct or terminate an audit or other investigation of a taxpayer's tax liability.

There are broader concerns that the administration will launch a broader attack on the tax-exempt status of nonprofit organizations across the civil society space. See two memos putting these attacks into context of applicable law: [Sandler Reiff](#) and [Nonprofit Alliance](#).

### **Government Data and Statistics**

And there is a deeper concern here, as well, in that the IGs are in place to protect against fraud, waste, abuse and corruption by federal government agencies or

personnel. Both Rubin and Greg Sargent (the interviewer) cite the relationship between the firings and the rising sense of graft-driven policies intended to facilitate the use of government for personal enrichment. Removing IGs removes both sources of information about fraud and corruption as well as guardrails in a position to blow the whistle on these actions or resist them. As I noted in an earlier briefing note (available [here](#)), with loyalists installed in let's say the Department of Labor, who now will believe the jobs reports published by the Bureau of Labor Statistics (BLS)? As to the consequences of destroying the federal government's statistical infrastructure, *see* recent CNN [reporting](#) on the fears centered on an administration that in recent months has questioned the legitimacy of government economic data, but is also actively shutting down federal programs and websites that provide resources to underserved communities.

Note too the suspension [of communications](#) from the HHS and its agencies, including the National Institutes of Health and the Centers for Disease Control and Prevention (CDC). It is particularly troubling that the blackout on [public communications](#) from government health agencies was ordered in the middle of flu season and a global zoonotic outbreak and that, for the first time since 1952, the CDC withheld its Y1, Weekly [morbidity and mortality data update](#). As [reported](#) by Catherine Rampell in the *Washington Post*, the blocked update was expected to contain two new studies about [bird flu transmission](#) (quoting KFF Health News). "The move echoed Trump's data-suppression approach to covid-19. ('If we [stopped testing](#) right now,' he said in June 2020, 'we'd have very few cases, if any.')" *See* [Public Health](#) below, as well.

If we want a sense of where this going, consider the [observations](#) of the Czech intellectual and former president of Czechoslovakia Václav Havel in 1978, "Because the regime is captive to its own lies, it must falsify everything. It falsifies the past. It falsifies the present, and it falsifies the future. It falsifies statistics. It pretends not to possess an omnipotent and unprincipled police apparatus. It pretends to respect human rights. It pretends to persecute no one. It pretends to fear nothing. It pretends to pretend nothing."

**Y1, Week Six**, [according](#) to the *Washington Post*, hundreds of probationary workers at the National Weather Service (NWS) and National Oceanic and Atmospheric Administration (NOAA) have been fired. The federal employees are responsible for producing weather forecasts, maintaining radar systems, gathering data from satellites and monitoring key commercial fisheries. Current and former staff at the NWS and NOAA have been warning that these firings could cause significant disruptions to the country's ability to guard against extreme weather events.

**Y1, Week Fifteen**, cuts at the NWS reportedly have resulted in around 10% of the staff being laid off or taking early retirement. All five of the living former National Weather Service directors [issued](#) an open letter warning that cuts to National Weather Service may soon endanger lives. They warned that "N.W.S. staff will have an impossible task to continue its current level of services. Our worst nightmare is that weather forecast offices will be so understaffed that there will be needless loss of life." The letter goes on to say that the coming Y1, Weeks are "the busiest time for severe storm predictions like tornadoes and hurricanes" and cautions that a broad range of



activities rely on accurate weather forecasting: “Airplanes can’t fly without weather observations and forecasts; ships crossing the oceans rely on storm forecasts to avoid the high seas; farmers rely on seasonal forecasts to plant and harvest their crops which feed us.”

**Y1, Week Twenty-Eight**, back in October I [cited](#) Trump’s attack last summer BLS as a harbinger. True to form, following a weak jobs report that caused the market to tumble 600 points, Trump directed his team to fire the BLS Commissioner, Dr. Erika McEntarfer, maintaining with no evidence, that the figures in the report had been “[manipulated for political purposes](#).” The country added 19,000 jobs in May (compared to an initial report of 144,000) and only 14,000 in June (compared to an initial report of 147,000), which when added to 73,000 in July means the country added just 106,000 jobs over the three months. While job figures often are revised as additional information becomes available, the scale of the revisions, not to mention what they said about the economy, stunned experts and the markets. (Incidentally, McEntarfer, an economist with a Ph.D. and a 20-year career as an economist at the Census Bureau and 19 months as an economist at the Treasury, was confirmed in 2024 [86 to 8](#).)

As *Axios* [noted](#), BLS “is considered the gold standard among international labor data collectors.” The *Wall Street Journal* [notes](#) that the today’s economic statistics grew out of efforts that began during the Great Depression to better understand how the U.S. economy works. And as Jason Furman notes, [writing](#) in the *New York Times*, McEntarfer does not make policy and does not make the figures that BLS releases. Rather, those figures are produced by the 2,000 nonpartisan career BLS staff members, who compile survey responses from the 100,000 plus businesses that report their employment data each month to BLS.

Both Furman and *Axios* note that revisions are normal. Writes *Axios*, “economists consider its revisions process key to transparency and thoroughness, even if it sometimes makes BLS look bad when preliminary numbers turn out to be wildly off.” Furman adds that in balancing timeliness and accuracy, revisions are natural. About one-third of the sampled businesses do not return their survey responses on time, necessitating BLS to make imputations for the missing data. As more survey responses arrive, the numbers are revised. An algorithm makes seasonal adjustments for the data.

*Axios* AM [described](#) the reaction to the firing as “a five-alarm fire” racing through the economic establishment, “one glaring example from a Y1, Week that bore many authoritarian hallmarks purging dissenters, rewriting history, criminalizing opposition and demanding total institutional loyalty.”

If BLS loses its independence and its economic data become politicised (think China’s growth rate over the years), then economists, investors and businesses are deprived of key metrics for assessing the markets and the broader economy. The Fed relies on U.S. economic statistics in setting monetary policy, and businesses and investors rely on these statistics to allocate capital. This incident should prompt a broader and more public debate regarding the politicization of federal agencies and the integrity of government data, and what that portends for the market and trust in the economic indicators that the federal government reports.

Shortly after announcing the firing of McEntarfer, Trump claimed on Truth Social the weak job numbers were “RIGGED in order to make Republicans, and ME look bad.” Binyamin Appelbaum, also [writing](#) in the *New York Times*, reminds us that economist John Maynard Keynes said that when the facts contradicted his opinions, he changed his mind. Trump prefers to change the facts.

See also [Wall Street Journal](#) coverage.

Sunday evening, Dr. McEntarfer [posted](#) on Bluesky, “It has been the honor of my life to serve as Commissioner of BLS alongside the many dedicated civil servants tasked with measuring a vast and dynamic economy. It is vital and important work, and I thank them for their service to this nation.”

**Y1, Week Twenty-Nine**, the *New York Times* Editorial Board addressed a few other casualties of the firing of Dr. McEntarfer: Trump has sent an unmistakable message across the entire federal government that producing information that displeases the president could be a career-ending move and may well be making it harder for the federal government to collect information from the private sector who could not be faulted for fearing that that information may not be accurately reported. Trump is also hampering the ability of the government to function. The Board cites Ben Casselman, whose case studies, such as Greece and Argentina [demonstrate](#) that countries that cook their statistics are lying to themselves, and they suffer the consequences.

The firing of Dr. McEntarfer joins a litany of over efforts to re-write history and hamper the ability of the government to collect data that contradicts Trump’s agenda – including a proposed defunding of an observatory that has measured the rise of carbon dioxide in the atmosphere since 1958, the shuttering of a national database that tracked misconduct by federal police officers, the removal from the website of the Centers for Disease Control and Prevention the results of the Youth Risk Behavior Surveillance System, a long-running study of adolescent behaviors, including sleep, sexual activity and substance abuse, and then, after a court enjoined the removal, reposted the data with a note disclaiming its accuracy.

**Y1, Week Thirty**, it was widely reported that E.J. Antoni, the Heritage Foundation’s chief economist chosen to head BLS, was in the crowd on January 6<sup>th</sup>. The White House said he was a “bystander” who wandered over to the Capitol after seeing the coverage on the news. Antoni [told](#) Fox News he favors pausing monthly job reports in favor of quarterly reports as he believes the methodology, modelling and assumptions are fundamentally flawed.

Antoni’s nomination is drawing criticism from economists across the ideological spectrum. He has neither the decades of experience as a statistician or as an economist - McEntarfer worked for 20 years as an economist with the Census Bureau, her predecessor William Beach was the chief economist for the Senate Budget Committee, and his predecessor Erica Groshen spent 20 years as an economist at the New York Federal Reserve and referees for about a dozen academic journals. [The Hill](#) quotes Harvard University economist Jason Furman as saying that Antoni is “an extreme partisan and does not have any relevant experience” and quotes Stan Veuger, a senior

fellow at the conservative American Enterprise Institute, as saying, “He’s utterly unqualified and as partisan as it gets.” *See also* [Washington Post](#) coverage.

**Y1, Week Thirty-Eight**, the White House [withdrew](#) the nomination of Antoni to head BLS. No public reason was provided.

## Judiciary

End of **Y1, Week Fourteen**, the FBI arrested a Milwaukee County Judge and [charged](#) her with obstructing justice. Judge Hannah Dugan was released on her own recognizance. The charging document alleges that when a group of ICE, DEA and FBI agents arrived to arrest a Mexican citizen, Eduardo Flores-Ruiz, who was in her courtroom facing domestic violence charges, she confronted the agents, directed them speak to the chief judge and then escorted Flores-Ruiz out of the courtroom through the door used by juries. He then attempted to escape and was caught.

Public Citizen and a variety of other allied organizations [issued](#) a statement criticizing the arrest, characterizing the actions of the administration (the erosion of judicial independence through intimidation, public attacks on judges who issue rulings the administration views as unfavorable and “blatant disregard of court orders,” and politicisation of law enforcement) as assaults “that strike at the very heart of our democratic system and must be recognized for what they are – a direct threat to the constitutional principles that safeguard the liberty of all Americans.”

**Y1, Week Forty-Eight**, Judge Dugan was found guilty of obstructing federal agents in her jury trial. She was found not guilty on the less serious charge of concealing a person from arrest. She will likely appeal. *See* [New York Times](#) coverage. Joyce Vance, in her Thursday Substack, [explores](#) defense of judicial immunity, which is well established in civil cases, but rare in a criminal prosecution. There is case law ([United States v. Joseph](#)) that holds that it is premature to consider immunity before trial. Now that a conviction has been secured, raising the immunity defense on appeal would be appropriate.

## Librarian of Congress

**Y1, Week Sixteen**, it was widely reported (*see, e.g.,* [New York Times coverage](#)) that Trump fired Dr. Carla D. Hayden, the Librarian of Congress. She is one of the most high-profile Black leaders to be targeted as part of the administration’s war on DEI. White House press secretary Karoline Levitt stated that her firing was the result of “quite concerning things she had done at the Library of Congress in pursuit of DEI,” though did not offer any evidence of those activities, and accused Dr. Hayden of permitting “inappropriate books in the library for children,” missing the obvious point that the [Library of Congress](#) is home to over 34 million books and printed materials, and does not lend books to anyone. Moreover, researchers accessing the library must be at least 16.

Trump also dismissed the Register of Copyrights, Shira Perlmutter. The Register of Copyrights is appointed by the Librarian of Congress and is also subject to presidential nomination and Senate confirmation. Perlmutter had very recently [issued](#) a report on AI that raised questions about the use of copyrighted materials by the models that feed AI.

**Y1, Week Seventeen,** Trump attempted to install the Deputy Attorney General and his former personal counsel, Todd Blanche, as acting Librarian, but that move was challenged by the official that now holds the post following the firing of Dr. Hayden, Principal Deputy Librarian Robert Newlen, who automatically succeeded Dr. Hayden. Media reports (see, e.g. [Washington Post](#) coverage) cite pushback from members of Congress on Trump’s attempt to wrest control of the Library of Congress from Congress.

**Y1, Week Forty-One,** the administration [files](#) an emergency appeal with the Supreme Court seeking a stay of an interlocutory injunction to allow it to fire Perlmutter. In March, Perlmutter [sued](#) Blanche and others for declaratory relief that she remains the Register of Copyrights and Director of the Copyright Office (05/22/25). She is represented by Democracy Forward Foundation and Munger, Tolles & Olsen.

In September, after having her motion [denied](#) by District Judge Timothy J. Kelly on the ground that she had failed to show that she would be irreparably harmed in the absence of an injunction (07/30/25), Perlmutter appealed to the D.C. Circuit, which [issued](#) (2-1) the interlocutory injunction in her favor (09/10/25). The Court found:

“In sum, ‘unusual actions relating to the discharge itself’ support a finding of irreparable harm to Perlmutter absent an injunction. Perlmutter can likely establish that she was unlawfully removed from her post as Register of Copyrights, and that her removal was motivated by the President’s disapproval of her work in service of Congress – work that was related to legislative, not executive, functions. Moreover, she was purportedly replaced by an Executive Branch official. That alleged violation of the separation of powers is irreparably harmful to both Perlmutter and to our system of government. In a system of checked and balanced power, the Executive has no authority to punish a Legislative Branch official for the advice that she provides to Congress.”

**Y1, Week Forty-Five,** the Supreme Court [issued](#) a brief order deferring action on the government’s [application](#) to the lift the D.C. Circuit’s injunction on Perlmutter’s removal until after it acts on [Trump v. Slaughter](#), the challenge by FTC commissioner Rebecca Slaughter to Trump’s efforts to fire her, and [Trump v. Cook](#), in which Trump is seeking to fire Fed governor Lisa Cook (11/26/25). The Supreme Court will hear oral arguments on December 8 in the Slaughters case and on January 21 in the Cook case. For the time being, Perlmutter remains the Register of Copyrights.

### **National Institutes of Health**

As Peter Wehner summarized in his Atlantic article (“[America's Mad King](#)”) the National Institutes of Health, long respected for its biomedical research, is being “irreparably damaged by [dramatic and reckless cuts](#) being made by [people who have no knowledge of the agencies they are gutting](#). Progress in cancer therapies such as cell-based immunotherapy is [being](#) threatened. Active clinical trials are [being disrupted](#). Decades of research are [being undermined](#).” See also “[NIH plans to slash support for indirect research costs, sending shockwaves through science](#).”

### **National Security Community**

**Y1, Week Fourteen,** the *Washington Post* [reports](#) that national security agencies are increasing the frequency of investigations into alleged leaks to the media, in some

cases using polygraph tests that are contributing to a sense of fear and intimidation, as well as resignations. Use of polygraphs has been reported at the FBI, the Pentagon, Homeland Security, the Office of the Director of National Intelligence (ODNI) and FEMA. The climate of fear is exacerbated by the combination of not knowing whether one will be fired, or investigated, or prosecuted, or all three.

The reporting notes that in parallel the Attorney General [has rescinded](#) a Biden-era policy that barred officials from searching reporters' phone records when trying to identify government leaks of sensitive information to journalists. Note that the scope of information subject to subpoena extends beyond "classified" to "privileged and sensitive" information. The *Washington Post* notes in particular that criteria for potential prosecution covers disclosures that "undermine President Trump's policies."

The *Washington Post* also notes that there is a growing concern that actionable information subject to retribution could extend to information that "is simply embarrassing or seen as undermining the administration's views," or that challenges the administration's version of events or simply shines a light on what is happening behind the scenes. This expanded focus brings us very much into the realm of authoritarianism, where criticism of the leadership or the leader is a punishable offense.

Many point to the firing of General Timothy Haught, the head of the National Security Agency (NSA) and Cyber Command, as capturing the damage that is being done not only to individual careers but to the mission of protecting the country. (See [NSA firings](#).)

The *Washington Post* also [reported](#) that Director of National Intelligence (DNI) Gabbard has set up her own DOGE-style team, the Director's Initiatives Group, to investigate "weaponization" of the 18-agency IC. The Post reports that at least 100 personnel at ODNI have taken the early retirement offer, while other seasoned intelligence officers are resigning "because they think the agency's new leadership is compromised by Trump's partisan politics." The article cites the "deferred resignation" of the acting general counsel of the ODNI, Tricia Wellman, reportedly "for providing legal advice that displeased Gabbard."

**Y1, Week Seventeen**, evidence that the administration has no factual basis for invoking the Alien Enemies Act, a declassified "Sense of Community" memorandum [issued](#) by the National Intelligence Council (NIC) dated April 7 and publicly released on May 5 bearing a header "approved for release by ODNI," concludes that "While Venezuela's permissive environment enables [TdA] to operate, the Maduro regime probably does not have a policy of cooperating with [TdA] and is not directing TdA movement to and operations in the United States." This undercuts any argument that the "predatory incursion" is by a "foreign nation or government." The memorandum was released in response to a FOIA request by the Freedom of the Press Foundation." See generally coverage by the [Washington Post](#), which broke the story, and [NYT coverage](#) (05/05/25).



The NIC [acts](#) under the direction of the Deputy Director for Mission Integration and serves as a bridge between the intelligence and policy communities, including by coordinating the assessments of the entire IC.

And in another reminder of how the administration treats those simply doing their jobs, DNI Gabbard [reportedly](#) fired the acting director at the NIC Mike Collins and his deputy Maria Langan-Riekhof following the public release of the declassified memo that contradicted claims about TdA (05/14/25). Gabbard reportedly is also moving the NIC from its home at CIA headquarters to the ODNI campus. The *New York Times* [reported](#) that acting chief of staff to the DNI (and nominee to lead the National Counterterrorism Center) Joe Kent told the analyst who prepared the memo (who was also serving as the acting chair of the NIC) to “rethink” his analysis and that, after re-examining evidence from the IC and the FBI, the NIC reaffirmed its April 7 conclusions.

Separately, it [was reported](#) that, in an apparent effort to bolster her profile and that of the ODNI in the administration, Gabbard has moved responsibility for the Presidential Daily Brief from the CIA to the ODNI. Former intelligence officer Beth Sanner, who oversaw the PDB during Trump 1.0, is quoted as saying the move would be a “huge mistake.” “Ultimately and ironically, it would probably reduce the O.D.N.I. role because it would separate their oversight from the C.I.A. teams doing most of the work. It would create inefficiencies and risk miscommunication and mistakes.”

**Y1, Week Twenty-Six**, *The Hill* reported that DoD had ordered Pentagon officials planning to attend the annual Aspen Security Forum at the last minute to cancel their attendance, claiming the bipartisan gathering “promotes the evil of globalism, disdain for our great country, and hatred for the President of the United States.” As the reporting notes, the four-day event, “described as the ‘premier national security and foreign policy conference,’ is among the most high-profile such events and for years has attracted Republican and Democratic administration officials, business leaders, and analysts.”

The only administration official to attend the Aspen Security Forum reportedly was the envoy for hostage release, Adam Boehler, who made the news for another reason this week for [calling](#) Salvadoran President Bukele “a good friend” for arranging a prisoner swap with Venezuela involving the release of 10 Americans held in Venezuela for 250 Venezuelans held in El Salvador. The 250 Venezuelans sent to Venezuela reportedly were the group deported to El Salvador and held in CECOT. It is unclear what happens to the cases challenging the legality of those deportations, the principal one being [J.G.G.](#) See [Bukele](#) post and [Rubio](#) statement. Recall the respective denials by the Trump and Bukele administrations regarding control over these deportees. See also [J.G.G.](#) case summary.

Tom Nichols [reported](#) **Y1, Week Twenty-Nine** that no Pentagon representatives spoke at the 2025 Space and Missile Defense Symposium, in Huntsville, which is billed as a gathering of more than 7,000 top experts, military officers, and defense-industry representatives from around the world. The absence was notable given Trump’s obsession with spending billions on the successor to President Reagan’s “Star Wars,

officially the Strategic Defense Initiative, which Trump calls the “Golden Dome.” Nichols suggests that the absence from this conference was not due to the ban but rather no one knows what the Golden Dome is supposed to do, and no one knows whether it has any chance of working.

**Y1, Week Twenty-Eight**, the General Counsel of the NSA, April Falcon Doss, was removed, reportedly after she was [criticized](#) by the *Daily Wire* for having worked on the Senate Intelligence Committee during the time of the Russia investigation. The criticism was amplified by Laura Loomer, who reposted a [criticism](#) of Doss. See [New York Times](#) coverage.

Also **Y1, Week Twenty-Eight**, government officials are struggling to explain how and why among the 10 Americans released from Venezuela was one [David Hanid Ortiz](#). Ortiz, a former U.S. Marine and dual Venezuelan American, had been convicted in Venezuela (which does not have an extradition treaty with Spain) of murdering three people in Spain in 2016. So, how to square this with Trump’s obsession with keeping criminals out of the United States and to the extent they are here illegally removing them? At some point State Department officials began referring to “nine Americans released,” but Hamid is here and reportedly still free. See [New York Times](#) and [El Pais](#) coverage.

Still in **Y1, Week-Twenty-Eight**, *POLITICO* [reports](#) on chaos at the Pentagon as DoD officials figure out the implications of the ban on attendance at think tank and research events, which are key channels through which DoD delivers messages and receives feedback. *POLITICO* notes that the ban inhibits the ability of the Pentagon to make its case on emerging defenses policies both in D.C. and abroad as allies struggle to understand the direction of travel under Trump. Another casualty of the ban are tech start-ups anxious to understand the military’s priorities and needs in building the next generation of weapons.

### **Small Business Administration**

On February 7, 1,000 or so probationary employees at the Small Business Administration (SBA) were told via email they were fired. These firings followed the issuance of the [Implementing the DOGE Workforce Optimization Initiative](#) EO.

Three days later these employees were told the unsigned termination letters had been sent in error. The following day these employees received a second notice of termination, effective immediately. As Reps. Derek Tran and Nydia Velázquez set out in their [letter](#) to the acting Administrator of the SBA (02/12/25), not only were these actions mean-spirited and confusing, and potentially illegal, these terminations are likely to have significant and adverse effects on the services that the SBA provides to small businesses. *NPR* [reported](#) on the impact on one fired SBA employee – an Army veteran, that captures the cruelty of this purge. See also *Business Insider’s* [reporting](#).

### **Social Security Administration**

The *New York Times* reports that as part of a strategy to force migrants to “self-deport,” the administration is effectively cancelling social security numbers that were lawfully obtained, without which migrants are cut off from financial services such as opening

up credit card and bank accounts, and access to government benefits. The effort involves adding names and social security numbers to the Social Security Administration's "death master file."

**Y1, Week Thirty-Three**, Charles Borges, the Social Security Administration's Chief Data Officer, resigned after [he submitted](#) a whistleblower complaint to Congress and the Office of Special Counsel in which he warned that DOGE had put the sensitive personal information of millions of Americans at risk (see [New York Times](#) coverage). In his resignation letter, Borges [noted](#) that he recently had become:

"aware of several projects and incidents which may constitute violations of federal statutes or regulations, involve the potential safety and security of high value data assets in the cloud, possibly provided unauthorized or inappropriate access to agency enterprise data storage solutions, and may involve unauthorized data exchange with other agencies. As these events evolved, newly installed leadership in IT and executive offices created a culture of panic and dread, with minimal information sharing, frequent discussions on employee termination, and general organizational dysfunction. Executives and employees are afraid to share information or concerns on questionable activities for fear of retribution or termination, and repeated requests by me for visibility into these events have been rebuffed or ignored by agency leadership, with some employees directed not to reply to my queries."

Makena Kelly and David Gilbert of *Wired* [reported](#) that less than 30 minutes after Borges' resignation email hit the in-boxes of staff at the Social Security Administration, it disappeared.

Marisa Karibas [reports](#) that an anonymous letter purportedly from a senior Social Security Administration employee was [submitted](#) to Sen. Ron Wyden in March setting out similar concerns. Another former senior Social Security Administration employee [set out](#) in a court filing her concerns that "she was not confident that DOGE associates have the requisite knowledge and training to prevent sensitive information from being inadvertently transferred to bad actors."

In his resignation letter, Borges ties his resignation to "SSA's actions against me, which make my duties impossible to perform legally and ethically, have caused me serious attendant mental, physical, and emotional distress, and constitute a constructive discharge. After reporting internally to management and externally to regulators serious data security and integrity concerns impacting our citizens' most sensitive personal data, I have suffered exclusion, isolation, internal strife, and a culture of fear, creating a hostile work environment and making work conditions intolerable."

## **USAID**

**Y1, Week One**, there were [reports](#) that upwards of 60 senior career employees at USAID had been placed on administrative leave, accused of attempting to circumvent the EO on foreign aid. Another senior official was put on leave for trying to reverse that move after finding no evidence of wrongdoing. The USAID public affairs office reportedly has been shut.

This came in the midst of a suspension by USAID and the State Department of a significant number of humanitarian and related programs (see [Foreign Policy and Aid](#)

below). A directive ordered USAID officials to not communicate outside the agency, including with the State Department, without approval. According to [The Guardian](#), the United States is the largest donor of aid globally, having disbursed \$72 billion in aid in FY2023 representing in calendar 2024 42% of all humanitarian aid tracked by the UN. For a detailed update on the situation at USAID, see [Devex Newswire](#). Devex estimates that the freeze in aid has halted nearly \$60 billion in unspent USAID obligations, putting at risk projects in countries such as Ukraine, Afghanistan and Kenya, across the spectrum from health to education.

At the end of **Y1, Week Two**, amid rumors that USAID would be folded into the State Department, CNN was the first [to report](#) that two senior USAID security officials had been placed on leave after stopping personnel from DOGE who physically tried to gain access to security systems and personnel files at USAID headquarters (described in one report “as seeking access to classified files in a secure area”). In response to news reports of the incident, Musk labelled USAID a “criminal organization” whose “time [it is] to die.” The USAID website went dark, and a new page was put up within the State Department website.

Recall that DOGE is not an agency or component of the federal government and is staffed by private individuals (none of whom has taken an oath to the Constitution). As Ruth Ben-Ghiat noted in her February 2<sup>nd</sup> *Lucid* [post](#), Musk is subject to no Congressional or other oversight because he has no official legal function.

As **Y1, Week Three** began, Marco Rubio had been put in charge of USAID as acting administrator, and Devex [reported](#) that all USAID direct hire personnel globally, with a few exceptions, [would be put on administrative leave](#) and those stationed abroad would be [recalled from their posts within 30 days](#). On Inauguration Day, USAID, founded in 1961 under President John F. Kennedy largely to counter the influence of the Soviet Union, was the largest aid donor in the world, employing over 10,000 people across more than 130 countries. Incidentally, when I went on the website to the USAID History page, it was gone.

Fast forward to **Y1, Week Six**, during a meeting of the Trump Cabinet Musk admitted that DOGE “accidentally cancelled” efforts by USAID to prevent the spread of Ebola, insisting that funding had been restored. As the *Washington Post* [reported](#), former and current USAID officials reported that Musk was wrong - “While the Trump administration issued a waiver to allow USAID to respond to an Ebola outbreak in Uganda last month, partner organizations were not promptly paid for their work, and USAID’s own efforts were sharply curtailed compared to past efforts to fight Ebola outbreaks.”

The Ebola funding story is representative of cascade of failures on the part of Musk and the Administration [to understand](#) how the federal government works and how destructive their initial efforts were. Once hastily dismantled, programs cannot magically be restored.

After aid groups scrambled to show their work would save lives and sought permission from the State Department and USAID to keep working, and after the administration conceded that programs should continue to operate ([according](#) to ProPublica, field

hospitals in Gaza, an HIV drug supplier for the Democratic Republic of Congo, Syrian refugee food programs, health clinics that combat Ebola in Uganda and PEPFAR), Secretary Rubio and Peter Marocco pulled the rug out from under nearly 6,000 aid programs (I note the reported numbers of programs vary – I went with the most conservative of them), including those granted waivers only days earlier. “The move consigns untold numbers of the world’s poorest children, refugees and other vulnerable people to death, according to several senior federal officials. [Local authorities](#) have already begun estimating a death toll in the hundreds of thousands.” And the United States is also refusing to pay almost \$2.0 billion owed by the government to aid organizations for work already completed.

Beginning of **Y1, Week Seven**, and the carnage continued at USAID. The acting Assistant Administrator for Global Health, Nicholas Enrich, [was placed](#) on leave after circulating a series of scathing memos to staff describing the “failure” to provide lifesaving assistance as a result of actions by Trump’s political appointees. Enrich warned that the failure “will no doubt result in preventable death, destabilization and threats to national security on a massive scale.” See also [CNN reporting](#) on the memos:

- “A failure to contain infectious diseases at their source heightens the risk of transmission to the United States, posing a direct threat to public health and economic stability. The consequences extend beyond human health, impacting American businesses and families by increasing healthcare costs, disrupting international trade, and straining domestic resources.”
- Projections of an additional 12.5 million to 17.9 million cases of malaria annually and an additional 71,000 to 166,000 deaths, with about 2,000 cases of malaria imported to the United States per year.
- For highly pathogenic avian influenza (HPAI), a “worst-case scenario” could see 775 million cases globally, with 105 million in the US. “Based on the known impact of the COVID-19 pandemic, a HPAI pandemic is likely to cost the US at least \$14 trillion. The economic impact of just animal losses from bird flu in 2022 cost the US economy up to \$3 billion.”

### **Individual government positions**

Effective February 14, all chief information officers across government agencies [were recharacterized](#) in effect as political appointees. The OPM directive calls for these positions, currently designated as nonpartisan “career reserved” to become “general.”



## EXECUTIVE ORDERS/ EXECUTIVE BRANCH ACTIONS

### EOs - IMMIGRATION & SECURING THE SOUTHERN BORDER

#### The Key Principles

##### *National Emergency*

Trump declared a “**national emergency**” at the southern border, which allows him to deploy National Guard and active duty military units to the border. This was long expected notwithstanding that the number of illegal border crossings is low, very few of the “millions and millions of criminal aliens” that Trump called out during his Rotunda speech have been arrested or convicted, and undocumented migrants have a far lower arrest rate than native-born Americans. The declaration was made under Sections 201 and 301 of the National Emergencies Act (NEA), and Trump invoked Title 10, Section 12302 and Title 10, Section 2808 to deploy active-duty military, as well as the Ready Reserve and the National Guard, to support the government’s response to “the emergency at the southern border.” Trump has also called for the construction of additional physical barriers along the southern border and for a waiver of FAA and FCC regulations that restrict the use of drones within five miles of the southern border.

This EO contemplates that the Secretary of Defense, or the secretary of each relevant military department, as appropriate and consistent with applicable law, is to order as many units or members of the Armed Forces, including the Ready Reserve and the National Guard, as the Secretary of Defense determines to be appropriate to support the activities of the Secretary of Homeland Security “in obtaining complete operational control of the southern border of the United States.”

The Secretary of Defense and the Secretary of Homeland Security, within 90 days (April 20), are to report on conditions at the border and any recommendations regarding additional action at the border, including, and this is critically important, whether to invoke the Insurrection Act (*see* my prior briefing note on the need to amend the Insurrection Act (01/04/24), available here).

**Y1, Week Thirteen**, CNN reports that Secretary of Defense Hegseth and Secretary of Homeland Security Noem will not recommend invoking the Insurrection Act.

To be clear, in reality (at least the normal reality), there is no national emergency because there is no emergency. The Brennan Center’s Elizabeth Goitein aptly characterized Trump’s responses to the border situation as a “massive abuse of emergency power. And I should say, ... the declaration of a national emergency is also an abuse of emergency powers, because these emergency powers are intended to address sudden, unexpected crises – that’s the definition of an emergency – that are moving too quickly for Congress to be able to address. That is not unlawful immigration at the border. It is not sudden or unexpected, and it is something that Congress can and should be addressing through comprehensive immigration reform.”

Goitein also notes that it is up to Congress, not the President, to address border security through comprehensive reform. In acting as he has, Trump is usurping the powers of Congress assigned to it under the Constitution. And, as Goitein reminds us, only a few

months ago, Trump scuppered a bipartisan border security bill to serve his own purposes in his campaign based largely on chaos at the border.

Incidentally, Trump has not only weaponized the “national emergency” designation, but he has also invoked the notion of an “invasion,” potentially to justify further abuses of presidential power.

### ***“Sealing the Border” to Repel an “Invasion”***

In a proclamation ([Guaranteeing the States Protection Against Invasion](#)), Trump finds that the federal government has failed in its obligation to protect the states, and thus has declared that “an invasion is ongoing at the southern border, which requires the federal government to take measures to fulfil its obligations to the States.” Accordingly, he in effect intends to **seal the southern border** (whatever that means) – having found that “aliens are engaged in an invasion” and directing “that entry into the United States of such aliens be suspended until [he issues a finding] that the invasion at the southern border has ceased.” Under the proclamation, he has ordered that those coming across the southern border be restricted from invoking the screening provisions of the Immigration and Nationality Act (INA) and has also denied entry to those who fail to provide sufficient health information.

In his [America First Priorities](#), Trump called for the end of the Biden-era “catch-and-release” policy (allowing undocumented migrants to remain in the country pending immigration court hearings), reinstating the “Remain-in-Mexico” policy (formally known as the Migrant Protection Protocols, requiring asylum seekers to be processed in Mexico), building the border wall and suspending the refugee resettlement process. In his [Securing our Borders](#) EO, Trump calls for construction of the wall and other physical barriers, detaining aliens “apprehended on *suspicion* of violating federal or state law, until such time as they are removed, and removing aliens who enter or remain in violation of federal law.”

The catch-and-release policy is to be terminated, and the Migrant Protection Policy is to be resumed. In addition, the CBP One app is discontinued, and parole programs (which includes catch-and-release) that are contrary to Trump policies are to be terminated. Under Biden policies, Border Patrol used existing authorities to “parole” individuals into the country who required humanitarian assistance or who they were unable to process for asylum. The CBP One app was used to schedule appointments with CBP.

The Acting Secretary of Homeland Security issued a [Finding of Mass Influx of Aliens](#) to support his request from state and local governments “in all 50 states” in the administration of immigration laws as well as a federal response.

End of Y1, **Week Twelve**, the “[Military Mission for Sealing the Southern Border of the United States and Repelling Invasions](#)” Presidential Memorandum (04/11/25) establishes a military buffer zone along the border by transferring jurisdiction over federal lands (including the Roosevelt Reservation, a 60-foot deep strip along the border that [stretches](#) across California, New Mexico and Arizona) to the military. In effect this means that migrants crossing the border would find themselves on a U.S. military base, allowing active-duty military units to hold migrants until turned over to ICE.

## ***Subsidizing of Open Borders***

**Y1, Week Five**, the [Ending Taxpayer Subsidization of Open Borders](#) EO seeks to crush tax-payer funded support for efforts of civil society groups aiding migrants. (See the related [Fact Sheet](#).) The targets are federal benefits for undocumented migrants, which is ironic as undocumented migrants are largely not eligible for federal benefits and overwhelming are additive in that they pay taxes and contribute to Social Security, among other programs, while getting no return benefit. *See generally* my prior briefing note on the contributions of undocumented migrants (01/09/25), available [here](#).

## ***Quotas***

**Y1, Week Thirty-Nine**, the *Wall Street Journal* [reports](#) that the push to meet the 3,000 arrests per day quota in fact is causing a broad realignment of enforcement priorities across federal law enforcement. Homeland Security Investigations (HSI) agents, Border Patrol officers (Border Patrol is the law enforcement arm of CBP), FBI agents and even Postal Service agents have been reassigned from their traditional duties, such as countering drug smuggling, child sexual exploitation and organized crime, to help track, detain and deport undocumented migrants. HSI agents have long focused on transnational gangs.

The article notes that federal referrals for prosecution are falling across agencies, according to data compiled by Syracuse University's Transactional Records Access Clearinghouse. DEA referred 10% fewer cases between May and June, the U.S. Marshals Service reported a nearly 13% decline and BATF reported a 14% decline. The article also notes that the reassignments are causing senior agents to resign. In Houston, at least six HSI agents resigned in recent months, and other resignations came in LA, Atlanta and Houston.

**Y1, Week Forty-Three**, an in-depth report from the *New York Times* ("[The Department of Deportation](#)") based on internal documents obtained under FOIA and interviews with more than 65 officials, highlights how the shift to illegal immigration has negatively impacted the principal mission of DHS, namely to keep the homeland, and Americans, safe. The shift has hit the criminal investigations arm of DHS, Homeland Security Investigations which has around 7,000 agents, particularly hard. Investigations of sexual crimes against children, terrorist financing, and human smuggling and sex trafficking all are suffering. While administration officials repeatedly trot out the nexus between undocumented migrants and crime, federal data continues to belie that. The *New York Times* cites data showing that fewer than 40% of people detained by ICE have a criminal conviction, roughly 8% of those arrested had been convicted of a violent crime, while about 9% had a traffic conviction.

The reporting cites DHS figures of 550,000 deportations, with the number in immigration detention in excess of [60,000](#).

## Addressing Undocumented Migrants - Setting the Stage for Deportations

Continuing with the invasion theme, in his preamble to the [Protecting the American People Against Invasion](#) EO, Trump contrary to abundant evidence finds that

“many of these aliens unlawfully within the United States present significant threats to national security and public safety, committing vile and heinous acts against innocent Americans. Others are engaged in hostile activities, including espionage, economic espionage, and preparations for terror-related activities. Many have abused the generosity of the American people, and their presence in the United States has cost taxpayers billions of dollars at the Federal, State, and local levels.”

As to the reality, *see generally* my prior briefing note on the implications of mass deportations (01/09/25), available [here](#).

Trump’s remedy is to call for stricter enforcement of the immigration laws against inadmissible and removable aliens. This includes:

- revoking a series of Biden EOs:
  - 13993 (aimed at revising civil immigration enforcement policies and procedures);
  - 14010 (reviewed the Migrant Protection Protocols, advanced opportunities for vulnerable communities to seek asylum protection, addressed myriad aspects of the US asylum system and strengthened Central American asylum systems);
  - 14011 (established a task force to identify children separated at the border from their families): and
  - 14012 (established a task force to coordinate efforts to support immigrants, including refugees, and facilitated state and local integration and inclusion efforts;
- giving the Directors of ICE and CIS, and the Commissioner of CBP the resources needed to enforce (on a civil basis) the INA and other federal laws relating to the illegal entry and unlawful presence of undocumented migrants (note this EO does not make reference to the military or National Guard, but the Coast Guard does fall under DHS);
- prioritizing prosecution of criminal offenses relating to unauthorized entry or continued unauthorized presence of aliens in the United States;
- establishing Homeland Security Task Forces (HSTFs) in all states nationwide to root out criminal cartels, foreign gangs and transnational criminal organizations, dismantle cross-border human smuggling and trafficking networks, end human smuggling and trafficking, with a particular focus on such offenses involving children, and ensure the use of all available law enforcement tools to execute US immigration laws;
- directing the Secretary of Homeland Security to announce and publicize the legal obligation of all unregistered aliens to comply with existing [registration obligations](#), to ensure the registration obligation is complied with and to treat failure to register as a civil and criminal enforcement priority;

- directing the Secretary of Homeland Security to ensure the assessment and collection of fines that the Secretary is authorized to assess against persons unlawfully present in the United States, “including aliens who unlawfully entered or unlawfully attempted to enter the United States, *and from those who facilitate such aliens’ presence in the United States*”;
- directing the Secretary of Homeland Security to take action for the removal of recent entrants and other aliens subject to removal under [8 U.S. Code § 1225\(b\)\(1\)\(A\)\(iii\)\(II\)](#) (expedited removal without much due process, otherwise known as the “two-year” rule);
- directing the Secretary of Homeland Security to build detention facilities and ensure the detention of aliens apprehended for violations of immigration law pending outcome of removal proceedings or removal, to the extent permitted by law;
- directing the Secretary of Homeland Security, with the consent of State or local officials, to authorize State and local law enforcement officials to perform the functions of immigration officers (under [INA Section 287\(g\)](#) agreements) to investigate, apprehend, or detain aliens in the United States under the direction and the supervision of the Secretary of Homeland Security;
- directing the Secretary of Homeland Security to encourage self-deportations;
- directing the Secretary of State and the Secretary of Homeland Security to implement sanctions against recalcitrant countries that resist accepting their deported nationals, under [8 U.S. Code § 1253\(d\)](#), which permits the Secretary of State to deny any immigrant or non-immigrant visas to nationals, citizens, subjects and residents of that country (*see below regarding [Colombia](#)*);
- directing the Secretary of State, the Attorney General and the Secretary of Homeland Security to rescind all Biden administration policies that led to the increased or continued presence of illegal aliens in the United States, including ensuring parole authority is properly exercised, that temporary protected status designations are proper and appropriately limited, and that employment authorization is appropriately granted;
- directing the Attorney General and the Secretary of Homeland Security, “to the maximum extent possible under law, [to] evaluate and undertake any lawful actions to ensure that so-called ‘sanctuary’ jurisdictions, which seek to interfere with the lawful exercise of Federal law enforcement operations, do not receive access to Federal funds” and to “evaluate and undertake any other lawful actions, criminal or civil, that they deem warranted based on any such jurisdiction’s practices that interfere with the enforcement of federal law”;
- directing the Attorney General and the Secretary of Homeland Security to:
  - audit grants and other funding arrangements for NGOs supporting or providing services to “removable or illegal aliens to ensure that such agreements conform to applicable law and are free of waste, fraud, and abuse, and that they do not promote or facilitate violations of US immigration laws;



- pause distribution of all further funds pursuant to such agreements pending the results of the review;
- terminate agreements determined to be in violation of law or to be sources of waste, fraud, or abuse and prohibit any such future agreements; and
- initiate clawback or recoupment procedures, if appropriate; and
- directing the Director of the Office of Management and Budget (OMB) to ensure that all agencies identify and stop the provision of any public benefits to any illegal alien not authorized to receive them under the INA or other relevant statutory provisions.

The then acting Secretary of Homeland Security revoked the Biden-era [protected areas policy](#) that prohibited arrests by US immigration agents at or near schools, medical and mental healthcare facilities, places of worship, places where children gather, social services establishments, shelters and other similar venues (except if in or near courthouses). See [Fact Sheet](#) prepared by the National Immigration Law Center.

Starting with the registration obligation, through to the intention to co-opt state and local law enforcement to be coordinated by the HSTFs, and deputize local law enforcement as immigration officers, pressure on sanctuary cities through the withholding of federal funds (challengeable under the Tenth Amendment) and the increased use of detention facilities – these will all facilitate the threatened mass deportations, notwithstanding the significant financial and human costs associated with the plan, and reduce the ability of civil society and others to support or provide care or other benefits to undocumented migrants. See my mass deportations briefing note (01/02/25), available [here](#).

Note that passage of the [Laken Riley Act](#), as [pointed out](#) by the Immigration Hub, will significantly expand the prolonged detention to include minor offenses (burglary, theft, larceny, shoplifting, assault on law enforcement officers or crimes resulting in death or serious bodily injury), including cases where conduct has led to an arrest, but there is no conviction, and increases the enforcement role of state attorneys general.

DoJ issued an [internal memorandum](#), citing the Supremacy Clause of the Constitution, directing U.S. Attorneys to investigate any state or local government officials who resist, obstruct or otherwise fail to comply with the executive branch’s immigration enforcement initiatives. Also, worryingly, the memorandum appears to call on component agencies to prioritize immigration enforcement, and it is reasonable to wonder what that reallocation of resources and focus will mean for other enforcement priorities, including, for example, illegal drug interdiction. The ACLU issued a [response](#) to the threats against state and local officials, citing various errors set out in the DoJ memorandum and concluding that the DoJ threats are unconstitutional, and further “violate common sense.”

In response to denial of landing rights for two military flights of deportees to Colombia, Trump slapped a 25% emergency” tariff (to have been raised to 50% in a Y1, Week) on all goods imported from Colombia and ordered a travel ban and "immediate visa revocation" for Colombian government officials and “their allies and supporters,” visa sanctions on “party members, family members and supporters of the

Colombian government” and enhanced customs inspections on travellers and cargo from Colombia. Trump vowed this was just the beginning, citing Colombia’s “legal obligations with regard to the acceptance and return of the criminals they forced into the United States.” Colombia backed down and so then did Trump – but the damage was done (a gift to China).

**Y1, Week Three**, news outlets reported the administration had started transferring migrants to Guantánamo. Some legal experts are questioning the legality of the move.

The *New York Times* recently [published](#) an analysis of the targets of Trump’s deportation agenda. The reporting points out that the terms “undocumented,” “unauthorized” or “illegal” are not entirely accurate. Of the almost 14 million targeted, 60% have no legal status, while 40% have some form of temporary permission to be in the country. That 40% includes 1.1 million with temporary protected status (TPS), 540,000 Dreamers (DACA), 2.6 million waiting on asylum claims and 280,000 subject to other deferred action. In addition, there are groups that have received humanitarian parole from the Biden administration: 240,000 Ukrainians, 77,000 Afghans, 530,000 Cubans, Haitians, Nicaraguans and Venezuelans, and 940,000 applicants using the CBP One app – immigrants in the country under these programs are legal under current rules, though Trump and other Republicans have said the programs are illegal. Trump could allow the TPA program to expire and end new humanitarian applications but may be unable to revoke the current status of those in the country. The asylum cases presumably must go through the court system.

**Y1, Week Eight**, USCIS [issued](#) a circular (“Alien Registration Requirement”) that sets out “the legal obligation of all *unregistered* aliens (or previously registered aliens who turn 14 years old) who are in the United States for 30 days or longer to comply” with registration requirements. Those who are deemed *registered* include:

- lawful permanent residents;
- aliens paroled into the United States under INA 212(d)(5), even if the period of parole has expired;
- aliens admitted to the United States as nonimmigrants who were issued Form I-94 or I-94W (paper or electronic), even if the period of admission has expired;
- all aliens present in the United States who were issued immigrant or nonimmigrant visas before their last date of arrival;
- aliens whom DHS has placed into removal proceedings;
- aliens issued an employment authorization document;
- aliens who have applied for lawful permanent residence using Forms I-485, I-687, I-691, I-698, I-700, and provided fingerprints (unless waived), even if the applications were denied; and
- aliens issued Border Crossing Cards (available to citizens of Canada or British subjects residing in Canada or to Mexican citizens residing in Mexico).

The legal basis is set out in a DHS [Interim Final Rule](#) (03/12/25), which is effective April 11, 2025.

Those not registered could include those who crossed the border illegally (*i.e.*, who were not inspected and lawfully admitted) and Canadian visitors who entered the United States at land ports of entry (*e.g.*, who drove across the border and have been in the United States for 30 days or more).

**Y1, Week Seventeen**, DHS Secretary Noem [announced](#) the termination of the TPS program for Afghanistan on the purported basis that “there are notable improvements in the security and economic situation such that requiring the return of Afghan nationals to Afghanistan does not pose a threat to their personal safety due to ongoing-armed conflict or extraordinary and temporary conditions” and that “permitting Afghan nationals to remain temporarily in the United States is contrary to the national interest of the United States.” The TPS program is separate from the [special immigrant visa](#) program available to translators and interpreters who worked with US forces in Afghanistan.

### **Ending Birthright Citizenship**

In the [Protecting the Meaning and Value of American Citizenship](#) EO, Trump seeks to end birthright citizenship, and in particular in cases when a newborn’s mother was unlawfully present in the United States and the newborn’s father was not a United States citizen or lawful permanent resident at the time of birth, or when the newborn’s mother’s presence in the United States was lawful but temporary, and the person’s father was not a United States citizen or lawful permanent resident at the time of birth. This EO flies in the face of the Fourteenth Amendment as well as the 1898 decision of the Supreme Court in *United States v. Wong* later codified in the INA, and goes beyond even what was previously expected, namely the first prong of the test only. Incidentally, without birthright citizenship, Kamala Harris would have been denied citizenship.

See [Democracy Fights Back](#), below.

### **Refugees**

Under the [Realigning the US Refugee Admissions Program](#) EO, Trump has suspended the US Refugee Admissions Program (USRAP).

A report is to be provided within 90 days by the Secretary of Homeland Security as to whether entry of refugees under the USRAP should be resumed. Trump has reserved to himself the decision on whether or not to resume the program. This EO revoked President Biden’s EO 14013 (Rebuilding and Enhancing Programs to Resettle Refugees and Planning for the Impact of Climate Change on Migration).

As a practical matter, per State Department guidance, this means that all refugee arrivals have been suspended until further notice, and all previously scheduled travel of refugees to the United States has been cancelled. No new travel bookings under the USRAP will be made. All refugee case processing and pre-departure activities also are suspended. No new referrals are to be made into the USRAP. Apparently, this guidance does not apply to Special Immigrant Visa (SIV) holders.

As the Migration Policy Institute has [observed](#), the halt to the USRAP and consideration of a travel ban from certain countries were the only actions Trump took,

thus far, in respect of legal migration. MPI notes that restricting legal migration will be politically fraught – consider the split that emerged between the MAGA faction and the tech community over the H-1B visas.

### **Alien Enemies Act**

**Y1, Week Six**, Priscilla Alvarez and Alayna Treene of CNN [reported](#) that Trump was preparing to invoke the Alien Enemies Act to speed up deportations, targeting a Venezuelan cartel already designated as a foreign terrorist organization, Tren de Aragua (TdA).

And two weeks later, that is what he did, by issuing the [Invocation of the Alien Enemies Act Regarding the Invasion of The United States by Tren De Aragua](#) Proclamation (signed 03/14/25, and released 03/15/25) and invoking wartime authority to target members of TdA, making them subject to immediate apprehension, detention and removal, and not eligible for entry into or residence in the United States. The Proclamation shoehorned the gang into the Venezuelan government by claiming that TdA is “conducting irregular warfare ... at the direction, clandestine or otherwise, of the Maduro regime in Venezuela.” The Proclamation was challenged hours before it was posted publicly (see [Democracy Fights Back- Alien Enemies Act](#), below).

The Alien Enemies Act, as I set out in a prior [briefing note](#) (01/09/25), has only been invoked three times, each during a war declared by Congress. The concern is that involving the Alien Enemies Act paves the way for deportations of other individuals without due process, regardless of their criminal records or immigration status.

Symptomatic of chaos that engulfs this White House, **Y1, Week Eight** Trump denied he had invoked the Alien Enemies Act by signing the EO: “We want to get criminals out of our country, number one, and I don’t know when it was signed, because I didn’t sign it,” Trump said. “Other people handled it, but Marco Rubio has done a great job and he wanted them out and we go along with that. We want to get criminals out of our country.” The White House later said he was referring to the Act itself, which was signed in 1798.

### **Sanctuary Jurisdictions**

**Y1, Week Fifteen**, in his [Protecting American Communities from Criminal Aliens](#) EO, Trump is doubling down on sanctuary states and cities. He has ordered the Attorney General and Homeland Security Secretary to publish a list of states and local jurisdictions “that obstruct the enforcement of Federal immigration laws (sanctuary jurisdictions).” Sanctuary jurisdictions risk having their federal grants and contracts suspended or terminated. Sanctuary jurisdictions that remain in defiance of federal law are to be subject to unspecified enforcement procedures. The Homeland Security Secretary and the Attorney General are “to develop guidance, rules, or other appropriate mechanisms to ensure appropriate eligibility verification is conducted for individuals receiving federal public benefits (within the meaning of 8 U.S. Code § 1611(c)) from private entities in a sanctuary jurisdiction, whether such verification is conducted by the private entity or by a governmental entity on its behalf.”

## Other Updates

**Y1, Week Fourteen**, the Migration Policy Institute [published](#) its report “In First 100 Days, Trump 2.0 Has Dramatically Reshaped the U.S. Immigration System, but Is Not Meeting Mass Deportation Aims.” The report notes, for example, that:

“Even as the number of immigration arrests is up significantly, the current pace of deportations suggests the administration will fall well short of its stated goal of 1 million deportations annually. While the government has not released official data in comprehensive fashion, based on *Federal Register* notices and selective information shared with news organizations it appears on track to deport roughly half a million people this year—fewer than the 685,000 deportations recorded in FY 2024 under President Joe Biden. As it has sought to increase removals, the Trump administration shook up leadership at [ICE] after just a month in office.”

**Y1, Week Nineteen**, Military.com [reports](#) that a DoD plan sent to Congress on May 8 shows that in a reprise of a shift in funds to build the wall during Trump 1.0, the Pentagon plans to shift \$1 billion allocated to maintaining and renovating Army barracks to fund the surge of active-duty military units to the southern border.

**Y1, Week Twenty-One**, the administration reportedly is planning to send foreigners in the United States illegally to Naval Station Guantánamo Bay without informing their governments. The deportees reportedly come from allied European nations, including Britain, Italy, France, Germany, Ireland, Belgium, the Netherlands, Lithuania, Poland, Turkey and Ukraine, as well as other parts of the world, including many from Haiti. Many of these governments reportedly are willing to accept the return of their citizens, but DHS views the pace of these efforts as too slow. See [Washington Post](#) and [POLITICO](#) coverage

Administration officials say the plan is needed to free up capacity at domestic ICE detention facilities, which have become overcrowded amid Trump’s pledge to implement the largest deportation of undocumented migrants in American history. Stephen Miller continues to push for a minimum of 3,000 arrests by ICE every day. During the peak of the GWOT, 780 detainees were held at Guantánamo. The administration back in January called for holding 30,000 detainees, raising concerns at the Pentagon about tropical weather issues, limited staff and limited access to medical treatment, as well as funding and resources.

Two weeks earlier, a suit was [filed](#) challenging the detention of noncitizens held in civil detention at Guantánamo Bay under the INA (06/04/25). The suit requests class certification seeks declaratory and injunctive relief and is also a petition for writ of habeas corpus. Plaintiffs are represented by the ACLU, Center for Constitutional Rights and the International Refugee Assistance Program.

**Y1, Week Twenty-Five**, it is widely reported that ICE, based on the Supreme Court [ruling](#) (07/03/25) that lifted the stay on deportations of eight men to South Sudan, intends to deport illegal migrants on as little as six hours’ notice to third countries. Apparently, migrants being sent to countries where officials have not provided “diplomatic assurances” that they will be safe will be given 24 hours’ prior notice, but in “exigent” circumstances, just six hours’ notice. Migrants being sent to countries that



have offered those assurances could be deported with no advance notice. See [Washington Post](#) coverage.

### **Detention Facilities**

**Y2, Week Four**, ICE [is rolling](#) out a new detention center model expected to cost \$38.3 billion and be funded through Congress' allocation of funds through the One Big Beautiful Bill Act. According to ICE, this new model will allow it “to create an efficient detention network by reducing the total number of contracted detention facilities in use while increasing total bed capacity, enhancing custody management, and streamlining removal operations.”

ICE is planning to acquire warehouses across the country and turn them into immigration detention centers. The plan contemplates the purchase and conversion of 16 warehouses, each holding 1,000 to 1,500 immigrant detainees at a time. Another eight large-scale detention centers are expected to hold 7,000 to 10,000 detainees at a time, and serve as “the primary locations” for international removals.

See [Washington Post](#) coverage and [Wall Street Journal](#) coverage.

## EOs - SHREDDING THE FEDERAL BUREAUCRACY

### Federal Workforce – Generally

The [Hiring Freeze](#) EO establishes a federal hiring freeze, and the [Return to In-Person Work](#) EO ends remote work arrangement in the executive branch.

The [Restoring Accountability to Policy-Influencing Positions Within the Federal Workforce](#) memorandum reinstates Trump's October 2020 prior EO (13957) creating Schedule F (to now be known now as Schedule Policy/Career), and makes certain other modifications to that prior EO. It also revokes President Biden's January 2021 EO that rescinded Schedule F. Presumably to better withstand challenges, the revised EO confirms that covered employees "are not required to personally or politically support the current President or the policies of the current administration." It does go on to say, however, that covered employees "are required to faithfully implement administration policies to the best of their ability, consistent with their constitutional oath and the vesting of executive authority solely in the President. Failure to do so is grounds for dismissal."

The [Reforming the Federal Hiring Process and Restoring Merit to Government Service](#) EO calls for a new federal hiring plan that curiously, though now not surprisingly, prioritizes not only efficiency, but a passion for "the ideals of the American republic and a commitment to upholding the rule of law and the United States Constitution." The EO goes on to say that the plan will prevent "the hiring of individuals based on their race, sex or religion" as well as individuals who are unwilling to defend the Constitution or to faithfully serve the executive branch. The plan will also leverage data analytics "to identify trends gaps and opportunities in hiring" and "leverage digital platforms to improve candidate engagement." The plan further is to improve Senior Executive Service positions, "to best facilitate democratic leaders, as required by law, within each agency."

Taken together with the Restoring Accountability EO, it sounds a lot like loyalty tests.

The [Implementing the DOGE Workforce Optimization Initiative](#) EO follows from the Hiring Freeze EO and calls for reducing the size of the federal government through efficiency reforms and attrition, augmented by reductions in force across the federal government, focused initially on probationary employees and re-employed annuitants. The EO also calls for OPM to initiate rulemaking that adds to the suitability criteria for federal employment, including compliance with applicable legal obligations (including timely filing of tax returns), compliance with citizenship requirements, certification of compliance with nondisclosure obligations and theft, misuse of negligent loss of government resources or equipment.

OPM has [called](#) on agencies to identify all employees who have served for less than two years in "excepted service appointments" and those who have served less than one year in "competitive service appointments." They are also directed to determine whether they should be retained. These probationary employees may be terminated without appeal rights to the MSPB.

The White House has announced a "resignation offer" for federal employees under which they can resign with pay through September 30. In a tactic reminiscent of Elon

Musk's ultimatum to Twitter employees in 2022, federal government employees were notified by email and told they can accept by responding from their government accounts and simply typing "resign." On January 28, the acting director of OPM Charles Ezell provided guidance regarding the program. Deferred resignation exempts employees who elect to resign from return-to-work requirements. Federal government employees have until February 6 to accept the offer.

The offer is available to all full-time federal employees except for military personnel, the US postal service, immigration enforcement and national security positions, and any others excluded by any federal agency (an estimated 2.3 million workers). Incidentally, it is unclear under what authorities those payments would be made – Senator Tim Kaine remarked that Trump "has no authority to make [the] offer. There's no budget line item to pay people who are not showing up for work. If you accept that offer and resign, he'll stiff you." Employee groups and other Democrats have also called on employees to [reject the offer](#).

**Y1, Week Three**, a group of Democratic attorneys general have warned federal workers not to accept the buy-out offer. The Partnership for Public Service is hosting a series of ["explainer webinars"](#) for federal employees regarding their rights.

It has been reported that career civil servants at OPM have been locked out of computer systems containing personal data of millions of civil servants. The lock-out reportedly has been engineered by aides to Elon Musk sitting within DOGE. According to [Reuters](#), "the systems include a vast database called Enterprise Human Resources Integration, which contains dates of birth, Social Security numbers, appraisals, home addresses, pay grades and length of service of government workers."

Musk also engineered installation of a new email server in OPM offices to send out mass emails to every single federal employee. As [reported](#) by The New Republic, the server has already triggered a [lawsuit](#) over potential privacy and security issues and led to a flood of [spam emails](#) being sent to various federal workers on Thursday.

See [Democracy Fights Back](#), below.

**Y1, Week Four**, with the Fork Directive deadline passed, OPM reportedly is moving forward with directives for the firing of probationary workers (the recently hired), which could potentially affect 220,000 in the federal workforce.

In perhaps one of the most stunning examples of incompetence, the Trump administration, as part of a purge of the Department of Energy, fired nuclear energy specialists at the [National Nuclear Security Administration](#) (NNSA), without realizing that the NNSA is responsible for designing and maintaining the country's nuclear weapons. Between 300-400 NNSA employees reportedly were terminated. It also is involved in responding to nuclear incidents, transporting nuclear weapons around the country and counter-terror that would target nuclear power facilities. These positions, [according](#) to an NNSA administrator, typically require high-level security clearances and training that can take 18 months or longer. The administration backtracked and is now trying to rehire these employees. [Reportedly](#), the fact that the NNSA name has

both “National” and “Security” in it did not exempt it from purges supposedly intended to spare national security employees. Requested exemptions were denied.

Reportedly, the broader purge at the Department of Energy of more than 1,000 federal employees included employees at the [Office of Cybersecurity, Energy Security and Emergency Response](#), which among other tasks is responsible for preventing cyberattacks against the nation’s power grid and energy infrastructure.

**Y1, Week Twelve**, a Y1, Week after the National Endowment for the Humanities (NEH) placed much of its staff on administrative leave and [cancelled](#) more than 1,200 grants for culture and humanities programs, NEH [reportedly](#) began a widespread reduction-in-force program. The RIFs could affect up to 75% of the staff.

**Y2, Week Three**, OPM has finalized its rule [creating](#) the new job classification “Schedule Policy/Career” (the renamed Schedule F). This new classification sits within the excepted service for “policy-related positions,” and employees designated for this new classification in effect become “at-will employees.” These civil servants will lose the removal protections set out in Title 5 of the U.S. Code and their whistleblower complaints will no longer be sent to the Office of Special Counsel (instead they will be reviewed internally by the respective agency’s general counsel). Employees classified as Schedule P/C will be treated the same way as the approximately 4,000 political appointees.

It is estimated that 50,000 federal employees will be converted when the new classification takes effect on March 9.

President and CEO of the Partnership for Public Service Max Stier commented, “No matter what the administration says, today’s action has nothing to do with restoring merit in federal employment. This new designation can be used to remove expert career federal employees who place the law and service to the public ahead of blind loyalty and replace them with political supporters who will unquestioningly do the president’s bidding.”

National Active and Retired Federal Employees Association National President William Shackelford called promulgation of the new classification a threat to the “integrity of our democracy.” “Expansion of political cronyism increases the risk that executive actions will be decided by the size of political contributions rather than the faithful execution of the law. That increases the risk of politically motivated enforcement of laws, threatening individual liberty; politically determined tariff exceptions and contract and grant awards, threatening greater corruption and waste of taxpayer dollars; and politically selective provision of services, threatening failure of government operations for disfavored groups or localities.” See [Government Executive](#) coverage.

Various legal challenges to the new classification are still pending. See, e.g., [National Treasury Employees Union v. Trump](#) (01/20/25) and [PEER v. Trump](#) (01/28/25). A third lawsuit, [filed](#) by AFGE and AFSCME, was [voluntarily withdrawn](#) when the plaintiffs joined the *PEER* lawsuit (11/24/25).

Reporting on this new classification cites as the figure for the number of federal employees who left their jobs in 2025 in the range of 325,000

## **Federal Workforce – The Military**

During **Y1, Week Two**, more EOs for the military:

The [Reinstating Service Members Discharged under the Military's COVID-19 Vaccination Mandate](#) EO calls for reinstatement of those discharged for refusing to be vaccinated, who wish to be reinstated, to be reinstated at their former rank and receive full back pay and benefits. Does wonders for military discipline!

The [Military Excellence and Readiness](#) EO, citing a “radical gender ideology to appease activists unconcerned with the requirements of military service like physical and mental health, selflessness, and unit cohesion,” maintains that service members with “gender dysphoria” and those with “shifting pronoun usage or use of pronouns that inaccurately reflect an individual’s sex” are unfit to serve in the US military.

The [Restoring America's Fighting Force](#) EO calls on the Secretary of Defense and the Secretary of Homeland Security to abolish all DEI offices in DoD and DHS and bans the promotion, advancement or other inculcation of the following un-American divisive, discriminatory, radical, extremist and irrational theories: that America’s founding documents are racist or sexist, gender ideology or “divisive concepts,” [defined](#) to mean concepts that:

- one race or sex is inherently superior to another race or sex;
- the United States is fundamentally racist or sexist;
- an individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously;
- an individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex;
- members of one race or sex cannot and should not attempt to treat others without respect to race or sex;
- an individual’s moral character is necessarily determined by his or her race or sex;
- an individual, by virtue of his or her race or sex, bears responsibility for actions committed in the past by other members of the same race or sex;
- any individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race or sex;
- meritocracy or traits such as a hard work ethic are racist or sexist, or were created by a particular race to oppress another race; or
- any other form of race or sex stereotyping or any other form of race or sex scapegoating.

It is not clear what this all means for addressing [Christian nationalism](#) in the military, particularly given the appointment and confirmation of Pete Hegseth as Secretary of Defense. Just sayin’!



## **Elimination of Smaller Federal Agencies**

As **Y1, Week Eight** came to a close, Trump shows no interest in slowing down. In his [Continuing the Reduction of the Federal Bureaucracy](#) EO (03/14/25), he directed the elimination of seven federal agencies, including the parent company of VOA, RFE/RL and RFA, the US Agency for Global Media. Among other things, the Agency for Global Media determines who leads VOA and RFA. The EO also covers:

- the Institute of Museum and Library Services (IMLS), which supports libraries, archives and museums in every state by providing grants to museums and libraries and funds job training, digital literacy and programs for children, veterans and rural areas;
- the Woodrow Wilson International Center for Scholars;
- the US Interagency Council on Homelessness, which addresses homelessness;
- the Federal Mediation and Conciliation Service (FMCS), which seeks to prevent, minimize and resolve work stoppages and labor disputes;
- the Community Development Financial Institutions (CDFI) Fund, which seeks to expand economic opportunity for underserved communities; and
- the Minority Business Development Agency (MBDA), which promotes growth of minority-owned businesses.

Earlier, President and Chairman of the Board of the US African Development Foundation (USADF), Ward Brehm, [sued](#) to enjoin the takeover of his agency (03/06/25). USADF was formed under the African Development Foundation Act as an independent agency to support and invest in African-owned and African-led enterprises. Brehm was represented by the Democracy Forward Foundation. District Court Judge Richard J. Leon [declined](#) to issue the temporary restraining order, finding that Brehm had not shown “cognizable irreparable harm to himself” if removed (03/11/25). However, the Judge was sceptical that there was a basis under the FVRA for installing an acting Chair of the Board without Senate confirmation.

As most of the agencies targeted by Trump were created and funded by Congress, it remains to see how this all plays out. The targeting of USADF flows from the [Commencing the Reduction of the Federal Bureaucracy](#) EO, which targeted in addition to USADF, the Presidio Trust, the Inter-American Foundation and the US Institute for Peace (USIP) (02/12/25).

**Y1, Week Nine**, a bipartisan group of Senators [urged](#) Treasury Secretary Bessent to not shutter the CDFI Fund.

### ***US Institute for Peace***

**Y1, Week Nine**, all 11 of the board members of USIP (leaving only the Secretary of Defense, the National Defense University President and the Secretary of State on the board) were removed, and, after being rebuffed once, DOGE allegedly broke into the USIP building. USIP officials [were evicted](#) Tuesday, and the President/CEO was fired. USIP is an independent non-profit entity created by Congress, meaning it is not part of the executive branch. I fear that this is a harbinger of the further weaponization of the extraordinary power of law enforcement. The head of the Criminal Division of the

DC US Attorney's office, [reportedly](#) warned USIP, whose mission is to reduce the likelihood of violent conflicts overseas and provide Congress and the administration with information and analysis, frequently hosts senior government officials for seminars and policy discussions, was being investigated for suspected criminal activity, and threatened a criminal investigation of any person "obstructing [their] efforts." The head of USIP security reportedly was advised he was under DoJ investigation.

Mid-Y1, Week, USIP and various of its board members [sued](#) DOGE, Trump and various others seeking injunctive relief. Plaintiffs are represented by Zuckerman Spaeder and Picard, Kentz and Rowe (03/18/25). The Complaint cited, among others, the fact that USIP is an independent non-profit organization, and not as set out in the 3/14 EO a government entity that is part of the federal bureaucracy, the unlawful removal of board members and the President/CEO and the trespass on its private property and plunder of its offices and systems. See [Court Listener docket](#).

**Y1, Week Ten**, it is widely reported (*see, e.g.,* [NPR reporting](#)) that DOGE has fired nearly all of the USIP staff.

The IMLS indicated to employees that it would place nearly all of its roughly 70 employees on administrative leave, but the move has yet to occur. Congress approved nearly \$300 million in funding for the agency in fiscal 2024. In a bipartisan [letter](#) to acting IMLS Director Keith Sonderling and OPM Director Vought, Senators Jack Reed, Kirsten Gillibrand, Susan Collins and Lisa Murkowski demanded that the agency continue to obligate the money Congress has appropriated.

**Y1, Week Twelve**, USIP plaintiffs [filed](#) a corrected motion of summary judgment (04/05/25). A group of 113 former senior military and foreign policy officials [submitted](#) an *amicus* brief in support of USIP's motion for summary judgment, as did [128 USIP employees](#) purportedly terminated (04/09/25).

**Y1, Week Thirteen**, USIP plaintiffs [filed](#) their reply in support of their motion for summary judgment.

**Y1, Week Eighteen**, District Judge Howell [ruled](#) that the administration did not have the authority to dismantle USIP (05/19/25). In concluding her ruling, the Judge wrote:

"The President second-guessed the judgment of Congress and President Reagan in creating USIP 40 years ago, and the judgment of every Congress since then, including in 2024, in appropriating funds to USIP, when he deemed this organization to be "unnecessary" three months ago in EO 14217. The President and his subordinates then used brute force and threats of criminal process to take over USIP's headquarters, despite being cautioned that this organization did not fall within the Executive branch and its leadership was not subject to the President's unilateral Executive branch removal power. This Administration then went even further, taking severe actions to dissemble USIP, including terminating its appointed Board members, its expert management, its dedicated staff and contractors located in both Washington, D.C. and around the world, and dispersing its assets and headquarters building. These actions against USIP were unlawful."

At the end of **Y1, Week Eighteen**, Judge Howell [denied](#) the administration's request that she stay her May 19<sup>th</sup> ruling (05/23/25).

## *Veterans Affairs*

**Y1, Week Twenty-Two**, The Guardian [reported](#) that the Department of Veterans Affairs has removed provisions in VA hospital bylaws that explicitly prohibited doctors, dentists, psychologists and others from discriminating against patients based on their national origin, political beliefs or marital status. While federal law prohibits discrimination at VA hospitals on the basis of race, color, religion and sex, neither political beliefs nor marital status is protected by federal law. The White House [claimed](#) the Guardian story was false.

**Y1, Week Forty-Seven**, the VA plans to eliminate as many as 35,000 positions, principally unfilled jobs such as doctors, nurses and support staff. The elimination of these positions follows a reorganization that saw the loss of close to 30,000 employees through attrition and buy-out offers, after VA Secretary Douglas Collins, under pressure from Congress, backed away from a plan to slash 15% of the workforce (83,000) through mass firings. See [Washington Post](#) coverage.

## *Wilson Center*

**Y1, Week Eleven**, virtually all of the employees of the Wilson Center, a nonpartisan foreign policy think tank, were placed on administrative leave and blocked from accessing their email accounts at work (04/03/25). The Center was created by Congress in 1968 in honor of President Woodrow Wilson and has served as a home for scholars across the foreign policy space. It houses the personal library of George Kennan. Only five employees remain, in the positions mandated in the Center's congressional charter. Earlier in the week, DOGE entered their premises and the following day the president of the Center, Mark Green (a former Republican congressman from Wisconsin, ambassador and head of USAID) resigned, reportedly having been given the choice of resigning or being fired. The White House had fired much of the board in March.

Interestingly, particularly given Trump's focus on Greenland, the Fact Sheet tied to the EO targeting the Wilson Center initially called for the elimination of the U.S. Arctic Research Center, but, as [reported](#) by High North News, the Fact Sheet thereafter was [revised](#) to no longer list the Research Center among the targeted agencies. As the reporting explains, the Research Center coordinates, promotes and communicates U.S. Arctic research efforts and helps establish links between the federal government, the State of Alaska and international partners in Arctic sciences. With the shuttering of the Wilson Center, it is unclear what happens to its Polar Institute.

As Jana Nelson, a former Deputy Assistant Secretary of Defense, writing in *The Hill*, noted ("[Ideas die in silence: Trump has quietly killed the Wilson Center](#)") (05/20/25), as independent agencies were notching victories against Trump efforts to shut them down, the one exception was the Wilson Center, which operated largely on private funding. Ambassador Green and the board apparently chose not to fight. Nelson closes with the following warning,

“[T]he Wilson Center's quiet dismantling is not just the story of one institution's fall, but a warning about what we lose when we stop defending the spaces that nurture inquiry, elevate dialogue and believe in intellectual leadership. The lesson of the Wilson Center is

that American global and intellectual leadership won't end in a dramatic way, all at once. It will fade away into the background, unsupported. Ideas die in silence. And this time, silence won."

*The Hill* [reported](#) that the next target of DOGE would be the Millenium Challenge Corporation (04/23/25). MCC was established under President George W. Bush as a catalyst for investment overseas in support of economic growth. Since it was founded in 2004, it reportedly has worked in more than 50 countries, with its most recent budget identifying \$900 million in spending. It backed infrastructure projects as a counterweight to China's Belt and Road Initiative. **Y1, Week Seventeen**, the acting CEO Gina Spiro resigned.

### **Federal Regulation**

The [Regulatory Freeze Pending Review](#) EO calls for a freeze on new regulations (no new rules and withdrawal of pending rules) that have not been reviewed and approved by a department head or agency head appointed or designated by the President. It also calls for consideration of 60-day postponements, where possible, of the effective dates of rules already published in the *Federal Register* but not yet effective, and reopening comment periods during that delay.

### **Freeze of Grants, Loans and Other Financial Assistance**

On January 27, acting director of the Office of Management and Budget (OMB) Matthew Vaeth, citing "Marxist equity, transgenderism, and green new deal social engineering policies," [ordered](#) a "temporary pause" of all activities related to obligation or disbursement of federal financial assistance and "other relevant agency activities that may be implicated by the executive orders, including, but not limited to, financial assistance for foreign aid, nongovernmental organizations, DEI, woke gender ideology, and the green new deal."

Agencies had until February 25 to provide detailed information on any programs, projects or activities subject to this pause. Each agency was required to pause the issuance of new awards; disbursement of Federal funds under all open awards; and other relevant agency actions that may be implicated by the executive orders, to the extent permissible by law, until OMB has reviewed and provided guidance to the relevant agency with respect to the information submitted.

The freeze would not have affected Social Security or Medicare benefits, but it nonetheless would have hit programs affecting millions of Americans, from grants to the Center for Disease Control and Prevention, to aid to homeless shelters, financial aid to students and grants for the country's energy supply. Initially, accessing Medicaid and Head Start benefits was an issue. (According to statistics in the [New York Times](#), the average state received around \$3,700 per person from the federal government.) See [Democracy Fights Back](#), below.

In the meantime, two days after OMB issued the freeze as well as an FAQ, a day after Stephen Miller castigated federal workers for sending out "billions of dollars for wicked and pernicious purposes," and following the legal challenges and widespread [confusion](#) and condemnation, in a two-sentence update, the freeze was rescinded (although the related EO was not). The chaotic roll-out is reminiscent of the 2017

travel ban. The *New York Times*, among others, [reported](#) that the OMB order was released without proper vetting. The order was drafted at OMB by its general counsel, Mark Paoletta, and released without being shown to the White House staff secretary, Will Scharf, or to Trump's top policy adviser, Stephen Miller. In typical Trump fashion, Trump backed down in the face of effective pushback and then blamed the media for the confusion.

The Verge [reports](#) that the National Center for Missing and Exploited Children, the country's leading child safety NGO, has been forced to remove publications that reference queer and transgender children from its website under threat of losing government funding. For example, a report on [missing children with suicidal tendencies](#), a report on [male victims of child sex trafficking](#), and an overall data analysis of [children missing from care](#) were removed after January 24. Archived copies of all three reports included references to LGBTQ+ and particularly transgender children.

### ***National Security Agency and National Security Council***

**Y1, Week Eleven**, the *Washington Post* [reported](#) that the director of the National Security Agency who also leads the U.S. Cyber Command, General Timothy Haugh, was fired, and his civilian deputy, Wendy Noble, was removed and reassigned. It was also reported that the firings may have been at the instigation of a far-right activist and influencer, Laura Loomer. As the *Wall Street Journal* [sets out](#), Haugh held one of the most important national security positions in the deferral government, overseeing the collection of signals intelligence overseas and safeguarding sensitive computer networks from cyberattack. Sen. Mark Warner correctly asked, "At a time when the United States is facing unprecedented cyber threats, as the Salt Typhoon cyberattack from China has so clearly underscored, how does firing [Haugh] make Americans safer?"

Former Air Force Secretary Frank Kendall, [writing](#) in *NewsY1, Week* ("If You Are Not Alarmed by Gen. Timothy Haugh's Removal, You Should Be"), warns that the significant constraints on the extent to which the formidable surveillance tools of the NSA and Cyber Command can be used against American businesses and citizens could be imperilled if General Haugh's replacement is politicized.

It was also [was reported](#), that least five key staff members on the National Security Council (NSC) the day after Loomer visited the Oval Office. These would have been Trump political appointees and reportedly were labelled by Loomer as "neocons."

**Y1, Week Eighteen**, it was widely [reported](#) that the size of the NSC staff is to be cut in half.

After eight months, during **Y1, Week Forty-Nine**, Trump nominates Lt. Gen. Joshua M. Rudd, a former Delta Force commander and current deputy commander of Indo-Pacific Command, to lead the National Security Agency and Cyber Command. He is not known to have leadership experience in cyber operations or signals intelligence. See [Washington Post](#) coverage.

### ***Schedule G***

**Y1, Week Twenty-Six**, Trump created a new federal employee classification, [Schedule G](#). The new classification is for employees who engage in policy-making or policy-advocating work. These positions will be non-career positions, meaning incumbents will generally be expected to leave when the President who appointed them leaves office. They are not subject to Senate confirmation, and it is unclear how many positions are intended to be created. See [Government Executive](#) coverage.



## EOs - IDEOLOGY

### DEI and a New Target, Accessibility

In Trump's world, DEI is the root of so much of what he sees is wrong with the country. In his [Reforming the Federal Hiring Process and Restoring Merit to Government Service](#) EO, he describes federal hiring processes as broken and outdated, and "no longer focused on merit, practical skill and dedication to the Constitution." He then singles out as impermissible factors, commitment to illegal racial discrimination under the guise of "equity" and commitment to the invented concept of "gender identity" over sex.

A second EO, [Ending Illegal Discrimination and Restoring Merit-Based Opportunity](#), cites efforts by "influential institutions of American society, including the Federal Government, major corporations, financial institutions, the medical industry, large commercial airlines, law enforcement agencies, and institutions of higher education" as having "adopted and actively used dangerous, demeaning, and immoral race- and sex-based preferences under the guise of DEI and DEIA policies. The EO revokes a series of Biden era EOs, as well as EO 11246 signed by President Lyndon Johnson in September 1965. Federal agencies are to "encourage the private sector to end illegal DEI discrimination and practices." The EO also sets its sights on state and local educational institutions that received federal funds as well as institutions of higher learning that receive federal grants or participate in the federal student loan assistance program.

In his [Ending Radical and Wasteful Government DEI Programs](#) EO, Trump refers to Biden's "concerted effort" of forcing "illegal and immoral discrimination programs [(DEI)] into virtually all areas of the federal government, ranging from airline safety to the military." Americans, he says, deserve a government committed "to expending precious taxpayer resources only on making America great." All diversity, equity, inclusion "and accessibility" (DEIA) programs, preferences and activities in the federal government are to be terminated. All DEI, DEIA and "environmental justice" offices and positions, plans and performance requirements are to be terminated, to the maximum extent allowed by law. Department heads are to assess the operational impact of Biden administration DEI, DEIA and environmental justice programs and are to identify, among other things, federal contractors that provided DEI training or DEI training materials to federal employees and federal grantees that received federal funding for DEI, DEIA and environmental justice programs.

The EO also extends to the private sector. In a section titled "Encouraging the Private Sector to End Illegal Discrimination and Preferences, the EO calls on agency heads to take necessary operational steps to "advance in the private sector the policy of individual initiative, excellence and hard work" [consistent with the policy]." The policy itself orders agencies "to enforce our longstanding civil-rights laws and to combat illegal private-sector DEI preferences, mandates, policies, programs, and activities." The Attorney General is to provide recommendations "for enforcing federal civil-rights laws and taking other appropriate measures to encourage the private sector to end illegal discrimination and preferences, including DEI. Each agency is to draw up a list of up to nine potential civil compliance investigations of publicly traded

corporations, large non-profit corporations or associations, foundations with assets of \$500 million or more, State and local bar and medical associations, and institutions of higher education with endowments over \$1 billion.”

Trump promptly issued a fact sheet [targeting the FAA's](#) DEI hiring policies. It is now widely reported that an Office of Personnel Management (OPM) memo ordered all DEI employees in the federal government to be placed on administrative leave and ordered all DEI offices across the government to be shut down. Agency heads are to ask their employees if they are aware of “efforts to disguise [DEI] programs by using coded or imprecise language.”

Signal groups lit up with news during **Y1, Week Two** of firings, reassignments and Stasi-like tactics. OPM [ordered](#) the closure of all DEIA and “environmental justice” offices and termination of workers within those offices within 60 days, there were anecdotal reports of firings of such workers in the first Y1, Week, as the order contemplates the issuance of reduction-in-force notices at any time. All outward facing media of these offices (websites, etc.) were ordered removed. The first woman Coast Guard Commandant, Admiral Linda Fagan, was removed, including for excessive focus” on DEI policies.

In moves reminiscent of life under the East German surveillance regime, during **Y1, Week One**, federal employees received emails (prompted by a second OPM [directive](#)) warning employees they could be sanctioned for failing to report co-workers holding DEI positions that may have escaped notice (by using “coded or imprecise language”) to mask their work. Employees were directed to notify OPM if they were changes in contract language or job descriptions to “obscure” connections with DEIA or “similar ideologies.” An Orwellian email address DEIAtruth was provided for denouncing co-workers.

One [anonymous post](#) from an OPM insider characterizes the situation at OPM as a “hostile takeover of the federal civil service” – the central operating pillar of the federal government – the ultimate human resources department on which the delivery of federal services depends. The first target was the senior, non-political, career civil service tasked with ensuring that the civil service remains non-political and loyal to the Constitution rather than individuals. Requests have been sent to all agencies to identify those deemed a threat to Trump’s agenda – and apparently the reports are to be sent to a non-governmental employee working for Elon Musk.

We hardly need any reminder of Trump’s “what-about-me” moment at the press conference called to honor victims of the crash of American Airlines flight 5342 and an Army Black Hawk helicopter, in which he blamed the crash on DEI hiring policies of his predecessors. Philip Bump, [writing](#) in the *Washington Post*, drew an interesting parallel with the 2020 press conference in which Trump called on Americans to use bleach to ward off COVID-19. I commend to you Trygve Hammer’s [Substack post](#), in which he concludes with “I just want to be clear that no one needs to be casting blame or turning to conspiracy theories right now. Blaming is not leading. Sticking to your bash-the-other-side talking points is marketing, not leadership. We deserve better. More than one mistake was made on the way to [the crash], and that does not mean anyone was incompetent or had bad intent.”

The National Science Foundation (NSF) has halted funding of all existing grants and review of new applications apparently pending its review to identify which have DEIA components. As [reported](#) by NPR, this effort is in conflict with the CHIPS and Science Act, several provisions of which that are tied to NSF funding require that NSF broaden participation in science of “historically underrepresented groups.”

The Department of Education [reportedly](#) has placed dozens of employees on administrative leave based on OPM guidance on DEIA, ensnaring many whose job titles and official duties had no obvious connection to DEIA. Some believe they were singled out merely for having attended routine DEIA training programs.

### **Disparate Impact**

**Y1, Week Fourteen**, in his [Restoring Equality of Opportunity and Meritocracy](#) EO, Trump as part of his war on DEI targeted “disparate-impact” liability, calling on federal agencies to “de-prioritize” enforcement of laws and regulations that include disparate-impact bases of liability and calls on the Attorney General to initiate action to repeal or amend regulations that impose liability premised on disparate-impact theories. As Erica L. Green [writing](#) in the *Washington Post* noted, that the disparate-impact test is a “longstanding legal tool used to root out discrimination against minorities” in housing, policing, education and employment, among other areas. This EO, she posits, represents a threat to “the nation’s bedrock civil rights law” as the test (which examines whether seemingly neutral laws, such as Jim Crow era literacy tests, in fact have different outcomes for different demographic groups) has been a key component of actions to enforce key parts of the Civil Rights Act.

The “disparate impact” test dates back to the 1971 Supreme Court decision in [Griggs v. Duke Power Co.](#)

### **Gender and the “Attack on the Entire American System”**

In his [Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government](#) EO, Trump obsesses with men self-identifying as women to “gain access to intimate single-sex spaces and activities designed for women, from women’s domestic shelters to women’s workplace showers.” Efforts he says, “to rededicate the biological reality of sex fundamentally attack women by depriving them of their dignity, safety and well-being.” He goes on to say that the “erasure of sex in language and in policy has a corrosive impact not just on women but on the validity of the entire American system.” To protect “women’s rights” and “freedom of conscience,” the US government will now only recognize two sexes, male and female.

Ironical that this perceived threat to women is far more important than recognizing, let alone guaranteeing, rights of access to abortion and other reproductive healthcare. This will affect, among other things, passports, visas and Global Entry cards, all government communications, funding of “gender ideology,” interpretations of Title IX of the Educational Amendments Act and protections of transgender people in prisons and detention centers.

## Scientific Research

**Y1, Week Eighteen**, just before the Memorial Day Y1, Weekend, Trump doubled down on his war on science with new rules on funding scientific research. In his [Restoring Gold Standard Science EO](#), Trump lays his perceived public loss of trust in science at the feet of leading researchers falsifying data and the Biden administration's politicization of science by encouraging DEI. Trump cites, in particular, the handling by federal agencies on the pandemic response, fisheries management and climate change. This EO comes on top of cuts of billions of dollars in federal funding of scientific research across the NSF, the National Institutes of Health (NIH) and NASA, among others, [massive cuts](#) in research funding at certain private universities and the loss among scientists of jobs and federal grants.

As described in The Economist ([“Trump's attack on science is growing fiercer and more indiscriminate”](#)), following WWII, researchers could apply for federal grants from the NSF, NIH, the DoD and the Department of Energy. Trump has upended this system, already cancelling or withdrawing from scientists or institutions, close to \$8 billion. An additional \$12.2 billion was rescinded but since reinstated. NIH and the NSF have cancelled more than 3,000 already-approved grants, according to Grant Watch; an unknown number have been cancelled by DoD, the Department of Energy and others. Cancellations tend to affect research associated with DEI and research on climate change, misinformation, the pandemic and vaccines.

See also The Economist's [“How cuts to science funding will hurt ordinary Americans,”](#) [“America is in danger of experiencing an academic brain drain”](#) and [“MAGA's assault on science is an act of grievous self-harm”](#) and the *New York Times*' [“Trump Has Cut Science Funding to Its Lowest Level in Decades.”](#)

## Diversity in the Administration

**Y1, Week Thirty-Nine**, the *New York Times* [reports](#) that not only has Trump fired Black officials from his overwhelming white administration but only two of the 98-confirmed appointees to the most senior political positions in his administration (Scott Turner, the Secretary of HUD, and Earl G. Matthews, DoD general counsel) are Black. During the same 200-day period, Black officials accounted for 21% of Senate-confirmed nominees under President Biden, 13% under President Obama and 8% under President George W. Bush. Black officials fired or targeted for firing include the CJCS, the Librarian of Congress, a member of the NLRB, a member of the Federal Energy Regulatory Board, a member of the National Transportation Safety Board, a governor of the Fed and a member of the Surface Transportation Board.

## EOs & OTHER ACTIONS - RULE OF LAW

### Revenge and Retribution

In his [Ending the Weaponization of Government](#) EO, Trump directs his revenge and retribution agenda against what he termed Biden-era campaigns against its perceived political enemies, weaponization of federal law enforcement and the IC against perceived political enemies and unprecedented, third-world weaponization of prosecutorial power to upend the democratic process, including the January 6<sup>th</sup> prosecutions. Trump calls on his administration to ensure accountability for “past misconduct related to weaponization of law enforcement and the intelligence community.” The Attorney General is directed to review the activities of the DoJ, the Securities and Commission (SEC) and the Federal Trade Commission (FTC), and any other agency exercising civil or criminal enforcement authority, during the past four years and prepare recommendations for remedial action. The DNI is directed to undertake the same in respect of the IC.

This is nothing short of a significant first step in what is likely to be the systematic removal of perceived enemies in the federal government, what Trump and his allies regularly call the “deep state.” We saw this before during his first term, when, for example, he claimed his campaign had been the target of FBI wiretaps or he pushed for the appointment of John Durham as Special Counsel to investigate the FBI’s handling of its inquiry into the Trump campaign’s alleged ties to Russia.

On his second day in office, Trump revoked Secret Service protection for his former National Security Adviser, and outspoken critic who has been the target of Iranian death threats, John Bolton. He also fired and withdrew protection from Brian Hook, his former special envoy to Iran who was leading the State Department transition team and had also been targeted by Iran (and was on the board of the [Wilson Center](#), which is now gutted), and he similarly withdrew protection from a third Iranian target, his former Secretary of State and CIA Director, Mike Pompeo.

It has been reported that Secretary of Defense Hegseth is about to announce rescission of the personal security detail and security clearance for former Chairman of the Joint Chiefs General Mark Milley, as well as an inquiry into his behavior and possible demotion in retirement. In the nothing-is-too-petty department, the two portraits of the General have been removed from the Pentagon. Milley was pardoned pre-emptively by President Biden.

The House Speaker [announced](#) that the House would establish a Select Subcommittee of the Judiciary Committee to continue House “efforts to uncover the truth” by further investigating the work of the original January 6<sup>th</sup> Select Committee and alleged failures of security at the Capitol.

See *Axios*’ summary of Trump actions through March 21, “[Trump's overflowing grudge list](#).”

Incidentally, to underscore the cruelty of the Trump revenge mindset, **Y1, Week Twenty-Three**, a forthcoming book for the first time reports that an assassination

attempt targeting Pompeo nearly succeeded in 2022 while he was staying at a Paris hotel. See [Washington Post](#) coverage.

**Y1, Week Thirty-Three**, Trump discontinued Secret Service protection for Kamela Harris. The Secret Service usually protects a former vice president for six months after they leave office, but President Biden had signed an order extending her protection for a year beyond that. In March, Trump also ended Secret Service protection for President Biden's children, Hunter and Ashley, whose protection had been extended by President Biden.

## **January 6<sup>th</sup>**

### ***Pardons of January 6<sup>th</sup> Defendants***

In an EO [addressing](#) the January 6<sup>th</sup> convictions and guilty pleas, President Trump commuted the sentence of 14 individuals (including defendants found guilty of seditious conspiracy by juries) and granted pardons *to all others* convicted of offenses related to January 6<sup>th</sup>. (See NPR's "[Trump gave pardons to hundreds of violent Jan. 6 rioters. Here's what they did.](#)") The Attorney General is directed to dismiss all pending indictments with prejudice (of approximately 470 defendants).

Note that this does not impact the group of civil claims brought in Federal District Court in DC by members of Congress and police officers against Trump, which were consolidated before Judge Ahmit P. Mehta and remain [pending](#). The claims have survived two rulings on presidential immunity, one by Judge Mehta and one by a three-judge panel of the DC Circuit. The latter sent the consolidated case back to Judge Mehta on the question of immunity and whether Trump's January 6<sup>th</sup> speech was a protected official act or a part of his re-election campaign.

In his *New York Times* [op-ed](#), former federal prosecutor Brendan Ballou warns that the effect of the pardons is to "encourage vigilantes loyal to the president, but unaccountable to the government." Recall that if vigilantes or militias were to act, Trump retains the power to pardon them (again) for federal crimes committed and pressure governors to pardon them (where that is possible) for state violations. Recall too that our history has plenty of examples of vigilante "justice," from lynch mobs to the Ku Klux Klan. (See my earlier briefing note on authoritarian rule in the United States (05/07/24), available [here](#).)

The pardons are perhaps the most appalling of the Day One actions. Only a few Republicans lawmakers have spoken out, some have offered muted criticism, and some have offered full throated support, claiming Trump had a mandate, overlooking the fact that there was little indication he would pardon those convicted of violence. As recently as January 5, then-Vice President elect JD Vance was clear that those who "committed violence that day" should not be pardoned. A Y1, Week into the new regime, on CBS "Face the Nation," Vance [defended](#) the pardons, including of those who attacked police officers, citing "massive denial due process" and "denial of constitutional rights," overlooking the fact that many pleaded guilty and others were found guilty by juries.



**Y1, Week Two**, Senate Democrats, led by Sens. Schumers, Murray, Murphy and Kim and with the support of all Senate Democrats, offered a resolution condemning the “pardons of any individuals who were found guilty of assaulting Capitol Police officers” - 160 pleaded guilty to assaulting police officers. Any one Senator could kill the resolution when it comes up for unanimous consent.

### ***Blocking Disclosure of Discovery Materials***

In August 2021, seven police officers injured during the attack on the Capitol [sued](#) Trump and a group of others on the basis that Trump’s remarks fuelled the attack. The case is ongoing. See [Court Listener](#) docket.

**Y1, Week Forty-Seven**, Trump has asserted executive privilege with respect to certain records to prevent their disclosure to the plaintiffs. While it is unclear which specific documents are covered by the assertion of privilege, a status report filed December 8 [indicates](#) they are documents in the possession of the National Archives and Records Administration (NARA) that were covered by an order [issued](#) by District Judge Amit Mehta in September 2024. According to the status report, NARA identified 7,397 documents as being responsive to the September 2024 order and 4,152 of these documents [were identified](#) by Trump as being covered by executive privilege.

### ***Pardons of Others***

And for those keeping track, despite Trump’s professed concern with drug trafficking, Trump [pardoned](#) Ross Ulbricht, founder of the online drug marketplace Silk Road who had been [sentenced](#) to life in prison.

End of **Y1, Week Ten**, Trump pardoned Trevor Milton, the founder and CEO of bankrupt Nikola Motors, who had been convicted of securities and wire fraud and ordered to pay \$700 million in restitution; Carlos Watson; the co-founder and CEO of Ozy Media who was convicted of securities fraud; and three co-founders and a former employee of the BitMEX crypto-currency exchange, convicted of violating the Bank Secrecy Act.

**Y1, Week Sixteen**, Trump directed the DoJ to seek the release of Mesa, Colorado County Clerk Tina Peters, calling her “an innocent political prisoner.” Peters was prosecuted by Colorado Attorney General Philip Weiser on seven counts of tampering with voting equipment after the 2020 election. She is serving a nine-year sentence after being found [guilty of four felonies](#) by a jury last August.

In March, the DoJ [filed](#) a statement of interest in support of Peters’ habeas corpus petition, in which DoJ set out that it was considering whether the prosecution (incidentally by a Republican prosecutor) had been politically motivated. Note that DoJ does not have the power to overturn a conviction in state court under state law. See [CPR News](#) coverage.

**Y1, Week Thirty-Eight**, Trump [commuted](#) the seven-year sentence of George Santos, who recall had pleaded guilty to wire fraud and aggravated identity theft. Santos had served 84 days of the seven-year sentence. Trump also [excused](#) Santos from having to pay \$370,000 in court-ordered restitution to the victims of his crimes.

As Jeffrey Toobin writes ([“The Santos Commutation Is No Joke”](#)), Trump has pardoned a number of Republican members of the House, all of whom shared the distinction of supporting Trump (saying yet another quiet part aloud - “Santos had the Courage, Conviction, and Intelligence to ALWAYS VOTE REPUBLICAN!”):

- Duke Cunningham (CA) - convicted of taking over \$2 million in bribes, among other crimes;
- Duncan Hunter (CA) - pocketed thousands of dollars of campaign contributions and spent it on extramarital affairs;
- Rick Renzi (AZ) - convicted of racketeering and extortion;
- Robin Hayes (NC) - lied to investigators in a bribery investigation;
- Chris Collins (NY) - pleaded guilty to insider trading and false statements;
- Michael Grimm (NY) - pleaded guilty to tax evasion and also admitted in court that he committed perjury and hired undocumented immigrants;
- John Rowland (CT, and former governor) - pleaded guilty to election fraud after going to prison years earlier in a separate scandal; and
- Steve Stockman (TX) - released after serving only two years of a 10-year sentence for stealing upward of \$1 million.

**Y1, Week Forty-One**, Trump pardoned Changpeng Zhao (known as CZ), the convicted founder and former CEO of the crypto exchange Binance. As the Wall Street Journal noted, the pardon will likely allow Binance to return to the United States after [pleading](#) guilty in 2023 to violating U.S. anti-money-laundering requirements under the Bank Secrecy Act and being barred from operating in the country. As part of the guilty plea by Binance and Zhao, Binance paid a record \$4.3 billion fine and agreed to have a monitor oversee its operations. Zhao stepped down as CEO, paid \$100 million in civil and criminal fines and served four months in prison. Zhao is believed to still hold a 90% interest in Binance, which remains the world’s largest crypto-trading platform.

Zhao’s push for a pardon earlier this year prompted a [call](#) by Sens. Warren, Durbin and Blumenthal in a letter to the Deputy Attorney General and the White House counsel for details of the exchanges between Zhao and the administration over the pardon and the relationships between Binance and the Trump family.

Since the election, Binance reportedly has been a key supporter of the Trump and Witkoff families’ World Liberty Financial crypto venture. Trump and Steve Witkoff are named as founder emeritus, Eric, Don. Jr and Barron, as well as Zack and Alex Witkoff are named as founders. Binance hosts World Liberty Financial and helped popularize World Liberty Financial’s proprietary tokens, generating significant fees for the Trump family. The *Wall Street Journal* [estimates](#) that following the launch of the WLFI token in September, the family had amassed paper gains of \$5 billion.<sup>5</sup>

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<sup>5</sup> As I understand it, World Liberty Financial is a DeFi platform. DeFi stands for decentralized finance. Just as Bitcoin is decentralized money, in that it is not controlled by a government or central bank and can be transferred by anyone to anyone without a bank or other financial institution intermediary, decentralized finance contemplates an

The Center for America Progress has launched a “[Trump’s Take](#),” a research project and live tracker that will continuously update the cash and gifts received by President Donald Trump, Melania Trump, and his two oldest sons from selling the presidency since his election in November 2024. As of October 23, the tracker shows that in the nearly one year since Trump was re-elected president, Trump and his family have amassed more than \$1.8 billion in cash and gifts from leveraging the presidency for personal gain, including over \$1.2 billion in crypto gains alone.

**Y1, Week Forty-Three**, Trump commuted the seven-year prison sentence of David Gentile, a private equity executive who was convicted on securities and wire fraud charges of defrauding 10,000 investors to the tune of \$1.6 billion. Gentile and his co-conspirator were charged with defrauding investors by using investor capital to make distributions and create the appearance of profitable returns from portfolio companies.

**Y1, Week Forty-Seven**, Trump pardoned Democrat Henry Cuellar and his wife Imelda, mistakenly believing Cuellar would defect to the GOP. Cuellar and his wife were awaiting a trial on charges that they received close to \$600,000 in bribes from a Mexican bank and an Azeri oil company. Former DoJ prosecutors J.P. Cooney and Molly Gaston, in a *New York Times* op-ed (“[The Pardon That Represents the New Era of Corruption](#)”), highlight the importance of a bipartisan repudiation of corruption and the degradation of the rule of law. While there are obvious political calculations to be considered, anything short of outright repudiation is short-sighted.

**Y1, Week Forty-Seven**, Trump said he would pardon [Tina Peters](#), but the pardon is merely symbolic since Peters was convicted and is serving a sentence based on a state crime, which is not covered by Trump’s pardon power. Colorado Secretary of State

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entire financial ecosystem that performs the functions of a financial system, but has no owner. Using decentralized money that can be programmed for automated activities, one can build exchanges, lending services and insurance providers that are not controlled by anyone and have no owners. DeFi tends to use stablecoins, which are cryptocurrencies pegged to real world assets, such as a currency (also known as fiat currencies). Stablecoins to date have largely been used by traders on cryptocurrency exchanges to reduce the risk of volatility typically associated with cryptocurrencies.

World Liberty Finance seeks to offer crypto lending and borrowing services as a DeFi platform and is focused on uplifting the global use of U.S. dollar-pegged stablecoins. World Liberty Financial sees itself as strengthening the United States’ influence in the global crypto market. It [describes](#) itself as a borrowing and lending platform that will “unlock financial access for all, by replacing the limits of traditional banking with open, on-chain infrastructure, creating a fairer system—where opportunity isn’t defined by location, status, or permission.”

The World Liberty Financial token (\$WLFI) [grants](#) voting rights on proposals to shape the mission and vision of the platform, but not financial rights. The World Liberty Financial corporate entity administers a protocol that allows token holders to vote on these governance decisions. This is all about distributed governance.

Jena Griswold issued a statement saying, “Tina Peters was convicted by a jury of her peers for state crimes in a state court. Trump has no constitutional authority to pardon her. His assault is not just on our democracy, but on states’ rights and the American constitution.” As set out in [coverage](#) by the *New York Times*, an ally of Trump’s Peter Tickin, [has sought](#) to convince Trump that Peters is an important potential witness in an investigation to establish that the 2020 election was rigged and that she was the victim of a conspiracy that included the Dominion Voting Systems and the government of Venezuela.

Earlier in the week, a federal magistrate judge [rejected](#) Peters’ bid to be released pending an appeal of her conviction. The judge ruled he had no authority to get involved in overturning a conviction under state law. Coincidentally (or not), DoJ [announced](#) it was opening an investigation into conditions at prisons and youth facilities in Colorado and Trump [attacked](#) Gov. Jared Polis for failing to order the release of Peters, whom he claims was “unfairly convicted of what the Democrats do, cheating on elections.”

It does not help matters that various right-wing political figures have called for the military to free Peters. See [Democracy Docket](#) coverage.

**Y2, Week One**, Trump pardoned:

- Adrianna Camberos and her brother, Andres. In 2021, Trump pardoned Camberos for earlier fraudulent activities, but after her release from prison, she and Andres were [convicted](#) on multiple fraud charges for activities undertaken after her release. It is unclear whether the pardon also overturns the order of restitution to the companies that were defrauded.
- Terren S. Peizer, a former business executive who had been [convicted](#) in 2024 of insider trading and sentence in June 2025 to 42 months in prison.
- David Levy, the co-Chief Investment Officer of a hedge fund, Platinum Partners, who was [convicted](#) in 2019 of securities fraud, securities fraud conspiracy and wire fraud conspiracy for his roles in defrauding the bondholders of Black Elk Energy by rigging a consent solicitation vote.
- Julio Herrera Velutini, a Venezuelan-Italian banker, whose daughter had given millions to a Trump-backed super PAC, former Gov. Wanda Vázquez of Puerto Rico who had accepted bribes from Herrera, and a former F.B.I. agent who had worked as a consultant for Herrera, all of whom had [pleaded](#) guilty to a campaign finance violation.

### **Security Clearances**

President Trump ordered that persons identified by the White House immediately be granted interim top security/sensitive compartmented information (TS/SCI) clearances for up to six months, without background checks.

In a [separate EO](#), Trump revoked current and active security clearances of then 51 former intelligence officials (two have since died) who signed a 2020 letter arguing that the emails on the Hunter Biden laptop had all the “classic earmarks of a Russian information operation.” The EO order also calls for an investigation as to whether there was “inappropriate activity” on the part of others in the IC related to the letter,

and disciplinary action if warranted. The EO also revokes John Bolton's security clearance. Loss of a security clearance is not only a career-ending move for serving intelligence and national security officers, but limits what these officers can do in the private sector (as a contractor or otherwise) upon leaving or being fired.

Rounding out **Y1, Week Three**, Trump [announced](#) he would be revoking Joe Biden's security clearance and his ability to receive the Presidential Daily Brief.

See also the [American Bar Association and the Legal Profession](#), above.

Anecdotally, this move, together with other stories of action being taken against leaders who speak up (and not necessarily in the form of direct criticism of the administration), is sending a chill through the professional services world and the business community. *See also* [reporting](#) by Bloomberg Law reporters Ben Penn and Tatyana Monnay.

**Y1, Week Nine**, Trump [revokes](#) the security clearances of Antony Blinken, Jake Sullivan, Lisa Monaco, Mark Zaid, Norman Eisen, Letitia James, Alvin Bragg, Andrew Weissmann, Hillary Clinton, Elizabeth Cheney, Kamala Harris, Adam Kinzinger, Fiona Hill, Alexander Vindman, Joseph R. Biden Jr., and any other member of Joseph R. Biden Jr.'s family.

**Y1, Week Thirty-One**, in yet another move likely designed to shift attention away from Epstein and back onto the Russia hoax, at the direction of Trump, the DNI [revoked](#) the security clearances of 37 former national security officials. The announcement was posted on X. The DNI claimed that the targeted individuals were involved in the "politicization or weaponization of intelligence" to advance partisan agendas, or had failed to adhere to tradecraft practices or to safeguard classified information." No evidence has been presented to support those accusations. *See* [New York Times](#) coverage. In addition to the politicization of the intelligence community to fit within the world view of Trump, the security clearance revocations raise separation of powers issues as two of the 37 apparently are members of congressional staffs. *See also* [CIA purge](#), below.

### **National Archive**

The National Archive and Records Administration (NARA) is an independent agency that houses many of the country's founding documents and oversees research facilities as well as 13 presidential libraries and 14 regional archives. NARA also is the repository for 13 billion pages of text and 10 million maps, charts and drawings, and tens of millions of photographs, films and other records. Moreover, the agency plays important roles in the federal government's classification process (housing the Information Security Oversight Office and the National Declassification Center and receiving classified documents for retention), which is why the classified documents purloined by Donald Trump were to have been returned to it and why it sought their return in accordance with the law.

As for its role as an institution that underpins our democracy, NARA is also:

- responsible for administering the Electoral College process, including by providing instructions to states on how to carry out the Electoral College voting process and transmit their votes, and for receiving and validating the voting certificates from the states;
- responsible for publishing the Code of Federal Regulations and the Federal Register;
- responsible for administering the process by which the Constitution is amended;
- responsible for administering the record retention and record destruction policies of the federal government;
- in charge of the National Personnel Records Center, to which the personnel files of all federal employees are transferred when they separate from the federal government; and
- the ombudsman for the federal Freedom of Information Act (FOIA) programs, and as such is the recipient of public complaints about violations of FOIA.

With that presumed taint, it is no surprise that NARA [was the target](#) of attacks in 2022 and certainly no surprise that at the end of **Y1, Week Three** Trump dismissed the head of NARA, the Archivist of the United States, perhaps the most apolitical position in Washington, D.C.

**Y2, Week Three**, Marco Rubio, who had been acting head of NARA for close to a year, has stepped down from that position due to the lapse of the 300-day time limit (210 days plus 90 days for a new president) set out in the FVRA. *See [Federal News Network](#)* coverage. By law, the deputy archivist normally would serve as the acting archivist if the archivist position is vacant, but there is no deputy. Rubio now has only two full-time positions in the administration (Secretary of State and National Security Adviser, having relinquished his role as acting Administrator of USAID to OMB Chief Russell Vought).

## **Second Amendment**

In his [Protecting Second Amendment Rights](#) EO, Trump directs his Attorney General to review, all in the context of protecting Second Amendment rights:

- all Biden administration actions that purport to promote safety but may have impinged on the Second Amendment rights of law-abiding citizens;
- rules promulgated during the Biden administration by DoJ, including by the Bureau of Alcohol, Tobacco, Firearms, and Explosives, pertaining to firearms and/or federal firearms licensees;
- agencies' plans, orders, and actions regarding the so-called "enhanced regulatory enforcement policy" pertaining to firearms and/or Federal firearms licensees;
- reports and related documents issued by the White House Office of Gun Violence Prevention;



- the positions taken by the United States in any and all ongoing and potential litigation that affects or could affect the ability of Americans to exercise their Second Amendment rights;
- agencies' classifications of firearms and ammunition; and
- the processing of applications to make, manufacture, transfer, or export firearms.

## Death Penalty

The title of the [Restoring the Death Penalty and Protecting Public Safety](#) EO captures the gist. Trump seeks to ensure that laws that authorize capital punishment are respected and implemented and to counteract politicians and judges who “subvert the law by obstructing and preventing the execution of capital sentences.” The Attorney General is directed to pursue the death penalty for all crimes “of a severity demanding its use” and to take action to seek the overruling of Supreme Court precedents that limit the authority of state and federal authorities to impose capital punishment. Murder of law enforcement officers and capital crimes committed by undocumented aliens are singled out.

## Nullifying the Law

**Y1, Week Twenty-Four**, in [letters](#) to a number of American tech companies obtained under FOIA, Attorney General Pam Bondi advised each such company that, notwithstanding the law barring them from supporting TikTok (the Protecting Americans from Foreign Adversary Controlled Applications Act), they had committed no violation of law for supporting TikTok and may continue to provide services to TikTok with violating the legislation and without incurring any legal liability. The purported basis for these conclusions is the President's Article II responsibility over national security and the conduct of foreign policy.

To be clear, and putting aside whether banning TikTok was the right decision, this step by the DoJ represents a nullification of the legal effects of legislation passed on a bipartisan basis and unanimously upheld by the Supreme Court. Legal experts, as the *New York Times* [reports](#), view this as an assertion of constitutional powers to immunize private parties against liability for committing otherwise illegal acts – both retrospectively and prospectively. The *New York Times* quotes Jack Goldsmith, a Harvard Law School professor and former senior DOJ official in the Bush II administration, as saying, “Recent past presidents have been aggressive in exercising law enforcement discretion, but they haven't suspended the operation of a law entirely or immunized its violation prospectively.” Goldsmith cites [Kendall v. United States ex Rel. Stokes](#), an 1838 Supreme Court case, that holds that the Constitution does not give presidents the power to dispense with the laws. On the contrary, the President is directed under the Constitution under the Take Care Clause to ensure the laws are faithfully executed.

Three Democratic Senators, in March, had [urged](#) Trump to work with Congress to ensure TikTok can lawfully remain operational. Recall the goal was to find an [acceptable non-Chinese buyer](#) for TikTok's U.S. operations initially by a January 2025 deadline (extended by Trump three times) or face a ban, but any sale by ByteDance

(TikTok's parent company) requires the approval of China. Not surprisingly, China is in no mood to collaborate at this point in light of the tariffs.

### **Russia Investigation, Relitigated**

**Y1, Week Twenty-Six**, it was just a question of time, and what better time than to distract the MAGA base from its fury over the Epstein files. On Thursday, DNI Gabbard [issued](#) a press release alleging that President Obama and his national security cabinet members manufactured and politicized intelligence to lay the groundwork for what she characterized was essentially a years-long coup against President Trump. Gabbard referred to a “treasonous conspiracy in 2016 committed by officials at the highest level of our government. Their goal was to subvert the will of the American people and enact what was essentially a years-long coup with the objective of trying to usurp the President from fulfilling the mandate bestowed upon him by the American people.”

The ODNI also [released](#) declassified material that it claims support the accusation against Obama and his national security cabinet members and a [timeline](#) purporting to show that the IC suppressed information showing that Russia did not impact the 2016 election. On X, Gabbard [wrote](#): “This betrayal concerns every American. The integrity of our democratic republic demands that every person involved be investigated and brought to justice to prevent this from ever happening again.”

Recall that in March, Trump had issued an EO calling for the declassification of the files related to Operation Crossfire Hurricane, the FBI investigation of Russian influence on the 2016 election. Influence incidentally that the Senate Select Committee on Intelligence, after a three-year investigation, had confirmed on a bipartisan basis in its exhaustive [report](#).

It has been a totem of the right that the Russia investigation set out to cast doubt on the legitimacy of Trump's 2016 victory, when in fact the investigation set out to chronicle the influence operations conducted by Russia. As Sen. Mark Warner noted (see [New York Times](#) coverage), the ODNI report compared two different topics – Russian attempts to hack into voting systems and Russian influence operations designed to sway public opinion. “This is one more example of the director of national intelligence trying to cook the books,” Mr. Warner said. “We’re talking about apples and oranges. The Russians were not successful at manipulating our election infrastructure, nor did we say they were.” The influence operations that the IC reported, and the Senate Intelligence Committee studied extensively, were different, he said.

Sen. Warner noted that, as recently as March of this year, the IC had found that Russia continues its malign influence operations to sow dissent in the West. The report [found](#) that “Moscow probably believes information operations efforts to influence U.S. elections are advantageous,” and that undermining the integrity of American elections was a key goal. “They acknowledged that Russia’s effort to meddle goes on. That was an assessment under her watch,” Warner said, referring to Gabbard. Warner also said his committee (led by Republicans) examined the effort to produce the intelligence

assessment in December 2016 and found no attempt by President Obama or senior officials to manipulate the findings.

And, of course, the irony of the Trump administration going after a former president (not to mention the immunity ruling that followed his appeal of the January 6<sup>th</sup> rulings against him) should not be lost on anyone. In case it was, the Editorial Board of the *Wall Street Journal* [reminded](#) its reminders that “like Trump, Obama has immunity.”

**Y1, Week Twenty-Seven**, Trump weighs in, [calling](#) on the DoJ to target President Obama for his role in the Russia investigation, following the DNI’s “treasonous conspiracy” comments. The effort to distract is unmistakable – in Oval Office comments during a meeting with Philippines President Ferdinand Marcos Jr., Trump called the Epstein affair a “witch hunt,” and then [pivoted](#) to urging the DoJ and others to focus on what he describes as the conspiracy led by President Obama to manipulate intelligence related to Russian interference in the 2016 election. Trump claims, “Obama tried to rig the election” and got caught (the election incidentally that he won). He claims that they “caught” Secretary Clinton. He also claims that Obama acted improperly in the 2020 election. “This was treason,” Trump maintained. (See [Wall Street Journal](#) coverage.)

And to remind readers, no serious investigation ever asserted that Russia changed actual votes; the serious investigations (being the investigation led by Special Counsel Mueller and the Republican-led Senate Select Committee on Intelligence) both concluded that Russia had interfered in the 2016 election to help Trump beat Secretary Clinton.

As a distraction from Epstein, Trump continues to double down – in a meme reminiscent of a school yard prank, Trump posted a [meme](#) depicting President Obama and seven of his senior officials in orange jumpsuits with the caption, “how did Samanatha Power make all that money?” He has called for Sen. Adam Schiff to be prosecuted for mortgage fraud. And the Attorney General [released](#) a statement that the DoJ would honor a request to release information “relating to former-FBI Director James Comey’s failed investigation into Hillary Clinton’s mishandling of highly classified information during her tenure as Secretary of State.”

*New York Times* coverage [notes](#) that the DNI appears to have repaired her damaged reputation in Trump’s eyes (over Iran’s nuclear capabilities in the days before the bombing of the facilities) by launching her attack against President Obama, but in doing so has put the Attorney General in a tough spot as she was given little warning of the public demand by the DNI that she launch an investigation of President Obama and some of his national security leaders. Recall that the DNI in the White House briefing room had combined her provocative accusations with placing the burden on the DoJ to follow through. The Attorney General had been badly bruised by the clash with the Deputy Director of the FBI over the Epstein files, and reportedly felt “blindsided and annoyed.”

DOJ staff, in the words of the reporting, “scrambled for a solution that would satisfy Mr. Trump while not committing the department to a tit-for-tat Obama investigation with unpredictable legal and political consequences. They later [announced](#) the

formation of what they described as a “strike force” to look into the DNI’s accusations. A spokesman for President Obama issued a response to the distraction, saying in part, “Out of respect for the office of the presidency, our office does not normally dignify the constant nonsense and misinformation flowing out of this White House with a response. But these claims are outrageous enough to merit one. These bizarre allegations are ridiculous and a weak attempt at distraction.” See coverage by [The Guardian](#) and [the Associated Press](#).

In sum:

- The Obama administration was unequivocal in its statements that Russia did not successfully hack voting machines or manipulate the vote count in 2016.
- The U.S. intelligence community was unanimous in its assessment that Russia launched a multifaceted influence campaign, including hacking and leaking contents of DNC servers, to sway voters during the 2016 election and did so to benefit Trump. This conclusion was later confirmed in the 2020 bipartisan Senate Intelligence Committee. Special Counsel Robert Mueller wrote in a [report](#) summarizing his findings, “The Russian government interfered in the 2016 presidential election in sweeping and systematic fashion.”
- Much of the public debate over Russia’s involvement focused on “collusion,” which is not a specific crime. Trump claimed he could not have colluded, because he was not charged with it. The debate was muddled by Attorney General [Bill Barr](#), who misrepresented Special Counsel Mueller’s findings. For his part, Mueller did not recommend charges against Trump, based on guidance from the Office of Legal Counsel at DoJ against charging a sitting president, which allowed Trump to claim vindication despite the [implied](#) accusations set out in the Mueller report.
- Don Jr., Jared Kushner, and Trump campaign chair Paul Manafort met at Trump Tower in June 2016 with Russians whom they believed would hand over “dirt” on Secretary Clinton.
- A Trump [2016-campaign aide](#) boasted to an Australia’s senior [diplomat](#) in London that Russia was trying to help the Trump campaign, and then lied about his Russian contacts to FBI agents.
- Trump publicly [called](#) on Russia to hack Secretary Clinton’s emails in July 2016 and Russian agents attempted to do so that very day, according to the [DoJ](#). Hackers who the U.S. government maintains were connected to Russia obtained emails from a various Democratic Party officials and leaked them.
- The “revelation” in the DNI’s new report that President Obama ordered U.S. intelligence to assess Russia’s interference in the election was widely reported at the time and publicly disclosed by members of the Obama Administration.
- Statements made by then Senator Rubio, CIA Director Ratcliffe, nominee for UN Ambassador Mike Waltz and even Tulsi Gabbard on a 2018 podcast cited Russian interference in the 2016 election.
- The alleged conspiracy by Obama and his national security team was the subject of an exhaustive investigation by Special Counsel John Durham, who

filed two criminal indictments based on his investigation, one against an attorney in private practice for lying to the FBI, and second against a Russia analyst for essentially the same offense. Both criminal cases ended in acquittals. See [POLITICO](#) coverage.

- A D.C. grand jury [returned](#) a criminal indictment against 12 Russian military intelligence officers for their roles in attempting to interfere with the 2016 election.
- Bottom line, the DNI report intentionally blurs the distinction between hacking of voting machines, which did not occur, and the Russian influence campaign, which most certainly did occur. And, by the way, whether national security officials or ordinary Americans, what should have been a concern then, and still now, is that Russia attempted to influence the outcome of a presidential election, and that concern need not be clouded by whether it was to help Trump or not.
- The clearest evidence that the Obama accusations are intended as a distraction from the Epstein furor is Trump's own admonition to House Republicans as they headed home for their recess "every time they give you a question that's not appropriate, just say 'oh by the way Obama cheated on the election.'"
- The national security community and Republican lawmakers should be alarmed that the Director of National Intelligence advances false criminal allegations and amplifies conspiracy theories.
- We should all be worried that the DNI and the President of the United States would be so cavalier about an accusation of treason. Gabbard referred to a "treasonous conspiracy" and Trump in the Oval Office said,  
"Whether it is right or wrong, it's time to go after people. Obama's been caught directly. It's time to start after what they did to me." "And except for the fact that he gets shielded by the press for his entire life, that's the one they, look, he's guilty. It's not a question. You know, I like to say, 'Let's give it time. It's there. He's guilty.' They, this was treason, this was every word you can think of."

Treason is a federal crime, potentially punishable by death. 18 U.S.C § 2381 defines treason as "levying war against the United States, or adhering to their enemies, giving them aid and comfort." Article III has a similar definition. Just because the allegation is preposterous does not make it any less dangerous.

Professor Austin Sarat, in the Guardian ("[Trump says Obama committed treason. This is Alice in Wonderland-style justice](#)"), writes "Some may be tempted to write off the president's latest Oval Office pronouncements as an unhinged rant or only an effort to distract attention from Trump's Epstein troubles. But that would be a mistake." The reason? He points to neuroscience, as set out by neuroscientist Tali Sharot and law professor Cass Sunstein in their article "[Will We Habituate to the Decline of Democracy?](#)," which tells us that people are less likely to respond to, or even notice, gradual change. The brain's tendency to react in these circumstances is called "habituation." When norms are violated repeatedly, when democratic principles are breached, when the

military or the courts are politicized, people will adjust – first viewing these as violations as a crisis, then as controversies and ultimately as another headline.

Sarat reminds us of John Adams defending British soldiers involved in the Boston Massacre and Attorney General Robert H. Jackson’s memorable 1940 “[The Federal Prosecutor](#)” speech on the power of prosecutors, and that presidents of both parties since 1940 have, even in the most controversial cases, whether of political allies or opponents, heeded Jackson’s warning (see “[May Federal Prosecutors Take Direction From the President?](#)”) and have declined to say anything about pending legal proceedings. Citing Sharot and Sunstein, Sarat concludes “To avoid habituating ourselves to the torrent of President Trump’s assaults on democracy and the rule of law, we need to keep our best practices, ideals, and aspirations firmly in view what we’ve done.”

**Y1, Week Twenty-Eight**, Senator Grassley authorized the release of a redacted classified [annex](#) to the 2023 report submitted by Special Counsel John Durham. While the release of the annex was hyped as evidence that the Clinton campaign conspired to frame Trump for colluding with the Russians during the 2016 election campaign, in fact it shows the opposite and confirms that Durham ultimately concluded that he was wrong in initially believing several foundational emails were real.

As [reporting](#) by the *Washington Post*, among others, shows, the key piece of evidence – a July 27, 2017 email purportedly from Leonard Bernardo, Director for Eurasia at OSF, that said the Secretary Clinton had approved a proposal to tie Trump to Russian to divert attention from the email server saga (what Durham called the “Clinton Intelligence Plan”) and a related one dated July 25, 2017, also purportedly from Bernardo – likely were prepared by Russian intelligence.<sup>6</sup> It is a fair supposition that burying the conclusion in the annex was not accidental.

Durham concludes in the annex: “The Office’s best assessment is that the July 25<sup>th</sup> and July 27<sup>th</sup> emails that purport to be from Benardo were ultimately a composite of several emails that were obtained through Russian intelligence hacking of the U.S.-based Think Tanks, including the Open Society Foundations, the Carnegie Endowment and others.”

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<sup>6</sup> It is unclear from the annex what the origins of the intelligence reports were. The *Washington Post* surmises that the emails were supposed to have been obtained by a Russian hack of the think tank servers as well as the DNC servers. In January 2023, the New York Times [had reported](#) that the Russian analysis of the think tank emails (one or more memos), which included the text of the emails themselves, were obtained by a Dutch intelligence service that had hacked into Russian intelligence servers and passed the analysis to the CIA. The New York Times also reported back in 2023 that Durham had used the Russian memos, which “were suspected by other U.S. officials as containing disinformation, to try to gain access to Bernardo’s emails – Judge Beryl Howell twice rejected the request. Durham then reportedly used grand jury powers to keep pursuing the emails. OSF reportedly provided access to the email server.



As the *Washington Post* notes, “Mr. Durham was never able to prove any Clinton campaign conspiracy to frame Mr. Trump by spreading information that it knew to be false about his ties to Russia, but he nevertheless used court filings and his final report to insinuate such suspicions. He brought charges of false statements against two people involved in outside efforts to scrutinize possible ties between Mr. Trump and Russia, both of which ended in quick acquittals.”

**Y1, Week Twenty-Nine**, the administration doubles down on its distraction strategy. Fox News [reported](#) that the Attorney General has ordered a grand jury investigation (sitting in South Florida) into whether Obama administration officials broke federal laws in the months leading up to the 2016 election while investigating Russia’s involvement. This development follows the criminal referral from the DNI to DoJ two weeks before. As the reporting notes, it is unclear which prosecutor has been assigned to the investigation, whom the grand jury is likely to target and what charges could be brought in light of the lapse of the five-year statute of limitations for what could conceivably be charged since the events in question took place close to ten years ago. (To extend the statute of limitations prosecutors would have to establish that there was an ongoing conspiracy to conceal the earlier crime.) It is also curious that the vehicle for the leak about the investigation was Fox News.

The *Washington Post* reports that political appointees in the DoJ are reluctant to convene a grand jury in D.C., the obvious jurisdiction since key decisions were taken there. They reportedly believe that it would be very difficult to find a sympathetic grand jury in a courthouse the chief justice of which, Judge Boasberg has regularly been attacked by Trump and enablers and who recently became the target of a DoJ complaint.

As Joyce Vance [reminds](#) us, there are guardrails that still exist:

- the Attorney General has to find prosecutors to bring the case;
- a grand jury would need to bring an indictment – Vance notes that this is already proving to be a challenge for the government in Los Angeles, where a recent LA Times headline [read](#), “Trump’s top federal prosecutor in L.A. struggles to secure indictments in protest cases.” Grand juries can, and in LA have, declined to indict where they believe the case is not supported by the law and the facts;
- a jury would have to convict;
- a judge would be overseeing the case; and
- there would be recourse to an appellate court.

**Y1, Week Forty**, more Russian investigation re-litigation. Jim Jordan on behalf of the House Judiciary Committee [sent](#) a referral to the Attorney General calling for criminal prosecution of former CIA Director John Brennan allegedly for false statements made in congressional testimony in 2023 and 2017 related to reliance by the CIA on the so-called Steele Dossier. See Nicole Wallace’s (MSNBC) [interview](#) with Brennan following the referral.

## **Law Firms**

See [Lawyers and the Legal Community](#), below.

## **Banks**

**Y1, Week Twenty-Nine**, the *Wall Street Journal* [reports](#) that a draft EO targeting banks is in circulation, and likely to be issued soon. The theme of the EO reportedly is “debanking” of customers for political reasons.

## **The FY 2026 NDAA**

**Y1, Week Forty-Eight**, in what could easily be described as “I will abide by the law as I see fit,” on the occasion of the signing of FY 2026 NDAA, Trump issued a formal statement ([Statement by the President](#)) – formal, in the sense that it is not the usual Truth Social rant – where he, in effect, lays down the gauntlet in respect of a number of provisions, which he says he will treat consistent with his constitutional authority or status as Commander-in-Chief and/or authority to conduct foreign affairs.

Congress has passed an NDAA every year for 65 years, though in 2020 Trump [vetoed](#) the NDAA because he disagreed, among other things, with base-renaming provisions. Congress overrode the veto in January 2021. The Atlantic Council [has prepared](#) a useful guide to the NDAA provisions.

## EOs - FOREIGN POLICY AND TRADE

### Foreign Policy and Aid – America First

Trump felt compelled [to tell](#) the State Department that henceforth American foreign policy shall “champion core American interests and always put America and American citizens first.”

As for foreign aid, Trump sees aid as often being “antithetical to American values” and as serving “to destabilize world peace by promoting ideas in foreign countries that are directly inverse to harmonious and stable relations internal to and among countries.” All new foreign development assistance obligations and disbursements are to be paused for 90 days, pending review. See [Reevaluating And Realigning US Foreign Aid](#). Trump’s reorganization of the National Security Council (NSC) excludes the USAID Administrator (President Biden had elevated the position to the NSC during his administration). This may make sense in light of the rumored intention to fold USAID into the State Department.

As Unlock Aid, which advocates for reform of the way in which the approximately \$60 billion of annual expenditures to solve global challenges are disbursed, noted in their response to the EOs, “Investments that promote sustainable economic growth create new markets for American businesses, for example. Strategic investments in Central America reduce migration pressures on America’s southern border. Investments in global health abroad reduce the risks of infectious disease outbreaks at home, disruptions in global supply chains, and global economic shocks. Pausing obligations and disbursements for essential programs puts investments like these at risk, undermines trust in the United States as a reliable partner, and weakens U.S. national and economic security.”

During **Y1, Week One**, the State Department advised all diplomatic and consular posts to pause all new foreign aid funding. This went further than the EO that halted new disbursements of *development* aid.

The *New York Times*, among many, [reports](#) that all new foreign assistance has been halted to partner nations, except “emergency food aid” and military aid to Israel and Egypt. For existing foreign assistance awards, contracting officers and grant officers have been directed to immediately issue stop-work orders.

The freeze thus impacts aid to Taiwan, Lebanon and Ukraine, though in anticipation of the move, the Biden administration had accelerated aid to Ukraine. The director of the State Department’s Office of Policy Planning is tasked with developing new guidelines for review of all foreign aid within 30 days.

As [reported](#) by CNN, the freeze has also had immediate consequences for thousands of Afghans who worked for the US military, including those in Qatar and Albania still awaiting onward travel to the United States, who have lost access to services and goods funded by the US government. The freeze also affects the ability of Afghans holding SIVs to travel to the United States. (Recall Trump’s criticism of Biden for abandoning Afghans who fought alongside our troops.). The freeze on foreign assistance also halts service provided by NGOs that were funded by the United States.

Michael Schiffer, [writing](#) in *Just Security*, notes that the suspended aid includes:

- work to prevent current outbreaks of mpox and Marburg virus from spreading beyond Africa;
- drug supplies supporting 20.6 million people across 55 countries living with HIV), including more than a half million children (under [PEPFAR](#));
- support for religious minorities in the Middle East;
- combatting the spread of fentanyl across the western hemisphere; and
- support of allies and partners in Asia to build resilience in the face of coercive Chinese economic policies.

Aid also includes the President's Malaria Initiative that counters the spread of malaria.

Schiffer concludes that “[i]n halting foreign assistance spending, the Trump administration has just put America last, while handing a gift to our biggest adversaries, notably China. In fact, Trump may just have conceded great power competition with China before his first Y1, Week in office was even over.” He also notes that there is “no such thing as a temporary pause. ... It is difficult to exaggerate the reverberating effects of a stop-work order on the ability of such organizations and their programs to continue to function.” He concludes that this suspension, unless reversed, “may represent an extraordinary setback for the United States,” because aid is not charity, it is an investment in safeguarding American interests. This is about protecting America from terrorist threats, fentanyl, human trafficking and the root causes of migration. It is about protecting critical supply chains and securing markets abroad for exports (and the jobs that underpin those exports).

Senator Lindsay Graham had this to say while [questioning](#) Russell Vought, proposed head of OMB (and I paraphrase). We spend \$69 billion on the State Department, our embassies and foreign assistance, which represents around 1% of the federal budget. But “[i]f you don’t get involved in the world and you don’t have programs in Africa where China’s trying to buy the whole continent, we’re making a mistake. So, it’s 1% of the budget. You could eliminate it all. You’re not going to balance the budget. I think soft power is a critical component of defending America and our values.”

Reps. Gregory Meeks (Ranking Member, House Foreign Affairs Committee) and Lois Frankel (Ranking Member, House Appropriations Subcommittee on National Security) [urged](#) Secretary Rubio to resume funding for ongoing US foreign assistance programs, and thereby avoid ceding space to Iran and other adversaries. Expect to see a flurry of lawsuits challenging the suspension, potentially under the Take Care Clause of the Constitution (which requires the President to ensure that laws are faithfully executed).

In the meantime, Trump has presented a significant gift to China and to Russia. As Schiffer notes, “The U.S. suspension of foreign aid now threatens to effectively leave the field wide open for China to expand its influence – and, ironically, to paint Beijing as a better and more reliable partner than Washington. Russia, too, may seek to exploit the vacuum created by the U.S. retreat from foreign assistance,” not to mention the impact on Ukraine.

Hard to see how any of this puts “America First.”

### **International Criminal Court (ICC)**

In his [Imposing Sanctions on the International Criminal Court](#) EO, Trump found that the ICC had “engaged in illegitimate and baseless actions targeting America and its close ally Israel” and determined that any effort by the ICC to investigate, arrest, detain, or prosecute protected persons “constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States,” and declared a national emergency to address that threat. Trump has imposed sanctions, which also includes making financial donations to sanctioned individuals and barred entry of sanctioned individuals.

**Y1, Week Thirty-Four**, the State Department is ratcheting up its campaign against the ICC by [imposing](#) sanctions on three human rights groups that [asked](#) the ICC in November 2023 to investigate Israel over allegations of genocide under Article 15 of the Rome Treaty. The designation of these three NGOs under the EO means that U.S. entities are prohibited from doing business with them.

The administration has also imposed sanctions on the ICC’s chief prosecutor, Karim Khan, his two deputies and six judges, and on Francesca Albanese, the U.N. Special Rapporteur on human rights in the occupied Palestinian territories. Albanese has [called](#) Israel’s campaign in Gaza a genocide.

### **UN and Other International Organizations**

In his [Withdrawing from and Ending Funding to Certain UN Organizations and Reviewing Support to all International Organizations](#) EO, Trumps goes after the UN High Commission on Refugees (UNHCR), the UN Educational, Scientific and Cultural Organization (UNESCO) and the UN Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA). He has withdrawn from UNHCR and put continued membership in UNESCO under review. He has halted funding of both UNHCR and UNRWA.

The Secretary of State is to conduct a review of all international intergovernmental organizations of which the United States is a member and provides any type of funding or other support, and all conventions and treaties to which the United States is a party, to determine which organizations, conventions, and treaties “are contrary to the interests of the United States” and whether such organizations, conventions, or treaties can be reformed. The Secretary of State is to provide recommendations as to whether the United States should withdraw from any such organizations, conventions, or treaties.

### **South Africa**

In his [Addressing Egregious Actions of South Africa](#) EO, Trump takes issue with South African legislation that could lead to the expropriation of Afrikaner land as well as the case brought before the International Court of Justice against Israel. (The initial version of the EO mistakenly referred to the International Criminal Court.) The EO provides that, as long as South Africa “continues these unjust and immoral practices that harm our Nation,” the United States shall not provide aid or assistance to South

Africa and “shall promote the resettlement of Afrikaner refugees escaping government-sponsored race-based discrimination, including racially discriminatory property confiscation.”

It is beyond me how land reform in South Africa has any impact on the United States. Moreover, there is fundamental disconnect between Trump’s crackdown on refugee resettlement and his move to facilitate the entry of white Afrikaners wishing to emigrate to the United States. Third, this is all theatre - as *The Economist* [notes](#), there is unlikely to be any exodus to the United States. South Africa has not imposed Zimbabwe-style land seizures and Afrikaners, like so many other South Africans, “feel deeply rooted in their homeland.”

### **Trade and Tariffs**

Under the [America First Trade Policy](#) memorandum, the Commerce Secretary is to investigate the causes of trade deficits and unfair trade practices and recommend appropriate measures to remedy the deficits and trade practices. The memorandum also singles out, among others, the US-Mexico-Canada Agreement, “currency manipulation” counterfeit produces and contraband drugs (*e.g.*, fentanyl), application of antidumping and countervailing duty laws, possible vulnerability from a national security perspective of the industrial and manufacturing base to imports, trade with China and the broader economic relationship with China, export controls in the context of national security – all subject to review. The Treasury Secretary is directed to investigate double taxation of US citizens and corporations. The reports largely are due by April 1.

Although no tariffs were announced on Inauguration Day, at the end of **Y1, Week Two**, Trump levied tariffs in China, Canada and Mexico. The [fallout](#) was immediate.

And then he backed down on Mexico and Canada. But the damage has been done. Financial markets were rattled and the stock market dropped – it is fair to say that much of Wall Street was taken by surprise that Trump would actually go through with the tariffs – the assumption was that the threat of tariffs would be for advantage in negotiations, never to be imposed.

Just to draw attention to one data point, the *Wall Street Journal* (WSJ) in an op-ed entitled “[The dumbest trade war in history](#),” notes that the US automobile industry, which contributes in excess of \$800 billion to the US economy, depends heavily on parts from Canada and Mexico. Moreover, tariffs, it notes, will also upend international trade in farm goods. In imposing tariffs, Trump is violating the treaty he negotiated during his first term, the US-Mexico-Canada trade agreement. Does not augur well for being trusted in the future to observe treaty commitments. The *WSJ* editorial board did not mince words, “Mr. Trump sometimes sounds as if the U.S. shouldn’t import anything at all, that America can be a perfectly closed economy making everything at home. This is called autarky, and it isn’t the world we live in, or one that we should want to live in, as Mr. Trump may soon find out.”

As *The American Prospect* [spelled out](#), Trump’s attack against Canada is based on a false premise. TAP cites Cato Institute [data](#) showing that approximately 86% of fentanyl caught by US customs is smuggled across borders in the United States by



Americans. Most of the fentanyl that gets through comes from China, followed by Mexico. Canada represents a miniscule amount (43 pounds intercepted versus 23,000 pounds intercepted from Mexico). Is this Trump's way to woo Canada (or some portion of Canada) to become the 51<sup>st</sup> state? Or is he scrambling to figure out how to pay for his tax cuts?

So, we now have threatened retaliation that will harm American exporters and raises the spectre of a hugely disruptive global trade war. The Canadian government [published](#) a list of products (worth \$30 billion) Canada is prepared to subject to a 25% tariff – effectiveness of these countermeasures is tied to the effectiveness of the US tariffs.

Worst case scenarios envision irreparable harm to supply chains and possible recession; short of that, supply chains are disrupted, and costs rise for businesses and consumers alike. Not exactly what Trump voters expected. And speaking of which, according to Morning Consult [polling](#), 67% of Americans blame the Trump administration for tariff-related price increases amid news of the tariffs.

Currently, the tariffs on imports from Mexico and Canada have been paused for 30 days. The tariffs on China's imports remain in effect. And there are concerns that the next target will be the European Union. But let's not forget, the price for the pause was Trump being able to announce concessions by Canada and Mexico" that they had already planned to do – evidence once again Trump will back down when he is confronted by strength. Similarly, the White House already is walking back the Gaza outburst.

**Y1, Week Seven**, 25% tariffs on Mexico and China took effect and the tariffs on China were doubled from 10% to 20%. The White House's [tariffs FAQ](#) cites fentanyl and presidential power under the International Emergency Economic Powers Act (IEEPA) to counter threats to national security! For more on emergency powers, see my briefing note (11/24/25), available [here](#). Canada responded to the 25% tariffs on goods and 10% tariffs on energy with tariffs on \$30 billion of US goods.

The day after the WSJ published [an article](#) (03/12/25) citing concerns of CEOs about Trump and his policies, in a Truth Social [post](#), Trump had this to say about the WSJ: "The Globalist *Wall Street Journal* has no idea what they are doing or saying. They are owned by the polluted thinking of the European Union, which was formed for the primary purpose of 'screwing' the United States of America. Their (WSJ!) thinking is antiquated and weak, and very bad for the USA." The WSJ article cited "universal revulsion" expressed during a private summit hosted by Jeffrey Sonnenfeld of the Yale School of Management in respect of Trump's economic policies.

Trump's threats against Canada have united our neighbors to the north against the United States. Canadian politics have been upended, as Justin Trudeau resigned, paving the way for Mark Carney to become the Prime Minister on March 14, following a Liberal Party leadership contest. On March 23, Carney called a snap federal election for April 28 (which had been expected only in the autumn and had to be called by October 20), stating he needs an electoral mandate to counter Trump. As he announced the snap election, Carney had this to say about Trump, "President Trump claims that

Canada isn't a real country. He wants to break us so America can own us. We will not let that happen." Before Trump directed his attention to Canada, the Conservative Party populist candidate, Pierre Poilievre, had been expected to win, with a commanding lead of 20 points. The contest is now viewed as a toss-up.

**Y1, Week Eleven, "Liberation Day,"** Trump declared a national emergency under IEEPA and the NEA and invoked authority under IEEPA to impose 10% tariffs across the board on all countries, plus individualized reciprocal higher tariffs on countries with the largest trade deficits. Mexico and Canada were not covered by this EO. [See Regulating Imports with a Reciprocal Tariff to Rectify Trade Practices that Contribute to Large and Persistent Annual United States Goods Trade Deficits](#) EO and related [Fact Sheet](#). It transpires that the tariff rates were determined for each affected country by calculating the U.S. trade deficit with that country, dividing it by the value of their exports to the United States, and dividing that result by two. China will be subject to a 54% tariff, India 26%, Japan 24% and the European Union 20%.

The JP Morgan chief economist, in a research note, said that the tariffs, while bringing in considerable revenue at the expense of higher prices could push the United States into recession as purchasing power falls into negative territory, causing a contraction in consumer spending. Fitch Ratings warned of a potential global recession.

China struck back, setting 34% tariffs across-the-board. While Trump's tariff's exempted certain categories of imports such as pharmaceuticals and semiconductors, China's tariffs have no exemptions. The *New York Times* [quoted](#) the director of RAND China Research, Jude Blanchard, as saying that the Chinese response was "inevitable." "Beijing can no longer maintain the fiction that diplomatic engagement with the Trump administration will prevent a full-scale trade war. Despite White House warnings against retaliation, the total tariffs imposed on China are now so substantial that Beijing has little reason to exercise restraint." A Trump-Xi summit is unlikely any time soon, and China has now filed a complaint with the World Trade Organization.

The Chinese government reportedly killed a deal between the administration and TikTok's parent company, ByteDance, that was hours away from being announced for the spinoff of TikTok. The Chinese government insists on tariff negotiations first. Trump responded by extended the deadline for the TikTok nationwide ban by a further 75 days (04/04/25). CNBC [reported](#) that Attorney General Bondi had assured Apple that there would be no enforcement action if TikTok remains on its app platforms (04/04/25).

**Y1, Week Eleven - Twelve:** In two days, the Dow Jones [plummeted](#) close to 4,000 points and the Street's "fear gauge" (the CBOE Volatility Index, or VIX) [skyrocketed](#) (its highest since 2020). The S&P declined 4.8% over those two days, the only other times that has happened was November 5-6 and November 19-20, 2008, at the height of the global financial crisis, and March 11-12, 2020, at the beginning of the pandemic. Over \$6.0 billion in market cap was [wiped out](#). U.S. oil prices [dropped](#) below \$60 a barrel for the first time since 2021 on fears that the Trump tariffs will push the United States, and possibly the world, into recession.

Monday (Tokyo time), Asia-Pacific markets, led by South Korea, followed by Japan and Australia, [extended their sell-off](#), and Sunday (New York time), Dow Jones Industrial average futures [had fallen](#) 1,400 points. Fears are growing on the Street that the sell-off becomes a doom cycle, with hedge funds forced to sell down equity positions to raise cash and meet margin calls. Even bitcoin has fallen as investors move to de-risk.

Investors were spooked by the size and comprehensive scope of the tariffs as well as Chinese retaliation and [fears](#) that the European Union will follow suit early in the week. Hedge fund investor and Trump-backer Bill Ackman, Sunday night, [urged](#) Trump to call “a time out,” fearing which we could be heading for a “self-induced, economic nuclear winter.”

Fast forward to the end of **Y1, Week Twelve**, Trump pulled back on all the so-called reciprocal tariffs announcing a 90-day pause for all except China, which was hit with 145% tariffs (125% on top of the existing 20% tariffs levied over fentanyl) on Chinese imports. That announcement left the universal 10% base tariffs in place. Note that while 10% appears low, particularly when compared to the reciprocal tariffs, they nonetheless represent the [largest increase](#) in tariffs since The Tariff Act of 1930, also known as the Smoot-Hawley Act.

China responded in kind with tariffs of [125%](#) (up from 84%, which had been imposed on April 9) on American imports. Late Friday (04/11/25), in a move that would spare companies like Apple and Nvidia, CBP announced that a list of electronic products would not be subject to the tariffs imposed on China (or incidentally to the other countries that face universal 10% tariffs). Covered products include smartphones, laptop computers, hard drives, computer processors and memory chips (which are not manufactured in the United States, and for which it would take years to build domestic manufacturing).

To recap,

- Trump imposed new 10% tariffs on February 1, which he increased to 20% on March 3, then to 54% on April 2, then to 104% on April 7, and then to 145% on April 9.
- China countered with 15% on coal and LNG and 10% on crude oil, agricultural machinery and large cars on February 4, followed by 10-15% tariffs on a range of other food products, then 84% tariffs on U.S. exports on April 9, and most recently 125% on April 11.

As this *POLITICO* article sets out (“[Forget tariffs — Beijing is already choking off US exports on the sly](#)”), China is demonstrating that tariffs are not the only arrows in the quiver for a trade war. The authors note that China has over the past four months been focused on a “stealth campaign” of non-tariff barriers to halt or significantly curtail key energy (LNG) and agriculture (beef and poultry) exports from the United States.

The world has the bond market, and more precisely, the sell-off of US treasuries, to thank for the pullback. In effect, the global financial markets had lost faith in US government bonds, which are used to fund the \$36 trillion national debt and are backed

by “the full faith and credit” of the government, as a safe haven. Bond yields rose sharply, moving inversely as they do to price as investors unloaded government bonds largely to cover margin calls or unwind leverage trades. Yields on the 10-year Treasury, which is the reference for corporate and consumer (including mortgage) borrowing, first fell at the beginning of the week to 3.85% and then shot up to above 4.5% on Friday. Yields on the 30-year Treasury, which are critical for insurance companies and pension funds with long-dated obligations, also rose – at one point experiencing the largest three-day jump in yields since 1982. Desks were also worried that China and other countries would offload Treasuries in retaliation against Trump’s actions. See also the FT’s [“Liquidity worsens in \\$29tn Treasury market as volatility soars.”](#)

Fortune placed Liberation Day alongside Black Tuesday in 1929, the 2008 Lehman Brothers bankruptcy filing and the 2020 pandemic-induced market slide. In another sign of the isolation of the United States, it was Canada, as chair of the G7, working with Japan and the European Union to maintain stability in the global economy financial markets.

As an aside, there are concerns that some were able to trade ahead of the pullback – the term for that, “insider trading.” See [Letter](#) from Senators Adam Schiff and Ruben Gallego.

**End of Y1, Week Twenty-Three**, Trump called off trade talks with Canada because Canada intends to roll out on June 30 its digital services tax despite the agreement hammered out at the G7 meeting. Tariffs are to follow next week, Trump threatened. See [The Hill](#) coverage. Trump’s [post](#) leads off by stating, “We have just been informed...”.

*The Hill* points out that Canada’s digital services tax, which imposes a tax on revenue that tech companies (principally US headquartered) derive from online marketplaces, social media services and data sales involving Canadian users, has been known for some time – dating back to 2021. This suggests that Trump’s announcement “indicated a lack of planning on the part of the administration, which delivered country-specific tariffs in early April.” The article quotes Alan Cole of the Tax Foundation as saying that the failure to anticipate Canada’s tax “is a sign the work process on trade from the 2024-2025 presidential transition to April 2nd was horrifically flawed in even more ways than we thought.” The Computer & Communications Industry Association [has called for](#) a Section 301 investigation of the tax.

Canada has retaliated by imposing a quota on some steel imports from the United States and a 50% surcharge for imports that exceed the quota.

See [Washington Post](#) and [NBC News](#) coverage.

**Y1, Week Forty**, Trump called off trade negotiations with Canada over an ad paid for by the provincial government of Ontario (led by Progressive Conservative Doug Ford) and broadcast in the United States, featuring President Ronald Reagan criticizing tariffs. In a Truth Social post, Trump accused Canada of “fraudulently” using a “fake” ad containing excerpts from a 1987 radio address in which the famously free-trade president criticized tariffs – “High tariffs inevitably lead to retaliation by foreign

countries and the triggering of fierce trade wars. Then the worst happens. Markets shrink and collapse. Businesses and industries shut down, and millions of people lose their jobs.”

The Reagan address was edited (spliced and reordered), but there is no evidence that the words spoken were invented or taken out of context. See [PBS Fact Check](#).

The following day, Trump accused Canada of trying to “illegally influence” the Supreme Court as it considers the legality of Trump’s retaliatory tariffs. There is another rich irony here – consider that, in his speech to the Knesset, Trump urged that Prime Minister Netanyahu be pardoned and he imposed 50% tariffs on Brazil because its Supreme Court had put former president Bolsonaro on trial for trying to stage a coup.

The Washington Posts [reports](#) that the Trump announcement had the effect of amplifying the ad. Ford announced on Friday that he would pause the ad campaign on Monday, meaning it would air over the weekend during the first two World Series match-ups between the Los Angeles Dodgers and the Toronto Blue Jays.

On Saturday, Trump said he plans to increase tariffs on imports from Canada by an extra 10% because the ad aired during the World Series.

**Y1, Week Forty-One**, admittedly symbolic, but noteworthy. Four Republican Senators joined the Democrats approving a resolution 50-46 to end the national emergency that Trump used to justify his tariffs on imports from Canada. The day before, Senators voted 52-48 (with Sens. Collins, McConnell, Murkowski, Paul and Tillis joining all the Democrats) to terminate the national emergency declared by Trump as the basis of the 50% tariff he imposed on goods imported from Brazil (due to the against taken by the Brazilian Supreme Court against Bolsonaro and Brazil’s digital content policies).

Then on Thursday, in a third vote, the Senate voted 51-47 (with Sens. Collins, McConnell, Murkowski and Paul joining all the Democrats) to end the base-level so-called “reciprocal” tariffs.

None of these three measures can go into effect because the House [voted](#) in September (213-211, with three Republicans voting against) to block all legislation challenging the Trump tariffs until March 2026.

**Y2, Week One**, Saturday Trump [threatened](#) to impose 100% tariffs on Canada “if [it] makes a deal with China,” warning “*Governor Carney*” (a slight he used with former Prime Minister Trudeau as well) against making Canada a “drop off port” for Chinese goods destined for the United States. Trump [later posted](#) 2 ½ hours later, “The last thing the World needs is to have China take over Canada. It’s NOT going to happen, or even come close to happening!”

According to the [New York Times](#), there is no reason to believe that Canada and China are negotiating a broad trade agreement. Prime Minister Carney was in China last week [to sign](#) an agreement that lowered tariffs on the import of 49,000 Chinese electric vehicles. Reportedly, Canada previewed the agreement with the USTR before it was signed and Trump appeared to praise Carney after the deal was signed (what Carney “

“should be doing and it's a good thing for him to sign a trade deal”). Presumably the Trump change of heart is due to the widely praised speech [given](#) by Carney at Davos.

Carney posted an ad in response focused on buying and building Canada. In a statement, And Carney, riffing on Trump's statement that “Canada gets a lot of freebies from us, by the way, they should be grateful. Canada lives because of the United States,” stated that “Canada doesn't live because of the United States. Canada thrives because we are Canadian.”

Trump later revoked his invitation to Carney to join his “Board of Peace” with another social media post – “Dear Prime Minister Carney: Please let this Letter serve to represent that the Board of Peace is withdrawing its invitation to you regarding Canada's joining, what will be, the most prestigious Board of Leaders ever assembled, at any time.”

[NPR reports](#) that Canada is the top export destination for 36 American states, with close to CDN \$3.6 billion Canadian (US\$2.7 billion) of goods and services crossing the border each day. Around 60% of U.S. crude oil imports are from Canada, as are 85% of U.S. electricity imports. Canada is also the largest foreign supplier of steel, aluminum and uranium to the United States and exports 34 critical minerals and metals that DoD covets for national security purposes.

**Y2, Week Four**, three House Republicans sided with all the House Democrats to block a procedural move that would have reinstated a ban on House members forcing votes on repealing “national emergencies,” and then six House Republicans<sup>7</sup> joined with all the House Democrats to rescind the “national emergency” that underpins the tariffs imposed last year on Canada. The repeal was introduced by Rep. Meeks. This 219-211 vote is largely symbolic as Trump would most certainly veto the legislation. But it is hugely symbolic – a major rebuke – as it represents the first time the House has successfully voted to cancel Trump tariffs; the Senate has done so a few times. The Senate is likely to pass the Canada resolution (it has done so twice before), where it will then be vetoed by Trump (and not clear the two-thirds congressional override threshold).

The Hill reports that emboldened Democrats, led by Rep. Meeks, are planning to force a series of votes through to repeal tariffs imposed on Mexico and Brazil, and “Liberation Day” tariffs.

Speaker Johnson is now contending with the thinnest of margins, with Massie considered at this point likely to vote with Democrats.

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<sup>7</sup> Reps. Don Bacon, Kevin Kiley, Dan Newhouse (who represents an ag-heavy district in Washington state), Jeff Hurd, Brian Fitzpatrick and Thomas Massie. Towards the end of the roll call, Trump threatened defectors with primaries – “Any Republican, in the House or the Senate, that votes against TARIFFS will seriously suffer the consequences come Election time, and that includes Primaries!”



## Global Regulation with Extraterritorial Effect

In his [Defending American Companies and Innovators from Overseas Extortion and Unfair Fines and Penalties](#) Presidential Memorandum (02/21/25), Trump doubles down on regulations with extraterritorial effect. He takes aim at:

- taxes imposed on U.S. companies by foreign governments, including those that may discriminate against U.S. companies;
- regulations imposed on U.S. companies by foreign governments that could inhibit the growth or intended operation of U.S. companies;
- any act, policy, or practice of a foreign government that could require a U.S. company to jeopardize its intellectual property; and
- any other act, policy, or practice of a foreign government that serves to undermine the global competitiveness of U.S. companies.

Trump takes specific aim at Digital Service Tax (DSTs) largely promulgated by EU members states (see [DST tracker](#)) (as well as Canada – Trump’s discovery of which triggered an [abrupt breakdown](#) in trade negotiations, cited above), regulations affecting the digital economy and content moderation regulations (which could only mean the DSA and its UK analogue, the Online Safety Act (see my August 2024 briefing note, available [here](#)).) See generally, [Content Moderation and Free Speech](#), above.

## Tax Treaties and Global Tax Deal – Focus on Extraterritorial Effect

In his [OECD Global Tax](#) EO, Trump directs the Treasury Secretary and Permanent Representative to the OECD to terminate any Biden administration commitments in respect of the [Global Minimum Tax](#). Simply put, the Global Minimum Tax (known as “Pillar Two”) is intended to ensure that large multinational enterprises pay a minimum effective tax rate (15%) in each jurisdiction in which they operate. It was negotiated by the Biden administration with close to 140 countries. The European Union, United Kingdom and other countries have adopted the 15% minimum tax, but the Congress never approved bringing the United States into compliance with it. The United States has an approximate 10% global minimum tax, part of Trump's landmark 2017 tax cut package.

The Treasury Secretary also is directed to investigate whether any foreign countries are not in compliance with bilateral tax treaties “or have any tax rules in place, or are likely to put tax rules in place, that are extraterritorial or disproportionately affect American companies,” and develop and present to the President “options for protective measures or other actions that the United States should adopt or take in response to such non-compliance or tax rules.”

It is worth focusing on whether the Trump administration intends to expand its focus on foreign laws, such as the EU’s GDPR or the EU climate disclosure rules, which have extraterritorial effect. (See my prior briefing note (03/05/23), available [here](#).)

## Pocket Rescission Invoked to Block Foreign Aid

**Y1, Week Thirty-Three**, Trump sends a [request](#) to Speaker Johnson that he would block nearly \$5 billion in foreign aid already approved by Congress, including \$520

million for the general budget of the United Nations and \$838 million for international peacekeeping activities. The move was first [reported](#) by New York Post. Trump's clawback was made using a rarely used "pocket rescission" power.

The Impoundment Control Act sets out rules governing the rescissions process and allows the administration to temporarily withhold funding for 45 days while Congress considers the request. If Congress opts not to approve the request within 45 days, the funds must be released. Trump used this clawback process earlier this year. A pocket rescission involves submitting a request to Congress within 45 days before the end of the fiscal year (September 30). As a result, the clock runs out and the funds expire. The last time a pocket rescission was used was in 1977 by President Carter.

Appropriations Committee Chair Sen. Susan Collins had this to say about the pocket rescission: "Any effort to rescind appropriated funds without congressional approval is a clear violation of the law. Given that this package was sent to Congress very close to the end of the fiscal year when the funds are scheduled to expire, this is an apparent attempt to rescind appropriated funds without congressional approval. Instead of this attempt to undermine the law, the appropriate way is to identify ways to reduce excessive spending through the bipartisan, annual appropriations process."

**Y1, Week Thirty-Four**, Sen. Lisa Murkowski [added](#) her voice in opposition to the pocket rescission – "The fact is, advancing the final appropriations bills and avoiding a government shutdown will require a great deal of hard work and collaboration when Congress resumes session next week. These unilateral actions by OMB only threaten the good bipartisan work that has been done in committee and on the floor, and risk throwing the entire process into chaos."

With a possible government shutdown looming at the end of September, *The Hill's* headline captured the moment: [Trump tosses hand grenade into GOP-Dem shutdown battle with pocket rescission](#).

**Y1, Week Thirty-Four**, ruling in a case brought by the AIDS Advocacy Coalition, District Judge Amir Ali [rules](#) that the use of pocket rescission is unlawful, and granted the motion for a preliminary injunction (09/03/25). Two days later, the D.C. Circuit (2-1) [denies](#) the government's motion for an administrative stay (stating only that the government had not "satisfied the stringent requirements" to stay the preliminary injunction pending an appeal. As the week comes to an end, the preliminary injunction remains intact and the pre-appropriated funds are to be released.

Judge Ali initially had issued a preliminary injunction based in part on the conclusion that the government violated the separation of powers by unilaterally declining to spend congressionally appropriated foreign aid funds. On appeal, the D.C. Circuit panel vacated and remanded. The panel did not express disagreement with Judge Ali's constitutional analysis, but held that the plaintiffs lacked a cause of action to bring a constitutional claim. After a petition for rehearing *en banc* and consideration by the full court, the D.C. Circuit amended its opinion to make clear that it did not preclude the plaintiffs from pursuing statutory claims that the unilateral decision of the government not to spend funds as Congress directed in the relevant appropriations acts

violated the Administrative Procedure Act. This ruling follows the latest remand for consideration of the statutory claims.

The Court concluded the government has “given no justification to displace the bedrock expectation that Congress’s appropriations must be followed and that absent a ‘claim of unconstitutionality that has not been rejected by final Court order, the Executive must abide by 26 statutory mandates.’ [quoting *Iken County*] Their decision not to do so is contrary to law in violation of the Administrative Procedures Act.” It later states that as “‘Congress has not altered the legal landscape’” [again quoting *Aiken County*], the government “‘accordingly remain under a duty to comply with the appropriations laws unless and until Congress does change the law.’”

## EOs - ENERGY AND CLIMATE CHANGE

### Climate Change and Electric Vehicles

[The Putting America First in International Agreements](#) EO calls for the US Ambassador to the United Nations to submit notification of withdrawal from the Paris climate agreement (effective in one year) under the United Nations Framework Convention on Climate Change (UNFCCC), and to revoke any purported US financial commitment made under the UNFCCC. The UNFCCC is the founding treaty of the UN climate talks, under which the Paris Agreement was negotiated. It was agreed at the Rio Earth Summit in 1992 and includes all countries, including the three that have not ratified the Paris Agreement.

The EO also rescinds the US International Climate Finance Plan.

The [Delivering Emergency Price Relief for American Families and Defeating the Cost-of-Living Crisis](#) EO, among other things aimed at bringing down costs of living calls on the administration to “eliminate harmful, coercive ‘climate’ policies that increase the costs of food and fuel.”

**Y1, Week Seventeen**, *POLITICO* [reported](#) that the administration is considering full withdrawal of the United States from the UNFCCC. During Trump 1.0, there was no move to exit the UNFCCC. The UNFCCC is an international treaty, and it is unclear whether the administration could pull out of the treaty without a two-thirds vote in the Senate and, if the United States does pull out of the treaty, whether rejoining at a later date would require a two-thirds vote in the Senate. (The only precedent was President Carter’s withdrawal from defense arrangements with Taiwan following normalisation of relations with China. The withdrawal was challenged and the Supreme Court ruled in *Goldwater v. Carter* that the issue was a nonjusticiable political question. Withdrawal from the Paris Agreement was based on a specific provision in the treaty addressing withdrawal.)

### Energy-Related

Trump declared a [National Energy Emergency](#) (an EO) and ordered a [Temporary Withdrawal of all Areas on the Outer Continental Shelf from Offshore Leasing and Review of Leasing and Permitting Practices for Wind Projects](#) (a memorandum). See [Democracy Fights Back](#), below.

His plans to [Unleash American Energy](#) focus on encouraging exploration and production on federal lands and waters, becoming a leading producer of non-fuel minerals, including rare earth minerals, and having access to sufficient energy resources across the country and territories for economic and national security, as well as military preparedness.

Trump calls for the elimination of subsidies and other policies that favor the development of electric vehicles (EVs) and for accelerating the permitting process, and he revoked a range of Biden-era climate- and energy-related EOs. Trump mandated that all agencies pause disbursement of funds under the Inflation Reduction Act and the Infrastructure Investment and Jobs Act, including funds for EV charging stations. Applications for liquid natural gas export project permits will once again be

accepted. Agency actions that impose undue burdens on domestic mining and processing of non-fuel minerals are to be revised or rescinded. Geological mapping of critical minerals is to be prioritized.

The US Trade Representative is to assess “whether exploitative practices and state-assisted mineral projects abroad are unlawful or unduly burden or restrict United States commerce.” The Commerce Secretary is to assess the national security implications of American dependence on minerals and the potential for trade action. The Secretary of Homeland Security is to assess the quantity and inflow of minerals likely produced by forced labor and whether such inflows pose a threat to national security.

### **Climate Change Assessments**

**Y1, Week Fifteen**, it was widely reported that the administration had dismissed the close to 400 scientists and other expert contributors to the U.S. government’s sixth quadrennial National Climate Assessment (NCA), which is used by the federal government and local governments to understand how to prepare for climate crisis impacts. The group was told that the upcoming assessment is being “re-evaluated.” NCAs are congressionally mandated – the first was issued in 2000 and the sixth (NCA6) is due to be published in 2028. The NCAs are overseen by the NASA-supported Global Change Research Program, which the administration [dismissed](#) in early April. The program coordinates input from 14 federal agencies and external scientists.

The dismissals coincide with the purging from government websites of [data](#) relating to climate change and extreme weather events and follows on the heels of the [prohibition](#) on attendance by U.S. government climate scientists at a key meeting of the UN Intergovernmental Panel on Climate Change (IPCC), the most important convening of global climate change experts. The meeting focused on setting out the timeline for the IPCC’s seventh climate assessment cycle, known as AR7. The administration has also halted financial contributions to the UNFCCC (\$13.3 million in 2024), reportedly causing a shortfall of 22% of its core budget.

The EPA also [failed](#) for the first time to report on behalf of the U.S. government to the UNFCCC U.S. climate-warming emissions, and the administration has [dismantled](#) the State Department’s Office for Global Change, which oversees global climate policy and aid.

“Trying to bury [NCA6] won’t alter the scientific facts one bit, but without this information our country risks flying blind into a world made more dangerous by human-caused climate change,” warned [Rachel Cleetus](#), one of the authors of NCA6 who is a senior policy director for the Union of Concerned Scientists’ (UCS) Climate and Energy Program ([quoted](#) in an update from the UCS).

The drastic cutbacks at NOAA and NWS also have impacts on efforts to combat climate change due to contributions to key global weather and climate data. As [noted](#) by the UCS, NOAA “provides data and analysis, most notably lifesaving information that aids in forecasting U.S. weather and climate extremes, used daily by the public, local and state governments, emergency responders, and the private sector Not surprisingly, many developing countries rely on NOAA’s data to prepare for extreme

weather events. In a world of increasing impacts of climate, [concludes](#) UCS, the cutbacks could “jeopardize most people’s access to life-saving information.”

Back in February, the Washington Post had [reported](#) that the administration has blocked work that is central to major international climate change research, and barred federal scientists and diplomats from attending a key global climate convening in China to work on the upcoming IPCC report, due in 2029. Among those barred from attending was Katherine Calvin, NASA’s chief scientist and senior climate adviser. The Washington Post also reported that NASA had terminated its contract with a U.S.-based group of scientists and staff who were working closely with Calvin to coordinate global efforts to draft the next IPCC assessment.

**Y1, Week Thirty-Eight**, the Department of Energy in an email from the acting Director of External Affairs reportedly [expanded](#) the list of words and phrases that its Office of Renewable Energy and Energy Efficiency is banned from using. The latest additions include “climate change,” “sustainability/sustainable,” “emissions,” “green,” “energy transition,” “clean/dirty energy,” “carbon/co2 footprint” and “tax breaks/tax credits/subsidies.” Recall that, at the United Nations, Trump said “I’ve been right about everything and I’m telling you that if you don’t get away from the green energy scam, your country is going to fail.”

### **COP30**

**Y1, Week Forty-One**, the United States apparently will not be sending an official government delegation to COP30, to be held November 10-21 in Belém, Brazil. Approximately 100 US governors, members of Congress, mayors and climate activists are expected to attend the summit, but none will have US government support. Sen. Sheldon Whitehouse [told](#) the Guardian that he had been told “they weren’t even going to send embassy support for the US delegation, which is a fairly standard courtesy for those of us that did go.” Recall that at the UNGA in September, Trump labelled the climate crisis “the greatest con job perpetrated by the world.” “If you don’t get away from this green scam, your country is going to fail.”

Recall, the State Department’s Office of Global Change, which was responsible for implementing and managing the United States’ international climate change policy and played a key role in negotiating the UNFCCC, [was shut down](#) as part of the reorganization of State in April.

**Y1, Week Forty-Three**, it appears that the absence of Trump and an official U.S. delegation from this year’s climate talks was seen as a blessing.

Some feared a repeat of the London convening at the headquarters of the International Maritime Organization (IMO) in October to [reaffirm](#) the net-zero framework for global shipping that includes a nominal levy on GHG emission from shipping. The framework was approved in April, but needed to be reaffirmed under IMO rules. The *Financial Times* [reported](#) that U.S. representatives sought to bully countries to drop the regulations, issuing threats of higher fees for docking in U.S. ports and visa restrictions for US travel for the negotiators and their families. The pressure tactics appear to have worked, with new rules postponed for at least one year (in April the regulations were approved in vote of 63 for, 16 against, 24 abstentions and the United



States walked out; the vote to posted was approved 57 for, 49 against and 21 abstentions). See [\*The Guardian\*](#) coverage.

## EOs - PUBLIC HEALTH

The [Withdrawing the United States from the World Health Organization](#) EO states that the United States intends to withdraw from the World Health Organization. The rationale: its alleged mishandling of the pandemic? Really?

The United States will pause all financial support for the WHO, recall US government personnel and contractors assigned to the WHO and “identify credible and transparent US and international partners to assume necessary activities previously undertaken by the WHO.” The 2024 [US Global Health Security Strategy](#), which set three policy goals to guide US policy on global health security – strengthening global health security capacities through bilateral partnerships; facilitating political commitment, financing, and leadership to achieve health security; and increasing connections between health security and complementary programs to maximize impact – is to be rescinded. It also identified climate change as a health security risk.

**Y1, Week Two**, the Trump administration purged federal websites, including sites that contained public health and other similar data, and in particular datasets and webpages from the CDC website. See [statement](#) of the Association of Schools and Programs of Public Health and “[Trump’s shocking purge of public health data, explained.](#)”

**Y1, Week Four**, CBS [reports](#) that the CDC could lose up to 10% of its workforce due to purges of federal government employees.

## OTHER TARGETS – LAWYERS, MEDIA, CIVIL SOCIETY AND BUSINESS

### Law Firms and Lawyers

**Y1, Week Six**, in a move that sent shock waves through the legal community and the broader professional services community, Trump issued a memorandum ([Suspension of Security Clearances and Evaluation of Government Contracts](#)) revoking the security clearances of partners at Covington & Burlington who provided pro bono legal support for Special Counsel Jack Smith. Reportedly, the representation was of Smith personally when, according to a statement by the law firm, it “became apparent he would become the subject of a government investigation” and was picked up in Smith’s disclosure of pro bono legal services in his OGE Form 278e. Counsel representing national security defendants need security clearances in order to effectively represent clients whose cases involve classified material. Withdrawing security clearances means that national security clients may be unable to find legal counsel to represent them.

**Y1, Week Seven**, the administration declared war on another law firm and implicated the broader legal community. The [Addressing Risks from Perkins Coie](#) EO singles out Perkins Coie, in its capacity as counsel to *The Hillary Clinton* campaign, for its work on the Russia-gate “dossier” and its election protection work, and goes much further than the Covington & Burling EO. (See also the White House [FAQ](#).) This EO directs the suspension of any security clearances held by Perkins Coie lawyers, requires government contractors to disclose any business they do with Perkins Coie, requires federal government agencies to review contracts with Perkins Coie or with contractors that disclose they do business with Perkins Coie and to terminate any contract for which Perkins Coie has been hired to perform any service. While the EO cites DEI concerns, this should be seen for what it truly is, weaponization of the instruments of executive powers by Trump to exact revenge on his political opponents.

The Perkins Coie EO also directs the Chair of the EEOC to “review practices of representative large, influential, or industry leading law firms for consistency with Title VII of the Civil Rights Act of 1964” and the Attorney General to investigate practices of these law firms who do business with the federal government for compliance with race-based and sex-based non-discrimination laws. Government agencies are to take steps to bar Perkins Coie employees from federal government buildings “when such access would threaten the national security of or otherwise be inconsistent with the interests of the United States and refrain from hiring Perkins Coie employees absent an affirmative waiver that “such hire will not threaten the national security of the United States.”

The two principal lawyers involved in the “dossier” work, Marc Elias and Michael Sussmann, had already left Perkins Coie. Marc Elias formed his own election law-focused firm in 2021.

The EEOC for its part sent [letters](#) to 20 law firms seeking information about the firms’ employment practices, including DEI (03/17/25), citing Title VII of the Civil Rights Act.

As **Y1, Week Eight** ended, a third law firm, Paul Weiss, was targeted under an EO. That EO was rescinded following an agreement reached with Trump.

It was [reported](#) that an email circulated by a GOP Senate staffer to GOP Senate staff offices instructed them to take note of the lobbying clients of Covington and Perkins Coie.

As **Y1, Week Nine** ended, as the number of lawsuits challenging actions by Trump and his administration reached 130 and as Trump and his DoJ ramped up their attacks on judges, and, in particular, DoJ efforts to have Chief Justice James E. Boasberg removed for his continued efforts to get to the bottom of the flights to El Salvador, and efforts to have Judge Beryl Howell [removed](#) following her [ruling](#) in favor of Perkins Coie, Trump fired another shot across the bow of lawyers and the legal community. This came in the form of a Presidential Memorandum, [Preventing Abuses of the Legal System and the Federal Court](#).

The Presidential Memorandum claims that attorneys, particular in the immigration law bar, are engaging in egregious conduct “when litigating against the federal government or in pursuing baseless partisan attacks.” Trump directs his Attorney General to seek sanctions against “attorneys and law firms who engage in frivolous, unreasonable, and vexatious litigation against the United States or in matters before executive departments and agencies of the United States.” He also calls for disciplinary action for conduct that “appears to violate professional conduct rules, including rules governing meritorious claims and contentions, and particularly in cases that implicate national security, homeland security, public safety, or election integrity. In complying with this directive, the Attorney General is directed to consider the ethical duties that law partners have when supervising junior attorneys, including imputing the ethical misconduct of junior attorneys to partners or the law firm when appropriate.”

The Presidential Memorandum raises the possibility of further suspensions of security clearances and terminations of federal contracts and calls for review of conduct of attorneys and law firms over the past eight years.

Vanita Gupta, who served at the DoJ during the Obama and Biden administrations, [characterized](#) the Presidential Memorandum as an attack on “the very foundations of our legal system by threatening and intimidating litigants who aim to hold our government accountable to the law and the Constitution.”

**Y1, Week Ten**, two more law firms were targeted. Jenner & Block, became the target of an [EO](#) by reason of having at one time employed a former federal prosecutor who worked on the team headed by Robert Mueller that investigated Russian interference in the 2016 election. WilmerHale became the target of an [EO](#) also for having welcomed back members of the Mueller team. See [Democracy Fights Back](#), below. Two other law firms, Skadden Arps and Willke Farr & Gallagher, entered into agreements with the White House after learning that they too would be targeted. Milbank also entered into an agreement with the White House.

**Y1, Week Twelve**, Trump targeted the firm Susman Godfrey, which represented Dominion Voting Systems in a defamation lawsuit against Fox Corp. in which Fox

agreed to settle for \$787.5 million. The firm also brought a defamation case against Mike Lindell, CEO of MyPillow. See [Addressing Risks from Susman Godfrey](#) EO (04/09/25). Susman Godfrey, represented by former Solicitor General Donald Verrelli and a team at Munger, Tolles & Olson, [filed](#) a complaint for declaratory and injunctive relief against the administration (04/11/25). The complaint notes that Trump seeks to exact revenge, “is engaged in an unprecedented and unconstitutional assault on [bedrock constitutional principles that lawyers must not be penalized for merely defending or prosecuting a lawsuit] and on the independent bar” and that “[i]f a president can with impunity seek to destroy a law firm because of the clients it represents, then the rule of law itself is in grave danger.” “The [Executive] Order’s retaliatory intent is unmistakable.”

Media reported that Kirkland & Ellis, Latham & Watkins, A&O Sherman, Simpson Thacher & Bartlett and Cadwalader, Wickersham & Taft had also agreed to provide pro bono to causes favored by the Trump administration. All told the agreed dollar value of the proffered pro bono efforts through **Y1, Week Twelve** totals \$940 million. Media also reported that pro bono assistance could extend to coal leasing deals and foreign trade agreements.

**Y1, Week Thirteen**, Susman Godfrey [moved](#) to obtain a temporary restraining order. The firm is represented by Munger, Tolles & Olson. District Judge Alikhan [granted](#) the motion (04/15/25). See [Memorandum in Support](#), which cites violations of the First Amendment (retaliation against the firm and its clients for their actual and perceived exercise of speech and associational rights, discrimination against the firm on the basis of viewpoint, infringement of the right to petition the government, and violation of the right to freedom of association), violations of Due Process, violations of Equal Protection and violations of the firm’s clients’ rights to counsel (04/14/25).

**Y1, Week Seventeen**, WilmerHale and Jenner & Block [notified](#) courts this week that the DoJ had revoked security clearances held by lawyers at the two firms, despite temporary restraining orders having been issued in favor of both firms.

End of **Y1, Week Twenty-Three**, Judge Alikhan [ruled](#) in favor of Susman Godfrey, granting summary judgment as well as declaratory and permanent injunctive relief (06/27/25). The Court found that the EO targeting the firm violates the Constitution and the laws of the United States, and threatens the independence of the bar – “a necessity for the rule of law.” The Court asserted:

“While the Order proclaims that it has been made pursuant to the “authority vested in [Donald Trump] as President by the Constitution and the laws of the United States of America,” the court is not convinced that there is a statutory or constitutional basis for the actions taken therein. Defendants do not point to any statutory authority that empowers the President to punish a law firm for its choice of clients, donations, or other speech, and the court is not aware of any law that would support such action. Likewise, there is no constitutional authority that supports the action taken by the Order, and it cannot be sustained based on any of ‘the several constitutional provisions that grant executive power to the President.’ [citing *Youngstown*]. None of the President’s many powers – not his power as commander-in-chief, nor his foreign policy powers, nor his power to appoint and remove government officials – can justify the targeting of a law firm for protected speech and actions.”

**Y1, Week Twenty-Seven**, the administration appealed the ruling in favor of Jenner & Block. At the end of June, the administration had appealed the ruling in favor of Perkins Coie. The administration has not filed notices of appeal of the rulings in favor of the other two firms, WilmerHale and Susman Godfrey.

**SIBR:** [writing](#) in *The Hill*, Professor David McGowan unravels the mystery as to why Susman Godfrey was targeted, since in contrast to the other targets, none of its partners were obvious targets of Trump’s personal ire. The EO referred to unspecified election work, but it also alleged that the firm “funds groups that engage in dangerous efforts to undermine the effectiveness of the United States military through the injection of political and radical ideology.” The hearing on the firm’s motion for a temporary restraining order did not shed any light on the mystery of the seditious funding accusation.

McGowan then cites the government’s [Opposition to Summary Judgment Motion](#), which in footnote 2 contains the following explanation: “Susman has provided funds to GLBTQ Legal Advocates and Defenders (GLAD), which previously sued the Federal Government to enjoin Department of Defense policy, based on a radical theory of gender ideology.” McGowan explains that the government also submitted a copy of a complaint filed in *Stockman v. Trump*, which was a lawsuit challenging a ban on transgender people from military service, and a GLAD Brief, which discussed the gay rights advocacy group’s activities. Susman was not involved in *Stockman* or listed in the GLAD Brief as providing legal support. In the 2018 GLAD Brief, Susman finally appeared – as having donated between \$3,000-\$4,999 to GLAD.

Does this mean that Trump will target individuals or organizations for making charitable contributions to advocacy organizations, which incidentally is protected by the First Amendment, as to speech and association, which he dislikes or finds inconvenient, and that the government will be complicit in making these attacks?

**Y2, Week Three**, the D.C. Circuit has consolidated the government’s appeals of the Perkins Coie, Jenner & Block, Wilmer and Susman lower court decisions, which will be heard by the merits panel of appellate judges that will hear the government’s appeal of the decision in favor of Mark Zaid. The briefs of these appellees are due March 27.

### **American Bar Association**

The ABA came under [attack](#) for its “diversity mandates” in its law school accreditation practices by the Attorney General. It was reported that the DoJ’s Antitrust Division political leadership will not participate in ABA-hosted events this year. The DoJ went further in **Y1, Week Twelve** by [prohibiting](#) its attorneys from speaking at, attending or otherwise participating in ABA-hosted events in their official capacities and prohibiting reimbursement for travel and or attendance fees for such events, on the ground that the ABA has been engaging in “activist causes,” including [suing](#) to block the administration from cutting foreign aid in the *Global Health Council et al.* case.

**Y1, Week Nineteen**, as [reported](#) by *The Hill*, the administration will no longer cooperate with the ABA on judicial nominations. This means that the historical judicial vetting practice (dating back close to 70 years), whereby the ABA was given



access to non-public information, including Bar records, of nominees, could interview nominees and could obtain information via questionnaires from nominees, would no longer occur. The DoJ cited bias in the rating process, and yet according to data cited by *The Hill*, during Trump 1.0. the ABA rated 264 of Trump's nominees: 187 were rated "well-qualified," 67 were rated "qualified," and 10 were rated "not qualified." While 10 is low, typically others had far fewer "not qualified" nominees (*i.e.*, in the range of three).

### **The Media**

Who will cause more damage to the media – the Trump regime or self-censorship to curry favor with the administration? Federal Communications Commission (FCC) chair Brendan Carr ordered an investigation into whether member stations of taxpayer-funded National Public Radio (NPR) and the Public Broadcasting System (PBS) violated government rules by airing "announcements that cross the line into prohibited commercial advertisements." Carr concluded his [letter](#) with the ominous warning, "For my own part, I do not see a reason why Congress should continue sending taxpayer dollars to NPR and PBS given the changes in the media marketplace since the passage of the Public Broadcasting Act of 1967."

And recall too that there is a broader censorship effort afoot – see [Content Moderation and Free Speech](#), below. As [reported](#) by [Catherine Rampell](#) in the *Washington Post*, the Restoring Freedom of Speech EO in reality is "the start of an Orwellian effort to root out wrongthink from government ranks and the private sector."

### **White House Correspondents' Association**

**Y1, Week Six**, Jeff Bezos announced that the opinion page of the *Washington Post* going forward will only focus on "support and defense of two pillars: personal liberties and free markets." He continued, "... viewpoints opposing [other] pillars will be left to be published by others." The Opinion Editor David Shipley stepped down.

Continuing in its efforts to cow the media, and in the process reducing the flow of information available to the public from trusted news sources, the White House announced it would select the media outlets permitted to participate in the presidential press pool. Historically, the [White House Correspondents' Association](#) (WHCA), founded in 1914, has selected which reporters participate in the pool, which rotates regularly, travels with the president and covers photo ops, Cabinet meetings, and other events where it is impractical to have swarms of correspondents and camera crews in attendance.

The WHCA president characterized the move as "tear[ing] at the independence of a free press in the United States. *New York Times* journalist Peter Baker [likened](#) the move to "how the Kremlin took over its own press pool and made sure that only compliant journalists were given access." Fox News correspondent Jacqui Heinrich [criticized](#) the decision, saying the "move does not give the power back to the people - it gives power to the White House."

The move follows the barring of Associated Press reporters from the Oval Office and Air Force One for declining to call the "Gulf of Mexico" the "Gulf of America,"

prompting a [lawsuit](#). We should be under no illusion; this has little to do with a map. Trump's goal is to stifle the flow of information that he finds inconvenient.

**Y1, Week Eight**, Trump continued to attack news outlets (see [DoJ Speech](#)) and turned his attention to VOA, Radio Free Europe/Radio Liberty (RFE/RL) and Radio Free Asia (RFA) (see [Voice of America](#)). National Press Club President Mike Balsamo issued a [statement](#) in support of these news outlets. He noted "Voice of America has delivered fact-based, independent journalism to audiences worldwide, often in places where press freedom does not exist. Removing large numbers of its journalists at the same time as dismantling [the US Agency for Global Media, the parent of Voice of America] threatens the very foundation that has allowed VOA to operate without political interference." He continued, "If an entire newsroom can be sidelined overnight, what does that say about the state of press freedom? This move not only puts VOA's credibility at risk but also undermines America's long-standing commitment to a free and independent press."

A short history of VOA, which began broadcasting in 1942 to combat Nazi propaganda, is available [here](#). Dana Milbank, in his op-ed, captured the enormity of Trump's actions:

"Voice of America went on the air eight weeks after Pearl Harbor. 'We bring you voices from America,' journalist William Harlan Hale said in German on Feb. 1, 1942, in [VOA's first broadcast](#). 'Today, and daily from now on, we shall speak to you about America and the war. The news may be good for us. The news may be bad. But we shall tell you the truth.' In the 83 years since then, VOA has been the voice of freedom across the globe, a constant force countering totalitarianism during World War II, the Cold War and the decades since. Adolf Hitler couldn't silence it. Joseph Stalin and his successors, right up through Vladimir Putin, couldn't silence it. Mao Zedong and his successors, through Xi Jinping, couldn't silence it. Ruhollah Khomeini and the ayatollahs couldn't silence it. But Donald Trump has just silenced the voice of freedom."

**Y1, Week Twenty-Three**, in his June 26 post ("[A Day Filled with Lies](#)"), Robert Hubbell picks up a theme that regrettably dates back months, namely the default of so much of the media to treat Trump like a normal politician and to accord deference that should have been jettisoned long ago. The latest example of media pandering to Trump – the series of outright lies told by Trump and his enablers in a single day that are called out by so few:

- When asked at a Judiciary Committee hearing by Sen. Adam Schiff about specific whistleblower allegations, Principal Associate Deputy Attorney General Bove (who has been nominated by Trump to serve as an appellate judge on Third Circuit) [responded](#) twice, under oath, "I don't recall."
- Attorney General Bondi implied she is [unaware](#) ICE agents are wearing face masks.
- Trump continues to [maintain](#) that the nuclear facility at Fordow was obliterated despite statements set out in a leaked after-action report by the Defense Intelligence Agency to the contrary.

- A former DOGE employee stated that the fraud and waste he was tasked with finding was “relatively non-existent.” Shortly after the interview was posted, the employee said he [was fired](#).

### ***Bob Woodward and Simon & Schuster***

**Y1, Week Twenty-Six**, the case filed by Trump against Bob Woodward and Simon & Schuster over The Trump Tapes was [dismissed](#) (07/18/25). Trump had claimed to have intellectual property rights in what eventually became Woodward’s book based on 20 interviews with Trump.

### ***Corporation for Public Broadcasting***

Also, **Y1, Week Twenty-Six**, the House (216-213, with two Republicans joining all Democrats voting against) approved a Trump administration plan to rescind \$9 billion in previously allocated funds, including \$7 billion in foreign aid and \$1.1 billion for the Corporation for Public Broadcasting (CPB). The Senate approved the package 51-48 (with Sen. Murkowski and Collins voting against).

The CPB cut-off means that all federal support for PBS, NPR and their member stations will end. NPR and PBS nationally are mostly funded by nongovernment sources, such as corporate sponsorships or viewer/listener donations, and rely on direct federal funds for only a small portion of its budget. Approximately [1,000 member stations](#) get a more significant portion of their operating revenue through CPB. NPR has warned that many of those member stations, particularly those broadcasting to rural areas or to underserved audiences, such as Native Americans, could be forced to shut down as a result of the funding rollback. A Harris Poll found that 66% of Americans (including 58% of Republicans and 77% of Democrats) support federal funding for public radio and call the funding good value. *See generally*, [The Hill](#) coverage.

A letter to Senate Democrats from Sen. Chuck Schumer [sets out](#) the threat of further rescission votes, calling the effort “an affront to the bipartisan appropriations process.” The rescission package allows the president to cancel previously allocated funds under the Impoundment Control Act.

### ***Wall Street Journal***

**Y1, Week Twenty-Seven**, presumably in further retaliation for its coverage of the Epstein saga, the *Wall Street Journal* was banned from travelling with Trump as part of the press pool during his Y1, Weekend visit to his golf course in Scotland.

### ***POLITICO***

**Y1, Week Thirty-Three**, Le Monde [reports](#) that *POLITICO* has come under attack from the administration for its criticism of Steve Witkoff. *POLITICO* is now German owned (by the Axel Springer Group), prompting allegations of “foreign influence.” The article in question by Felicia Schwartz, [“His inexperience shines through’: Steve Witkoff struggles to manage Russia as Trump peace envoy,”](#) cited “frustrated” European and American diplomats saying that Witkoff’s refusal to listen to experts and to consult allies left him “uninformed at times and unprepared.” It also pointed out

that despite meeting President Putin “five times over six months,” Witkoff has not made “any breakthroughs on Ukraine.”

Vance [posted](#) on X, “This story from *POLITICO* is journalistic malpractice. But it’s more than that: it’s a foreign influence operation meant to hurt the administration and one of our most effective members.” White House Deputy Chief of Staff James Blair called the article a “foreign influence operation run through a German-controlled online media outlet.” Neither Vance nor Blair offered any evidence of German government involvement, the predicate for a “foreign influence operation.” Kirill Dmitriev, the head of the Russian Direct Investment Fund who has led Russia’s delegation in talks on Ukraine, [posted](#) on X that “Fake articles lie exactly as @JD Vance confirms.”

See also [Daily Beast](#) coverage and [The Hill](#) coverage.

### ***New York Times***

**Y1, Week Thirty-Six**, on Monday Trump [sued](#) the *New York Times*, Random House and various journalists for defamation during the 2024 campaign (09/15/25). He seeks \$15 billion in damages. He complains in the complaint that he had to overcome “persistent election interference from the legacy media,” led by the *New York Times*. In an emailed statement, the *New York Times* said, “This lawsuit has no merit. It lacks any legitimate legal claims and instead is an attempt to stifle and discourage independent reporting.” The *New York Times*, in its coverage of the suit, Michigan Law School professor Dow Herzog as saying, “[t]his is mostly a press release masquerading as a lawsuit.”

On Friday, District Judge Steven D. Merryday [threw out](#) the case against the *New York Times* citing Rule 8, which requires that a complaint include “a short and plain statement of the claim showing that the pleader is entitled to relief” (09/19/25). As to Trump’s complaint, the Court found that, “[e]ven under the most generous and lenient application of Rule 8, the complaint is decidedly improper and impermissible.”

The Court continued, “As every lawyer knows (or is presumed to know), a complaint is not a public forum for vituperation and invective – not a protected platform to rage against an adversary. A complaint is not a megaphone for public relations or a podium for a passionate oration at a political rally or the functional equivalent of the Hyde Park Speakers’ Corner.” And concluded: “This complaint stands unmistakably and inexcusably athwart the requirements of Rule 8. This action will begin, will continue, and will end in accord with the rules of procedure and in a professional and dignified manner. The complaint is **STRUCK**.”

Recall that Trump sued the *New York Times*, three of his reporters and his niece Mary Trump in 2021 over an investigation into his financial history. That lawsuit [was dismissed](#) in 2023 on the ground that the case failed “as a matter of constitutional law,” and Trump was ordered to pay the paper’s legal costs. In 2020, the Trump campaign sued the paper [for defamation](#) over an essay (“The Real Trump-Russia Quid Pro Quo.”), which [also was dismissed](#).

**Y1, Week Thirty-Nine**, Trump [refiled](#) his case against the New York Times (10/16/25).

### ***Jimmy Kimmel***

See [Civil Liberties Watch – Jimmy Kimmel](#), below.

### ***BBC***

**Y1, Week Forty-Two**, the Director-General of the BBC, Tim Davie, and the CEO of BBC News, Deborah Turness, resigned following the leak of a memorandum written by a former independent external adviser to the BBC’s editorial guidelines and standards committee, Michael Prescott, who left his role in the summer. The memorandum, details of which were published by *The Daily Telegraph*, set out a variety of criticisms, the most incendiary of which from a U.S. political perspective is that the BBC edited the speech Trump gave on January 6<sup>th</sup> before the Capitol was attacked, which it aired as part of its Panorama series (“Trump: A Second Chance?”). Other criticisms included coverage by Panorama and the Arabic Service’s coverage of Israel-Gaza, criticism of the LGBTQ+ news desk, particularly on trans issues, and alleged inaccuracies in a report on racism in the motor insurance industry.

Two actual clips of the speech given 54 minutes apart were spliced together (*see* Guardian side-by-side [comparison](#)) suggesting that Trump encouraged the attack. The program did not point out that Trump had also said he wanted his supporters to demonstrate peacefully. *See* the [response](#) by the BBC board chair, Samir Shah, to a Parliamentary committee (annexed to which is the leaked letter).

While this story is likely just a blip on the U.S. news landscape, it dropped like a bombshell in Britain. The reason is that the BBC has been under attack for years, and the resignations are being labelled by some as a coup by conservative elements on the board, led by an appointee of Boris Johnson and former No 10 press secretary, Robbie Gibb. There are elements of political interference, and the fate of independent journalism certainly in Britain and potentially beyond could hang in the balance. *See* [The Observer](#) editorial. But the broader crisis facing the BBC is that it has become an easy target both overseas given its global reach and at home, where it regularly faces allegations of deep bias.<sup>8</sup>

**Y1, Week Forty-Three**, Trump has threatened to sue the BBC for at least \$1 billion unless it apologizes, it issues a “full and fair retraction” of the documentary and provides “appropriate compensation for the harm caused.” *See* [Guardian](#) coverage as well as [The Telegraph](#) coverage, which includes a copy of the legal letter sent to the BBC. The letter cites Florida law even though BBC iPlayer, the principal streaming platform carrying the Panorama series, and BBC One, which broadcasts the series, are not available in the United States. That will present threshold hurdles if established. Also, because the show was broadcast just before the 2024 election, there is talk of “election interference,” the basis on which Trump sued and settled with CBS News.

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<sup>8</sup> [According](#) to *the Observer*, 73% of Reform voters believe the BBC is biased in favour of left-wing views; 31% of Labour voters believe it is biased in favour of right-wing views; and just 19% of all respondents to YouGov polling think it is not biased.

As with the other cases in which media organizations settled, Trump would need to prove actual malice. He would probably need to establish that he suffered the “overwhelming financial and reputational harm” his counsel has claimed.

If the case were to end up in a British court, the action may fail as the one-year statute of limitations for libel ran out in October. Maximum damages could be in the range of £300,000.

A No 10 spokesperson has said that “We support a strong and independent BBC but this is a matter for the BBC.” This statement walked back an earlier statement by a minister that the BBC should apologize to Trump, and failing to back the BBC. The BBC has apologized, but not directly to Trump.

The challenges notwithstanding, I suspect Trump will pursue the case.

None of this can be good news for Starmer, who has prioritized staying on Trump’s good side. For an interesting perspective on the situation Starmer faces domestically, see political journalist and commentator Ailbhe Rea’s [“Does Keir Starmer Realize How Much Trouble He is In?”](#)

In response to the legal sent to the BBC, the BBC [responded](#) – “While the BBC sincerely regrets the manner in which the video clip was edited, we strongly disagree there is a basis for a defamation claim.” The BBC also [issued](#) a corrections and clarification notice on its website. In both statements, the BBC indicated that it would not rebroadcast the program. There has been no suggestion of any payment to Trump. One can imagine the deep opposition in Britain to the idea that a portion of the television license fee would fund a payment to Trump.

As **Y1, Week Forty-Three** winds down, despite the apology, Trump has doubled down on the issue, now [saying](#) he will sue the BBC for “anywhere between a billion and five billion dollars,” alleging that the BBC “changed the words coming out of my mouth.”

**Y1, Week Forty-Eight**, Trump made good on his threat and [sued](#) the BBC for up to \$10 billion in the Southern District of Florida, one for each of his two counts, of defamation and violation of Florida’s Deceptive and Unfair Trade Practices Act (12/15/25). The complaint seeks to pre-empt challenges to jurisdiction by citing two websites (Tom’s Guide and PureVPN) that published instructions on how to watch the Panorama documentary via VPN and referencing BritBox subscriptions. The complaint alleges that “the BBC elected to publish the Panorama Documentary just one week before the 2024 [election] with the express intent of interfering with it and trying to undermine President Trump’s odds of winning reelection.”

## **CNN**

**Y1, Week Forty-Four**, in a *per curiam* opinion, a three-judge panel of the Eleventh Circuit [affirmed](#) the 2023 dismissal by a lower court of a defamation suit brought by Trump against CNN in which he claimed that, by using the phrase the “Big Lie” to describe his characterization of the 2020 election, CNN had defamed him (11/18/25). The district court dismissed his complaint with prejudice. Trump then moved for reconsideration and, alternatively, for leave to amend his complaint. The district court



denied these motions. On appeal, Trump contends that the district court erred in dismissing his complaint and abused its discretion in denying his motions. The appellate panel affirmed the district court's dismissal.

The district court dismissed Trump's defamation claim because the statements of which he complained were "opinion, not factually false statements, and therefore [we]re not actionable." Alternatively, the lower court ruled that Trump did not sufficiently plead that CNN acted with actual malice.

### ***CBS NEWS***

CBS News editor-in-chief Bari Weiss decided at the very last minute to "spike" a "60 Minutes" story, "INSIDE CECOT" by longtime CBS correspondent Sharyn Alfonsi, triggering massive criticism of the network over self-censorship. The program had been heavily promoted on air and on social media in the days leading up to the scheduled broadcast, including via a press release sent out on the Friday before the Sunday airing. Weiss' explanation for pulling the segment at the last minute was that "it needed additional reporting" has been met with widespread derision. Apparently Weiss wanted an on-the-record response from Stephen Miller and Tom Homan, but DHS, the State Department and the White House had declined to do. Weiss refused to speak with Alfonsi.

The program examined the deportation of more than 250 men to CECOT and featured interviews with some of the men who described severe conditions, brutal treatment and alleged abuse. It turns out that the program was distributed in Canada to Global TV, which also pulled it, but not before the program [started circulating](#) online.

The ensuing firestorm suggests that Weiss failed to learn the lesson of the Kimmel suspension and reinstatement. Allison Gill of the podcast *Mueller, She Wrote* [commented](#), "Had Bari Weiss just ran [sic] the story, it would have been seen by a couple million people tops. The bootleg has now gone viral, and may end up being the most-watched 60 Minutes segment ever."

Alfonsi, in a [message](#) to her colleagues, labelled Weiss' action a "political" move and noted that the program had already gone through various levels of Standards & Practices and legal vetting and review. She continued,

"If the administration's refusal to participate becomes a valid reason to spike a story, we have effectively handed them a 'kill switch' for any reporting they find inconvenient. If the standard for airing a story becomes 'the government must agree to be interviewed,' then the government effectively gains control over the 60 Minutes broadcast. We go from an investigative powerhouse to a stenographer for the state. These men risked their lives to speak with us. We have a moral and professional obligation to the sources who entrusted us with their stories. Abandoning them now is a betrayal of the most basic tenet of journalism: giving voice to the voiceless."

In the background: last week, Trump posted on Truth Social, "For those people that think I am close with the new owners of CBS, please understand that 60 Minutes has treated me far worse since the so-called 'takeover,' than they have ever treated me before. If they are friends, I'd hate to see my enemies!" The Y1, Week before, Trump doubled down on 60 Minutes for its interview with Marjorie Taylor Greene, whom he

called a “very poorly prepared Traitor,” and accused Paramount of being “NO BETTER THAN THE OLD OWNERSHIP.”

Recall that CBS is the network of Edward R. Morrow and Walter Conkrite. 60 Minutes, CBS News’ storied flagship program, has been ranked the #1 news program for a half century. Weiss, after leaving the *New York Times* triggered by its illiberal environment,” co-founded The Free Press – the supposed antidote to legacy media, and was installed at CBS by Paramount CEO David Ellison. Skydance Media, led by Ellison, acquired Paramount, which owns CBS News, and also brought The Free Press, and with it came Weiss. See continuing [Washington Post](#) coverage.

Stephen Miller [reportedly](#) called on CBS to fire the producers of “60 Minutes” for launching a “revolt” against Weiss.

One more irony in all of this – NPR reported that Weiss objected to the program’s use of the term “Venezuelan migrants,” preferring to describe the deportees as “illegal immigrants,” even though many of the deportees were legally in the United States, having applied for asylum, which applications were pending at the time they were rendered to CECOT.

### **Washington Post**

**Y2, Week Three**, Trump did not need to sue the Washington Post to essentially put it well on its way to irrelevance; Jeff Bezos and publisher Will Lewis did that for him. Ashley Parker, formerly with the Post and now the *Atlantic*, [wrote](#) “The *Post* has survived for nearly 150 years, evolving from a hometown family newspaper into an indispensable national institution, and a pillar of the democratic system. But if Bezos and Lewis continue down their present path, it may not survive much longer.

On Wednesday morning, the paper announced mass layoffs. Former Post journalist, who now works for the *New Yorker* after [resigning](#) last March, [wrote](#), “The scale of the demolition, though, [is] staggering – reportedly more than three hundred newsroom staffers. The announcement was left to the executive editor, Matt Murray, and human-relations chief Wayne Connell; the newspaper’s publisher, Will Lewis, was nowhere to be seen as the grim news was unveiled.” In an email, Marcus writes “I grieve for the institution, for the good and hard-working people who have made it a national treasure, and for the future. My latest for the *New Yorker*. So sad to have to write this. So wish it could have been different.”

Saturday evening, Will Lewis, publisher and chief executive of the Washington Post and longtime Rupert Murdoch media figure, in an email to the staff (without a subject line) announced he was resigning (Matt Viser, the White House bureau chief for the Washington Post, [posted](#) the email on X). Jeff D’Onofrio, who only joined in June as chief financial officer, will serve as acting publisher and chief executive.

### **Other Organizations under Attack**

**Y1, Week Six**, the National Endowment for Democracy (NED) [announced](#) it was unable to access Congressional appropriated funds, which sustain 95% of its grant-making and operations. For the first time its four-decade history, it has been forced to suspend support for nearly 2,000 of its partners worldwide. “The disruption is hitting

hardest in highly repressive environments, where dedicated frontline organizations have been forced to lay off staff, curtail operations, and, in some cases, face increased security threats.”

## **Congress**

**Y1, Week Twenty**, it was reported that at the end of the prior Y1, Week, a member of the staff of Rep. Jerry Nadler, at his NYC office which is in the same building as an immigration courthouse, was handcuffed, briefly detained and then released by DHS agents. A DHS officer reportedly claimed that staffers were “harboring rioters” and reportedly had no warrant to enter the office. A later DHS statement claimed that Federal Protective Services entered the office to “conduct a security check” as they were “concerned about the safety of federal employees in the office. No mention of rioters in that later statement. Nadler has [demanded](#) a congressional investigation. The incident comes amidst an [increasing number of arrests](#) by ICE agents at immigration courthouses following the conclusion of migrants’ hearings if they have been ordered deported or their cases have been dismissed.

David A. Graham, writing in The Atlantic (“[The Trump Administration Targets Congress - Again](#)”), observes that members of Congress – Democrats and Republicans alike – have no strategy for fighting back against the encroachment on checks and balances.

## **Business Community**

### *Goldman Sachs*

**Y1, Week Thirty**, Trump called out Goldman Sachs on a Trust Social post to “go out and get himself a new Economist” because it had made a “bad prediction a long time ago” on the market and tariffs. He also questioned whether CEO David Solomon should focus on his former side gig of being a DJ. The *Wall Street Journal* [explained](#) that Trump was likely referring to Goldman’s long-serving chief economist, Han Hatzius, who has been predicting that Trump’s tariffs would impair labor markets, trigger higher inflation and slow economic growth. Hatzius and his team on Sunday had reported that U.S. consumers had absorbed 22% of the tariff costs through June, and will ultimately absorb 67% if the trend in tariffs remains the same. These predictions are in line with those of other economists.

### *Intel*

Last week, Trump on [Truth Social](#) had [called](#) on Lip-Bu Tan, CEO of Intel, to resign because of his [past ties](#) to China. Sen. Tom Cotton had [raised](#) concerns about Tan in an open letter to the Chair of the Board of Intel two days before. In a [message](#) to all Intel employees, Tan defended his reputation. He referred to “lots of misinformation circulating about [past roles of his]” and said that Intel is engaging with the administration “to address the matters that have been raised and ensure they have the facts.” Scrutiny of Tan has been tied to the company he led until 2021, Cadence Design Systems, which pleaded guilty to DoJ charges and agreed to pay a \$140 million fine to [resolve](#) charges that Cadence committed criminal violations of export controls by selling electronic design automation (hardware, software, and semiconductor

design intellectual property technology to the China's National University of Defense Technology. Tan's VC investments in Chinese companies have also been scrutinized.

Then fast forward a Y1, Week (**Y1, Week Thirty-One**), and in Trump's own words, saying the quiet part out loud, he asked Tan for a 10% stake in Intel, and "He agreed, and they've agreed to do it, and I think it's a great deal for them. He walked in wanting to keep his job, and he ended up giving us \$10 billion for the United States." Intel [confirmed the deal](#):

- The government will make an \$8.9 billion investment in Intel common stock, to be funded by the remaining \$5.7 billion in grants previously awarded, but not yet paid, to Intel under the CHIPS and Science Act and \$3.2 billion awarded to the company as part of the Secure Enclave program. The \$8.9 billion investment is in addition to the \$2.2 billion in CHIPS grants Intel has received to date, making for a total investment of \$11.1 billion.
- The government will acquire a stake equivalent to 9.9% of Intel. It will be a passive investment with no Board representation or other governance or information rights. The government agrees to vote with the Board on matters requiring shareholder approval, with limited exceptions.
- The government will receive a five-year warrant, at \$20 per share for an additional 5% of Intel common shares, exercisable only if Intel ceases to own at least 51% of the foundry business.
- The existing claw-back and profit-sharing provisions associated with the government's previously dispersed \$2.2 billion grant to Intel under the CHIPS and Science Act will be eliminated to create permanency of capital.

### *State Capitalism*

Harold Meyerson, writing in The Prospect ("[When L'État C'est Trump, the U.S. Goes In For State Capitalism](#)"), makes the point that business should be far more afraid of Trump than Mamdani. It is Trump who is pushing the state to take over private business and who is mimicking the CCP in having government control or own major businesses. The end game is obvious:

- Trump used pressure tactics found unlawful by federal courts to exact promises for pro bono support from a group of law firms.
- Trump's approval of Nippon Steel's purchase of U.S. Steel was conditioned on the government receiving a golden share through which the government could control the company's policies and conduct.
- Trump's decision to let Nvidia and AMD sell H200 chips to China, despite the risks that poses to U.S. national security, was conditioned on their having to pay our government 15% of the revenues they made from those sales.
- Trump told Intel to fire its CEO, then walked that back when the CEO visited the White House and apparently promised to "bring suggestions to me." The *Wall Street Journal* [reported](#) that Trump was considering having the government take a financial stake in Intel.

It is unclear whether this investment, which the government was already providing in the form of grants, will help the struggling chipmaker. As *Reuters* [noted](#), what Intel desperately needs is customers for its so-called “cutting-edge 14A manufacturing process.”

Like CCP control of the Chinese economy, “our version of state capitalism is Trumpian capitalism, which, like Chinese state capitalism, involves the government’s increasing control and direction of businesses.” As Greg Ip, chief business columnist at the *Wall Street Journal*, [observed](#), under Trump “capitalism in America is starting to look like China.” Americans’ support for “free-market” capitalism, has weakened. The market’s inability to meet or even address the strategic needs of the country and the spirations of its citizens led Biden to pivot to an industrial policy. Ip though concludes that Biden’s industrial policy did not rise to the level of CCP state capitalism. Trump, with his takeover and bullying of businesses, banks and law firms, crossed the line.

Trump is no ideologue – the state has become the vehicle for him to exert personal control wherever he wishes. As Meyerson notes, “No broader doctrine—not nationalism, not mercantilism, not liberalism’s preference for regulated capitalism or a mixed economy, and certainly not social democracy or any form of socialism—is at the root of Trump’s embrace of state capitalism.”

Imagine if any Democrat had veered into championing state capitalism, let alone state capture. In the wake of the global financial crisis, the government bailed out banks and the auto industry through a combination of loans and warrants. It did not end up taking control any of them. The IRA green energy provisions called for tax credits and subsidies, not stakes and certainly not control.

Meyerson cites the Financial Times editorial board, which [concluded](#), “The legally dubious arrangement underscores that, under Trump, corporate America has entered an era in which business decisions will be dictated less by the invisible hand of the market and more by the heavy hand of the White House. To adapt, boardrooms may increasingly need to adopt the mindset of enterprises operating in emerging markets ruled by similarly controlling and capricious leaders.”

Heather Cox Richardson, writing as **Y1, Week Thirty-One** came to an end, [observed](#) that “It is wild to see Republicans cheering on a president who publicly threatened a CEO and stated openly that he shook the man down for a major share in his company. It is even wilder to see Republicans, who since 1980 have held so fervently to the idea of free markets that they have denounced even the most basic regulations as socialism, celebrate the government takeover of a private company. The story of that shift is a larger story about how the Republicans came to put party over country and, now, how they have put power over everything.”

**Y1, Week Twenty-Three**, the Intel deal appears to be generating some discomfort among conservatives, according to [reporting](#) in *The Hill*, with some GOP voices questioning whether Intel will benefit or suffer under partial government ownership, prompting comparisons to state-owned enterprises in China and Russia.

**Y1, Week Forty-Seven,** Sens. Shaheen and Coons and other national security Democrats [issued](#) a statement criticizing the administration’s decision to allow Nvidia to sell H200 AI chips to China, citing concerns that the H200s are far more capable than any chips China can manufacture on its own, and access to those chips will give “China’s military transformational technology to make its weapons more lethal, carry out more effective cyberattacks against American businesses and critical infrastructure, and strengthen their economic and manufacturing sector.”

### *JPM Chase*

**Y1, Week Fifty-Two,** Trump [threatens](#) to sue JPMorgan Chase (JPMC) in the coming two weeks claiming that the investment bank debanked him after the January 6<sup>th</sup> insurrection, once again reiterating that the 2020 election was rigged. Apparently, the threat was triggered by a Wall Street Journal [article](#) that reported that last year Trump had offered JPMC CEO Jamie Dimon the post of Fed Chair, which Dimon took as a joke. See [POLITICO](#) coverage. Recall Dimon’s [statement](#) about his decision not to fund the ballroom construction.

**Y2, Week One,** Trump made good on his threat and [sued](#) JPMC and Dimon for \$5 billion based on a claim of “debanking” for political reasons. The case was filed in Florida state court. The complaint notes that Trump was given 60 days notice of the closure of his accounts at JPMC, and alleges that the decision “came about as a result of political and social motivations and JPMC’s unsubstantiated ‘woke’ beliefs that it needed to distance itself from President Trump and his conservative political views.” Last March, Trump [filed](#) a similar lawsuit against Capitol One.

In August, Trump had signed an EO (“[Guaranteeing Fair Banking for all Americans](#)”) calling on bank regulators to look into and take action to address “politicized or unlawful debanking,” which the EO defines as

“an act by a bank, savings association, credit union, or other financial services provider to directly or indirectly adversely restrict access to, or adversely modify the conditions of, accounts, loans, or other banking products or financial services of any customer or potential customer on the basis of the customer’s or potential customer’s political or religious beliefs, or on the basis of the customer’s or potential customer’s lawful business activities that the financial service provider disagrees with or disfavors for political reasons.”

### *Defense Contractors*

**Y1, Week Fifty-One,** in his [Prioritizing the Warfighter in Defense Contracting](#) EO, Trump takes on under-performing defense contractors. The EO provides that covered contractors will be prohibited from buying back their stock or issuing dividends at the “expense of accelerated procurement and increased production capacity.” Future contracts with new or existing defense contractors (including renewals) must provide that executive incentive compensation be tied to certain performance metrics, including “on-time delivery” and “increased production,” rather than short-term metrics such as free cash flow or earnings per share driven by stock buy-backs.



Contracts will also have to reflect the buyback and dividends limitations. During periods of under-performance base salaries are to be frozen at then current levels.

DoD is directed to undertake a review of defense contractors for critical weapons, supplies and equipment that are underperforming, or not investing sufficient capital in necessary production capacity, not sufficiently prioritizing government contracts or whose production speed is insufficient. These contractors will be subject to a cure period if they also bought back their stock or paid dividends during the period of underperformance or deficiencies, failing which they will be subject to remediation.

Delinquent contractors may lose support for foreign military sales. The EO directs the SEC Chairman to consider whether to amend the Rule 10b-18 safe harbor for public company stock buy-backs in line with the EO.

The EO was [accompanied](#) by a lengthy Truth Social post.

Clearly, there will need to be regulations to flesh out what this all means.

## EO – ELECTION SECURITY

### Proof of Citizenship

**Y1, Week Ten**, in his [Preserving and Protecting Elections](#) EO, supplemented by a [Fact Sheet](#), Trump, citing among other things the counting of ballots after election day (inherent incidentally in mail-in voting) and voting by non-citizens (which is against the law and as to which there is scant evidence), made good on campaign promises to require voter identification and, in the process, will, if these measures survive legal challenge, upend voting processes in the United States. In short, they could disenfranchise millions of Americans.

The EO purports to amend the federal voter registration form to require proof of citizenship in order to vote, to require production of proof of citizenship and to prevent states from accepting mail-in ballots after election day, regardless of when the ballots were postmarked. I say “purports” because under the Constitution, Congress and the states have the authority to determine the rules for elections. The President does not have the power to order that covered by this EO.

Efforts to add citizenship to the federal form have been blocked in the past by courts. The [Safeguard American Voter Eligibility](#) (SAVE) Act passed during **Y1, Week Twelve** in the House would require voters to prove citizenship in person, which would spell the end of mail-in and online voter registration [already in effect across 42 states](#), as well as D.C. and Guam.

As [reported](#) by the Guardian, according to [State Department data, in 2023](#), only 48% of Americans had a valid passport, and close to 69 million women who have changed their names would struggle to produce matching documentation, according to a [Center for American Progress \(CAP\) analysis](#). The Center for Democracy and Civic Engagement reports that in 2024 approximately 21 million voting-age Americans, close to 9% of the population, did not have a current, valid form of identification. The CAP analysis is illuminating – among its other findings:

- Approximately 146 million American citizens do not possess a valid passport—for context, [153 million Americans voted](#) in the 2024 presidential election:
  - High rates of passport ownership are overwhelmingly concentrated in Blue states, while low rates are concentrated in Red states.
  - In West Virginia, Mississippi, Alabama, Arkansas, Kentucky, Louisiana and Oklahoma fewer than one-third of the residents have passports.
  - Only in four states do more than two-thirds of citizens have a valid passport: New York, Massachusetts, California, and New Jersey.
  - Only 1 in 4 Americans with a [high school degree or less](#) have a valid passport.
  - Only 1 in 5 Americans with [income below \\$50,000](#) have a valid passport.
  - Republicans are [less likely](#) to have a passport than Democrats.
- Conservative and Republican-leaning women are twice as likely to have [changed their surname](#).

See also [YouGov data](#) on regional and socio-economic differences.

### **ActBlue**

**Y1, Week Fourteen**, in yet another one of the supreme ironies of the Trump era, Trump issued his [Investigation into Unlawful “Straw Donor” and Foreign Contributions in American Elections](#) Presidential Memorandum directing his Attorney General to investigate the Democratic grassroots donations platform, ActBlue, and other donation groups as alleged conduits for foreign campaign contributions. See generally, the *New York Times*’ [“With Orders, Investigations and Innuendo, Trump and G.O.P. Aim to Cripple the Left.”](#)

### **Mail-In Ballots**

**Y1, Week Thirty-One**, Newsmax agrees to settle the defamation suit brought against it by Dominion Voting Systems for \$67 million. This now means that purveyors of Trump’s Big Lie have paid \$854.5 million to settle defamation claims that election machines rigged the 2020 election against Trump.

You would have thought that Trump and his enablers would cut back on the repeatedly discredited claims that voting systems were rigged to elect Joe Biden. We now have Trump resurrecting his quixotic campaign against mail-in ballots (after toning it down last year at the request of GOP candidates, who ended up benefitting from mail-in ballots and early voting) reportedly after speaking with Putin. Let’s pause on that for a moment – recall Trump at the Helsinki summit took Putin at his word that Russia did not seek to influence the 2016 election, going against at the time the unanimous views of the U.S. IC. And now he is taking election security advice from Putin!

First on social media and then during an Oval Office question-and-answer session with reporters, Trump pledged to [“lead a movement”](#) to eliminate “corrupt” mail-in ballots and voting machines ahead of the 2026 midterm elections. He exclaimed, “Mail-in ballots are corrupt; you can never have a real democracy with mail-in ballots. It’s the only way [Democrats] can get elected.” Trump intends to issue an EO, but that ignores the fact that election laws are set by the states.

Eight states and D.C. [allow all elections](#) to be conducted entirely by mail, while other states permit some elections to be carried out using mail-in ballots. Trump lied when he said that the United States is alone in conducting elections by mail. In fact, 34 countries [allow](#) mail-in voting (including Canada, the United Kingdom, Australia and Germany), according to the International Institute for Democracy and Electoral Assistance. Recall that his Commission on Election Integrity that he created during his first term and was chaired by Mike Pence [was shut down](#) after failing to find evidence of widespread voter fraud.

[According to a](#) U.S. Election Assistance Commission [report released in June](#), 30.3% of ballots cast in the 2024 election were submitted by mail. In the 2020 election, a record 43% of ballots were submitted by mail.

## **PROCLAMATIONS/OTHER ACTIONS – TRAVEL TO THE UNITED STATES**

**Y1, Week Twenty,** Trump issued a [Proclamation](#) banning foreign students from getting visas to study at Harvard (06/04/25).

**Y1, Week Twenty,** Trump imposed full travel bans on nationals from 12 countries and partial travel bans on 7 countries. His [Restricting the Entry of Foreign Nationals to Protect the United States from Foreign Terrorists and other National Security and Public Safety Threats](#) Proclamation imposes a full travel ban on nationals (both immigrants and non-immigrants) from Afghanistan, Burma, Chad, Republic of the Congo, Equatorial Guinea, Eritrea, Haiti, Iran, Libya, Somalia, Sudan and Yemen and a partial travel ban on nationals (both immigrants and certain classes of non-immigrant visa holders) from Burundi, Cuba, Laos, Sierra Leone, Togo, Turkmenistan and Venezuela. In the video announcing the bans, Trump referred to the recent terror attack in Boulder, though the suspect in that attack is from Egypt, which is not on the list. (Incidentally, a federal judge [blocked](#) the removal of the family of the perpetrator in that attack (06/04/25).)

Various rationales were provided for the bans – some countries because they declined to accept the return of their citizens or had “unacceptable” levels of visa overstay rates, and others were covered due to inadequate screening and vetting. There are various exceptions, including, among other categories, for lawful permanent residents, dual nationals travelling on a passport other than one issued by a banned country, SIVs from Afghanistan, ethnic and religious minorities facing persecution in Iran, and athletic teams and coaches participating in the World Cup, Olympics and other major sporting events designated by the Secretary of State. The bans apply from 12:01 am ET on June 9.

The Trump 1.0 travel ban from six Muslim countries ultimately was upheld by the Supreme Court. Five countries (Iran, Libya, Somalia, Sudan and Yemen) are the only countries to have been covered by the Trump 1.0 ban and the current ban.

**Y1, Week Twenty-One,** up to 36 additional countries reportedly may be covered by an expanded travel ban. The *Washington Post* reports that 36 countries are being given 60 days to meet new benchmarks and requirements (based on a dozen concerns) for their citizens to be allowed to travel to the United States. It remains unclear what happens if the benchmarks are not met, but the threat of the travel ban looms large, nonetheless.

The countries affected [are](#): Angola, Antigua and Barbuda, Benin, Bhutan, Burkina Faso, Cabo Verde, Cambodia, Cameroon, Democratic Republic of Congo, Djibouti, Dominica, Ethiopia, Egypt, Gabon, Gambia, Ghana, Ivory Coast, Kyrgyzstan, Liberia, Malawi, Mauritania, Niger, Nigeria, Saint Kitts and Nevis, Saint Lucia, Sao Tome and Principe, Senegal, South Sudan, Syria, Tanzania, Tonga, Tuvalu, Uganda, Vanuatu, Zambia and Zimbabwe. (See [Washington Post](#) coverage.) Note that Egypt is a key ally in the Middle East and receives significant military aid. Djibouti hosts our only permanent military base on Africa, Camp Lemonnier, where incidentally eight deportees remain in limbo.

See also [social media vetting](#) requirements for student visas.

**Y1, Week Thirty-Three**, the State Department [has said](#) it will deny or revoke visas for members of the Palestinian Authority (PA) and the Palestine Liberation Organization ahead of the September meetings of the UN General Assembly in NYC. The announcement comes as Australia, Canada, France and the United Kingdom plan to recognize a Palestinian state, joining 147 other UN members in doing so. The PA mission to the United Nations will receive waivers, per the [1947 treaty regarding UN headquarters](#), and the United States is reported to be “open to re-engagement that is consistent with our laws.” However, unless reversed, the ban will prevent PA President Mahmoud Abbas from attending UNGA, as he is not a member of the UN delegation.

The 1947 treaty provides that the United States shall not impose any impediment to the travel of representatives of UN missions to the headquarters district in New York. Any required visas shall be granted as promptly as possible. The State of Palestine is an observer member of the United Nations. When Yasser Arafat was refused a visa in 1988, the General Assembly met in Geneva.

Time reports that French Foreign Minister Jean-Noël Barrot condemned the action, citing the foundational principle that “[t]he UN headquarters is a sanctuary in the service of peace: it cannot tolerate any restrictions on access.” EU Foreign Policy chief Kaja Kallas [urged](#) the United States to reconsider its decision “in light of international law and the structure of the UN.”

**Y1, Week Thirty-Four**, Trump issues his [Strengthening Efforts to Protect U.S. Nationals from Wrongful Detention Abroad](#) EO to address “hostage diplomacy.” The EO empowers the Secretary of State to designate any country the government of which directly engages in or provides support for the wrongful detention of a U.S. national as a “state sponsor of wrongful detention.” Countries so designated could be subject to sanctions, including travel bans and imposing travel restrictions on Americans on travel or through such countries. The designation is modelled after the designation of state sponsors of terrorism.

During Trump’s first term, Congress passed the Robert Levinson Act (named after an FBI and DEA agent who was abducted in Iran in 2007 and never heard from again) empowering the State Department to determine whether an American is being “wrongly detained” based on several criteria, such as the fairness of the country's judicial system or whether they are being held hostage to extract concessions from the U.S. government.

Never one to miss an opportunity to criticize Democrats and upend tradition, Trump and other administration officials criticized the Biden administration during the signing of the EO, stating without evidence that more Americans had been wrongfully detained than freed during the Biden era.

As **Y1, Week Thirty-Six** wound down, Trump lobbed another grenade into corporate America – [Restriction on Entry of Certain Non-Immigrant Workers](#) Proclamation.

H-1B visas will now require a \$100,000 fee. The White House scrambled to make clear that the fee would only [apply](#) to new visa applicants, not current visa holders who may have been out of the country on Friday. The new requirement kicks in on Sunday. Recall that this highly-skilled visa category triggered a split between MAGA allies that

avored tight restrictions on all immigration and the tech entrepreneurs who rely heavily on H-1B visa candidates.

Trump relied on Sections 212(f) and 215(a) of the INA to ban entry of any H-1B applicant who had not paid the fee. The Proclamation directs the secretaries of State and Homeland Security to take actions necessary to implement the proclamation and “and to deny entry to the United States any H-1B non-immigrant for whom the prospective employer has not made the payment.” The secretaries of State, Labor, Homeland Security and the Attorney General are directed to recommend whether or not to extend the ban on entry, which currently will lapse in 12 months.

The Proclamation states that the fee requirement is subject to exceptions, and cross references a subsection that calls on the secretaries of State and Homeland Security to take actions necessary to implement the proclamation. This suggests that just as was the case with the tariffs the administration has built in a path for companies to petition for exemptions.

According to [Pew Research Center](#), in FY 2024 around 400,000 H-1B applications were approved, which represents a doubling since FY 2020. Of these, 65% (258,196) were renewals. In FY 2023, 73% of the H-1B visas issued were given to Indian applicants. A majority of the visas issued each year since 2010 have been to Indian applicants. China ranked second, at 12%. The proportion of visa holders whose highest degree is a master’s degree increased from 31% in FY 2000 to 57% in 2021.

**Y1, Week Thirty-Eight**, the U.S. Chamber of Commerce [filed](#) an action seeking injunctive relief and a declaratory judgment in respect of the H-1B visa fees (10/16/25). The Chamber argues that the administration’s actions are *ultra vires*, as they exceed the administration’s authority under the INA, and they violate the Administrative Procedures Act. The Chamber is represented by the U.S. Chamber Litigation Center and McDermott Will & Schulte. This is the first action the Chamber has brought against the Trump administration this term. See [Chamber](#) press release.

**Y1, Week Fifty-Two**, the State Department [announced](#) a temporary suspension of visa processing for citizens of 75 countries “whose migrants take welfare from the American people at unacceptable rates.” It appears to be an indefinite suspension. See [Guardian](#) coverage, including the list of 75 countries affected.

The State Department [says](#) it has revoked more than 100,000 visas under Trump 2.0, and DHS [reported](#) in December that more than 605,000 people have been deported, while an additional 1.9 million left the country voluntarily, under Trump 2.0.

**Y2, Week Four**, the American Association of University Professors (AAUP) and various civil society groups [filed](#) a lawsuit challenging the “Gold Card” visa program, which plaintiffs allege unlawfully sells U.S. residency to wealthy individuals while pushing aside scientists, researchers, engineers and other professionals whom Congress directed the immigration system to prioritize (under the EB-1A “extraordinary ability” and EB-2 “exceptional ability” preference categories). Plaintiffs are represented by Democracy Defenders Fund and Public Citizen Litigation Group.



## EOs - OTHER ACTIONS

**Alaska.** In his [Unleashing Alaska's Resource Potential](#) EO, Trump took aim at “the punitive restrictions implemented by the previous administration that specifically target resource development on both State and Federal lands in Alaska.”

**Anti-Christian Bias.** Y1, Week Three, Trump announced the formation of a task force, to be headed by his Attorney General, to “[eradicate](#) anti-Christian bias” in the federal government.

Y1, Week Twelve, *POLITICO* [reported](#) that the State Department had advised all employees that the Department will work with an administration-wide task force to collect information “involving anti-religious bias during the last presidential administration” and will collect examples of anti-Christian bias through anonymous employee report forms that employees are encouraged to provide regarding their co-workers.

**Changing Names.** Trump took action to restore [Names that Honor American Greatness](#), including changing Denali back to Mount McKinley and changing the Gulf of Mexico to the Gulf of America.

Y1, Week Thirty-Two, Trump suggests changing the Department of Defense to the Department of War – odd for someone on a tear to be awarded the Nobel *Peace* Prize. The Department of War was established in 1789 and was renamed the Department of Defense in 1949 as part of a [reorganization](#) of the department authorized by Congress that brought the Navy, Marine Corps and Air Force into the fold. The *New York Times* [quotes](#) Jamal Greene, a professor at Columbia Law School, as saying that, “The president can call the department whatever he wants in informal communication, but the Department of Defense and the Secretary of Defense were so named through acts of Congress, and I am unaware of any legal authority for the president to change those names by executive fiat.” All to say that an EO is insufficient to change the name.

Y1, Week Thirty-Four, Trump, claiming that since WWII the U.S. military “never fought to win,” made good on his threat and announced a rebrand of the DoD to the Department of War via his 200<sup>th</sup> EO. That EO authorizes the Defense Secretary, the Pentagon and subordinate officials to use “secondary titles” such as “Secretary of War,” “Department of War” and “Deputy Secretary of War” in official correspondence, public communications and ceremonial contexts. The new name needs to be approved by Congress. The DoD website and url have been changed.

Hegseth called the rebrand consistent with “restoring... the warrior ethos, restoring victory and ... restoring intentionality to the use of force.”

Incidentally, consider the cost! See *POLITICO* coverage (“employees could find themselves changing Defense Department seals on more than 700,000 facilities around the world”).

**Digital Equity Act.** Y1, Week Sixteen, the *New York Times* [broke](#) a story that Trump had attacked the [Digital Equity Act](#) on the ground that it was “racist” and

“unconstitutional,” not realizing that the Biden-era legislation (the Act was included in the bipartisan infrastructure bill) was aimed at expanding high-speed internet access in communities that lack access, benefiting older Americans, veterans, the disabled and rural areas (including in red states). There is barely any mention in the Act about race. The New Republic [cites](#) examples of grant requests submitted by Arkansas, Indiana, Kansas and Ohio. As the grants have been approved by Congress, cancellation will undoubtedly be challenged.

**DOGE.** Trump renames the US Digital Service, as Obama-era department focused on digital modernization of the federal government, as the [Department of Government Efficiency](#) (DOGE).

As explained in detail by The Liberal Patriot, DOGE initially was tasked with modernizing technology and software in the federal government to improve the government’s efficiency and productivity. Next, DOGE was tasked with aligning hiring and regulation with Trump’s ideals. Musk drove DOGE well beyond these tasks, dismantling and restructuring federal agencies, halting countless agency programs and hiring government employees. He shut down USAID, vastly reduced the scope of work at the CFPB and then turned his attention to the Department of Education.

Trump also tasked Musk with responsibility for identifying fraud, waste and abuse. As The Liberal Patriot notes, Musk, together with Russell Vought at OMB, has a vastly expanded, and inflated, sense of fraud, waste and abuse, essentially equating those concepts with programs with which “Trump merely has ideological disagreements.” These efforts fly in the face of the [Impoundment Control Act](#).

Heather Cox Richardson, [writing](#) on Day 101 (**Y1, Week Fifteen**) notes that while Musk, who now exits government service to return in Trump’s words to “cars and family,” had pledged to cut \$2 trillion, Musk reduced that figure to about \$150 billion. She cited *New York Times* reporting that Musk’s numbers are largely unsubstantiated, and his list of cuts are riddled with mistakes. She also cites an estimate from the Partnership for Public Service that DOGE cuts actually have *cost* taxpayers \$135 billion, and this figure does not include the bevy of lawsuits. And to add to the mix, she cites a *Washington Post–ABC News–Ipsos* poll that found only 35% of Americans approve “of the way Elon Musk is handling his job in the Trump administration,” while 57% disapprove.

**English Proficiency – Truckers.** **Y1, Week Fifteen**, in his [Enforcing Commonsense Rules of the Road](#), Trump is directing his administration to ensure rules on language proficiency for operators of motor vehicles are enforced.

**Federal Emergency Management Agency.** Trump ordered a review of FEMA and called for the establishment of a council to undertake that review. See [Council to Assess the Federal Emergency Management Agency](#).

**Fentanyl.** **Y1, Week Forty-Eight**, Trump issues his [Designating Fentanyl as a Weapon of Mass Destruction](#) EO. It calls on:

- the Attorney General to pursue investigations and prosecutions into fentanyl trafficking, including through criminal charges as appropriate, sentencing enhancements, and sentencing variances;
- the Secretary of State and the Secretary of the Treasury to take appropriate actions against relevant assets and financial institutions in accordance with applicable law for those involved in or supporting the manufacture, distribution, and sale of illicit fentanyl and its core precursor chemicals;
- the Secretary of Defense and the Attorney General to determine whether the threats posed by illicit fentanyl and its impact on the United States warrant the provision of resources from DoD to DoJ to aid in the enforcement of title 18 of the United States Code, as consistent with [10 U.S. Code § 282](#);
- the Secretary of Defense, in consultation with the Secretary of Homeland Security, to update directives regarding the Armed Forces' response to chemical incidents in the homeland to include the threat of illicit fentanyl; and
- the Secretary of Homeland Security to identify threat networks related to fentanyl smuggling using WMD- and non-proliferation-related threat intelligence to support the full spectrum of counter-fentanyl operations.

At this point, it is hard to tell if this has any real-world impact. My adjacent civil experts are considering the impact of the reference to title 18 (presumably [18 U.S. Code § 175](#) (bioweapons)) and 10 U.S. Code § 282 (which authorizes use of DoD resources for limited forms of assistance during an emergency situation involving WMD – referencing 18 U.S. Code §§ 175, [229](#) and [2332\(a\)](#)). There is also the question of how any of these authorities square with the Posse Comitatus Act. Were the fast boats carrying fentanyl (which it is not, it comes across via land ports of entry), one could see this as an end-run attempt to justify continuing those strikes. Another suggestion is that the EO is an attempt to expand the scope of the [Foreign Intelligence Surveillance Act](#) (FISA) based on [50 U.S. Code § 1801](#), subsection (b)(1)(d) of which defines “an agent of a foreign power” as including someone engaged in the proliferation of WMD.

See early [POLITICO](#) coverage.

**Iron Dome.** In his [Iron Dome for America](#) EO, Trump directed the Defense Secretary to draw up an implementation plan for the next-generation missile defense shield.

**Museums; Historical Sites.** In his [Restoring Truth and Sanity to American History](#) EO, Trump takes aim at national parks and museums, including the Smithsonian Institution, which he claims “has come under the control of a divisive, race-centered ideology” and promotes “narratives that portray American and Western values as inherently harmful and oppressive.” Museums, he says, subject visitors to “ideological indoctrination or divisive narratives that distort our shared history.” The intended message is clear. Among the many responses, the American Historical Association [released](#) a statement in support of the Smithsonian, which as of the end of April had 35 signatories. The statement notes that the EO “egregiously misrepresents the work

of the Smithsonian Institution” and “completely misconstrues the nature of historical work.”

**Y1, Week Twenty-One**, two weeks after Trump tried to fire her, Kim Sajet, the first woman director of the National Portrait Gallery, resigned. The Y1, Week before, the Smithsonian’s Board of Regents [issued](#) a statement rebuffing Trump, declaring that all personnel decisions would be made by the Secretary of the Smithsonian, under oversight by the Board of Regents. Trump had accused Sajet of being “highly partisan and a strong supporter of DEI.”

**Y1, Week Twenty-Eight**, the National Museum of American History, part of the Smithsonian, [removed](#) references to Trump’s two impeachments from an exhibit display on the American presidency – “The American Presidency: A Glorious Burden.” The *Washington Post* reported that the Smithsonian agreed to remove the references following pressure from the White House. The Smithsonian [told](#) CNN that the decision was made after a review of the museum’s “legacy content.” CNN pointed out that the statement failed to mention the EO targeting “improper ideology.” The display included information about the impeachment of Presidents Andrew Jackson and Bill Clinton and the impeachment process against President Richard Nixon. (See also [NPR](#) coverage.)

The Smithsonian has [said](#) in a formal statement that there was no pressure from the administration or other government official for the removal and that “the section – Impeachment – will be updated in the coming Y1, Weeks to reflect all impeachment proceedings in our nation’s history.” Perhaps, as Joyce Vance [notes](#), a silver lining – press coverage and media outrage matter.

**Y1, Week Thirty**, in a [letter](#) to Lonnie Bunch, secretary of the Smithsonian Institution, signed by White House senior associate Lindsey Halligan, director of the domestic policy council, Vince Haley, and director of OBM, Russ Vought, the White House stated it wants to ensure that museums “reflect the unity, progress and enduring values that define the American story” and reflect the [Restoring Truth and Sanity to American History](#) EO. To do so, the White House will undertake a review of public-facing content, curatorial process, exhibition planning, collection use and narrative standards.

**Y1, Week Thirty-One**, Trump took a break from orchestrating peace in Ukraine with another attack on the Smithsonian, the “last remaining segment of WOKE.” He complains that the museums are “out of control” in presenting content that portrays the country in a “horrible” light, including slavery. He says that the museums will now suffer the same fate as the universities and law firms, concluding that “This Country cannot be WOKE, because WOKE IS BROKE.”

**Y2, Week Three**, District Judge Cynthia M. Rufe [ordered](#) a temporary halt to further removals and/or destruction of the President’s House site by the Interior Department and the National Park Service, following a lawsuit brought by the City of Philadelphia. The site is where George Washington lived as the head of the newly established U.S. government. The household included nine enslaved people, who were memorialized by placards and videos at the site, until the Trump administration took them down. One of the plaques, titled “The Dirty Business of Slavery,” described how the slave

trade affected the lives of 12.5 million Africans forcibly brought to the Americas. The plaques explaining the site were removed and screens showing videos were switched off. See [“How the National Park Service Is Deleting American History.”](#)

**NGOs. Y1, Week Three,** Trump declared war on NGOs. In his [Memorandum for Heads of Executive Department and Agencies](#), he calls out NGOs “many of which,” he claims with absolutely no evidence, “are engaged in actions that actively undermine the security, prosperity and safety” of Americans.” The policy is to stop “funding NGOs that undermine the national interest.”

**Russia Investigation. Y1, Week Ten,** in his [Crossfire Hurricane](#) Presidential Memorandum, Trump declassified certain materials related to the FBI’s investigation of Russian interference in the 2016 election, codenamed Crossfire Hurricane. Certain other information from the investigation remains classified.

**Seabed Mining. Y1, Week Fourteen,** in his [Unleashing America's Offshore Critical Minerals and Resources](#) EO (see also related [Fact Sheet](#)), Trump is positioning the country to tap seabed minerals through a focused effort on exploration and development both within the jurisdiction of the United States and beyond.

**Sovereign Wealth Fund.** In his [A Plan for Establishing a US Sovereign Wealth Fund](#) EO, Trump directs the Treasury Secretary and Commerce Secretary to develop a plan for the establishment of a sovereign wealth fund.

### **Rescission of “Harmful Executive Orders”**

Among the 78 EOs issued by President Biden that were [rescinded](#) on Day One (see Appendix A), were EOs that advanced racial equality, combatted discrimination on the basis of gender, addressed climate change, imposed additional ethics requirements for political appointees, focused on the underlying causes of migration, lowered prescription drugs, withdrew offshore drilling from certain areas, protected transgender persons in the military and imposed sanctions on settlers accused of violence against Palestinians in the West Bank.

The directors of the Domestic Policy Council and the National Economic Council are tasked with identifying additional EOs to repeal and additional new EOs to replace rescinded ones. The National Security Adviser is directed to review all Biden-era National Security Memoranda that “harm national security, domestic resilience and American values” for possible rescission.

### **Unleashing Law Enforcement**

**Y1, Week Fifteen,** in his [Strengthening and Unleashing America’s Law Enforcement to Pursue Criminals and Protect Innocent Citizens](#) EO, Trump calls for establishing “best practices at the state and local level for cities to unleash high-impact local police forces, protect[ing] and defend[ing] law enforcement officers wrongly accused and abused by state and local officials and surg[ing] resources to officers in need.” He calls on his administration “to ensure that law enforcement across America focus[es] on ending crime, not pursuing harmful, illegal race-and sex-based ‘equity’ policies.”

The Attorney General is directed to create mechanisms to provide legal resources and indemnification for law enforcement officers “who unjustly incur expenses and

liabilities for actions taken during the performance of their official duties to enforce the law. This mechanism shall include the use of private-sector pro bono assistance for such law enforcement officers.”

The Attorney General, the Secretary of Defense and the Homeland Security Secretary are to “increase the provision of excess military and national security assets” to assist state and local law enforcement, and the Secretary of Defense and Attorney General are to “determine how military and national security assets, training, non-lethal capabilities and personnel” can be deployed “to prevent crime.” We should connect two sets of dots: the removal of the [TJAGs as part of the Friday night massacre](#) and the [gutting](#) of the Civil Rights Division.

The Legal Defense Fund (LDF) [published](#) a Fact Sheet dissecting the various elements of the EO on Policing. The LDF addressed the limits of the EO:

- the federal government cannot direct local or state law enforcement agencies;
- EOs do not create, amend, or change existing law, and this order is no exception;
- some federal grant programs are controlled by Congress, and federal agencies do not have the power to change them;
- DoJ cannot unilaterally end or dismiss “consent decrees” or other court orders before amendment or termination (While DOJ can request to amend or terminate consent decrees, the presiding judge is the ultimate decision-maker; however, out-of-court agreements that are not subject to court oversight do not require court approval); and
- equal opportunity and antidiscrimination obligations are enshrined in the U.S. Constitution and our federal civil rights laws.

That said, the EO:

- encourages increased arrests and incarceration, even for minor offenses;
- increases militarized force and weaponry in protests and warrant executions;
- reduces accountability for misconduct, including constitutional violations, by officers and law enforcement agencies; and
- could embolden law enforcement agencies and officers to push the bounds of their authority.

And as a practical matter, in Louisiana, for example, as [reported](#) by 4WWL, six DoJ attorneys who oversaw the New Orleans Police Department consent decree were taken off the case this week amid a shakeup. Officials involved in the case believe this dramatic change could signal that the end of the 12-year federal oversight could come well before the two-year “sustainment period” granted in January by a District Judge. See also [ProPublica](#) coverage.



# DEMOCRACY FIGHTS BACK – RULE OF LAW EXPLAINER

## Introduction

**Y1, Week Fifty-One**, as of January 15, 2026, *Just Security* is tracking 582 active cases (which counts as one case the more than 100 lawsuits and 50 restraining orders from dozens of federal judges on student visa reversals, before the government [reversed](#) its decision and restored the F-1 registrations on April 25, 2025). Of these cases:

### Plaintiff wins:

- Case closed in favor of plaintiff: 7
- Government blocked: 51
- Government temporarily blocked: 109
- Government blocked pending appeal: 33

Total: 200

### Government wins:

- Temporary block denied: 40
- Not blocked pending appeal: 46
- Case closed/dismissed in favor of government: 24

Total: 110

Awaiting court ruling: 230

Government action temporarily blocked in part; temporary block denied in part 16

Case close: 26

Here are some of the litigation trackers:

- [Civil Rights Litigation Clearinghouse](#)
- [Forbes](#)
- [Just Security](#)
- [Lawfare](#)
- [New York Times](#)
- [Washington Post](#)
- [Democracy Forward News & Updates](#)

Other trackers:

- [CBCF](#)
- [Chamberlain - Tracking Politicization of the Military](#)
- [Christina Pagel](#)
- [Choose Democracy - Tracking the Trackers](#)
- [CNN Tracker of EOs](#)
- [Horizons Project - movement activity](#)
- [Project 2025 Tracker](#)
- [Public Citizen - Tracking Conflicts of Interest](#)
- [Resist List](#)
- [CAP: Global Weakness Watch](#)

Robert Hubbell [provided](#) a succinct refresher on the relevant Constitutional and legislative principles:

- Congress makes the laws (Article I, Section 1);
- the president must take care that the laws are faithfully executed (Article II, Section 3 – the **Take Care Clause**);
- all appropriations are to be authorized by Congress (Article I, Section 9 – the **Appropriations Clause**);
- the president must carry out the appropriations made by Congress; and
- the president cannot refuse to spend the money appropriated by Congress (**Impoundment Control Act**).

There are two other relevant clauses of the Constitution.

- The **Presentment Clause** (Article I, Section 7) provides that after the Senate and the House have passed legislation, the President may only sign or return legislation (in whole and not in part) and may not otherwise pick and choose which provisions become law and which do not.
- The **Spending Clause** (Article I, Section 8) gives Congress exclusive power over the federal purse, including the power to attach conditions to the expenditure of federal funds. The President has no constitutional power to countermand these appropriations.

The actions of Trump and Musk – the cuts, the closures and the hacking in support thereof, Hubbell reminds us, should not be labelled as “controversial,” or “disputed,” or “illegal.” “They overthrow the constitutional order and separation of powers by claiming that the president exercises the authority granted to Congress in Article I of the Constitution. That is a coup.” It is now up to the courts under Article III to resist Trump’s encroachment.

Thus far, the legal challenges have served two purposes. The first has been to slow down the challenged actions and the second is that the lawsuits have yielded new information about the extent of the efforts to dismantle the institutions of government. *POLITICO* [reported](#) that sworn affidavits from the DoJ provided the following insights: Thomas Krause, a Musk ally, [described his handling of Treasury’s massive payment system](#), indicating he had “over the shoulder” access to view it and had toyed with copies of the code underlying the system; Trump’s then day-to-day manager of USAID, Peter Marocco, filed a [12-page affidavit](#) describing efforts to shutter the agency, and forced DoJ to admit that those efforts were more extensive than lawyers had previously acknowledged in court; and that FBI leaders had resisted efforts by Trump’s appointees in DoJ to disclose the names of FBI agents who worked on January 6 cases.

That said, we should be under no illusion as to how close we are to a constitutional crisis. Recall that, during a 2021 interview, Vance, a graduate of the Yale Law School, said he would advise Trump to “fire every single midlevel bureaucrat, every civil servant in the administrative state, replace them with our people. When the courts stop you, stand before the country, like Andrew Jackson did, and say, ‘The chief justice has made his ruling. Now let him enforce it.’” Vance, together with Musk and others, has

continued with this riff in the face of a growing number of legal challenges (described below) to Trump administration actions.

Musk reacted to a [temporary restraining order](#) with the following post referring to Judge Engelmayer: “A corrupt judge protecting corruption. He needs to be impeached NOW!” Vance posted his view that, “If a judge tried to tell a general how to conduct a military operation, that would be illegal. If a judge tried to command the attorney general in how to use her discretion as a prosecutor, that’s also illegal. Judges aren’t allowed to control the executive’s legitimate power.”

Joyce Vance, professor at the University of Alabama School of Law, wrote in an e-mail to [NBC News](#): “The Constitution and our rule of law tradition are set up so that the courts have jurisdiction to consider the scope of power possessed by the executive branch (the president), when his actions are challenged. “Centuries of precedent establish the role of the courts in checking overreach by the executive branch,” including cases like [Youngstown Sheet & Tubing Company v. Sawyer](#), where the U.S. Supreme Court refused to let President Harry S. Truman take over U.S. steel mills during the Korean War. In *Youngstown*, the Supreme Court held that when the President acts:

- in accordance with express or implied authorization, “his authority is at its maximum” for that authority includes all that he possesses under Article II plus all that Congress can delegate, and only in these circumstances does the President personify federal sovereignty;
- in absence of congressional grant or denial of authority, there is a “zone of twilight” in which he and Congress may have concurrent authority or in which authority is uncertain; and
- in a manner incompatible with the expressed or implied will of Congress, “his power is at its *lowest ebb*,” for then he can rely only on his own Constitutional powers, less any Constitutional powers of Congress over the matter.

Marin K. Levy, professor at Duke Law School, told CNBC via e-mail: “The State Attorneys General and the judge in this case were all acting well within their authority. What we saw here was the judicial system working as it is supposed to.”

**Y1, Week Fifteen**, the *Washington Post* [reports](#) that, as the number of legal challenges edge up to 200, DoJ lawyers defending the administration in these cases “are encountering mounting criticism and frustration from federal judges, a sign of deepening tension between the executive branch and courts weighing its aggressive uses of power. In recent hearings and rulings, judges appointed by presidents of both parties have criticized the statements and behavior of administration officials, accusing them of defying court orders, submitting flimsy evidence, providing inadequate answers to questions and even acting like toddlers.” In short, the deference often shown to the DoJ, the only department of the federal government to have a value in its name, is quickly dissipating.

**Y1, Week Twenty-Eight**, Jennifer Rubin, writing in *The Contrarian*, [highlighted](#) the key role being played by Democratic State Attorneys General in pushing back against the administration on multiple fronts. Rubin points out that these AGs from 23 Blue

states and D.C. are in court regularly challenging the administration, with suits pushing back on suspensions or terminations of vital federal funding, violations of rights of individuals to privacy of information shared with government agencies, the tariffs, machine gun conversions and restrictions on abortion access.

Some AGs have litigated cases involving their own states, including CA AG Rob Bonta's challenges to the deployment of Marines and National Guard in LA and IL AG Kwame Raol's response to the administration's crackdown on "sanctuary cities."

The latest arena, Rubin notes, is the fight against DoJ demands for access to state voter files. She ties the push for voter data to an initiative highlighted by [the New York Times](#) to find reasons to bring criminal prosecution against election officials.

## Legal Terminology

An explainer on legal terminology relating to emergency relief in federal court:

- A **temporary restraining order** (or **TRO**) is a pre-trial order that stops (enjoins) or mandates conduct. It is issued in emergency situations to prevent irreparable harm and, under Rule 65 of the Federal Rules of Civil Procedure, can be issued without notice to the affected party. TROs tend to have short durations (maximum 14 days, unless both sides to a longer term or there is "good cause" for an extension) and generally will be followed by consideration of a preliminary injunction. Requesting parties will request both a TRO and a preliminary injunction. Both are intended to preserve the status quo pending decision on the merits of the underlying case.
- Like a TRO, a **preliminary injunction** is sought to prevent irreparable harm pending the outcome of a case. They can only be issued after the affected party has notice and both parties have an opportunity to be heard. To succeed in getting a preliminary injunction, the requesting party must establish that it is likely to succeed on the merits of (that is, win) their underlying case, it is likely to suffer irreparable harm if the preliminary injunction is not granted, that the balance of the equities (interest in obtaining the injunction versus burden on the affected party) tips in their favor, and the granting of the injunction is in the public interest (*Winter v. NRDC*). There is no time limit on a preliminary injunction and typically runs while the case is pending.
- A court will issue a **permanent injunction** if it finds that the requesting party has suffered irreparable injury, that remedies at law are inadequate to compensate the requesting party for its injury, based on the relative hardships, a remedy in equity is warranted and the public interest will not be disserved by the permanent injunction.
- In unusual circumstances, injunctions can be issued on a nationwide basis.
- Preliminary injunctions can be appealed; TROs can be appealed but that is less customary.
- Both TROs and preliminary injunctions are equitable remedies. These remedies are framed as extraordinary and drastic. A party requests a court to issue a TRO

and/or a preliminary injunction by filing a **motion**. If the court grants any of these motions to block action, that action is “**enjoined**.”

- An “**administrative stay**” is a court-ordered temporary suspension (a pause) of a legal proceeding or action.
- A “**writ of mandamus**” is an extraordinary remedy to compel the performance by a public official of a non-discretionary duty that the official failed to perform.
- Legal relief is being sought in [federal court](#) – the lower courts are **District Courts**. If District Court decisions are appealed, typically they are heard by a panel of three judges at the relevant appellate court (called a **Circuit Court**). There are 94 federal judicial districts divided among 12 regional circuits. An appellant can request a re-hearing of the full appellate court (*en banc*). These decisions can be appealed to the **Supreme Court**. In a few instances, the government has gone directly to the Supreme Court for relief.
- In describing case outcomes, one typically attributes statements and holdings as being of the relevant court (*e.g.*, “The Court held ...”).

As Suzanne Goldberg noted in her Lawfare [post](#), federal courts have responded in a variety of ways to the flurry of challenges to the Trump administration:

- grant a TRO and then dissolve it days later after determining the court lacked jurisdiction over a [union challenge to the federal “fork in the road” offer](#);
- grant and then extend a TRO prohibiting the Trump administration from sending home [USAID employees abroad](#) but then [deny a preliminary injunction](#) after full briefing and multiple hearings;
- deny a TRO for lack of irreparable harm but leave open the possibility of a preliminary injunction in a challenge to [DOGE’s access to internal agency data](#) and other Musk and DOGE actions;
- issue a TRO that was proposed and agreed to by [FBI agents, their union, and the government](#) not to publicly share a list of agents involved in the Jan. 6 investigations;
- order the Trump administration to obey its TRO on the [federal funding freeze directive](#) and to report biY1, Weekly on its disbursement of [National Institutes of Health funds](#); and
- [grant a preliminary injunction](#) to block most parts of an executive order ending federal support for programs and grants related to diversity, equity, and inclusion but denied a TRO because it was unnecessary in light of the preliminary-injunction grant.

## **Writ of Habeas Corpus**

**At the end of Y1, Week Sixteen**, Deputy White House Chief of Staff Stephen Miller was quoted as saying that the White House was “actively looking at” suspending the writ of habeas corpus as part of the administration’s deportation efforts. Miller then went on to cite the Constitution, which does in fact provide that the “Writ of Habeas

Corpus shall not be suspended unless when in Cases of Rebellion or Invasion the public Safety may require it.” (This is known as the “Suspension Clause.”)

The legal doctrine of habeas corpus (a legal phrase meaning “you shall have the body”) dates back to the Magna Carta and its literal meaning compels a person who has been detained to be brought physically in front of a judge so that the legality of the detainee’s detention can be determined. A petition for a writ of habeas corpus is the legal means by which an illegal detention can be challenged. It is the one of the “few safeguards of liberty” referred to in the body of the Constitution (noted above) as opposed to the Bill of Rights, which came later. (A history of the doctrine can be found in the 2008 Supreme Court case ([Boumediene v. Bush](#))). (See also, [Federal Judicial Center](#) summary.)

The [Federal Judiciary Act of 1789](#) empowers federal courts to issue writs of habeas corpus. The Suspension Clause does not specify which branch of government can suspend the privilege, but as it is set out in Article I most scholars believe only Congress can suspend it. The privilege of the writ of habeas corpus has been suspended only four times in U.S. history: during the Civil War; in 11 South Carolina counties overrun by the Ku Klux Klan during Reconstruction; in two provinces of the Philippines during a 1905 insurrection and in Hawaii after the bombing of Pearl Harbor.

Only once has habeas corpus been suspended by the President alone, and that was by [President Abraham the 14th](#) during the Civil War.<sup>9</sup>

In the post 9/11 world, in addition to the *Boumediene* ruling, which held that the right to petition for a writ of habeas corpus extends to “aliens” designated as “enemy combatants” and held at Guantanamo Bay, the Supreme Court in 2004 upheld the right of every American citizen avail themselves of the protection of habeas corpus even if

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<sup>9</sup> Shortly after the outbreak of hostilities in 1861, federal troops detained a civilian, John Merryman, on suspicion of sabotage. His counsel submitted a petition for a writ of habeas corpus to Chief Justice of the Supreme Court Roger B. Taney (citing as a circuit court judge), who delivered an opinion from the bench citing that the President had no authority to suspend habeas corpus and that military officers had no authority to arrest and detain a civilian or to refuse to surrender such an arrestee to civilian authorities. That ruling was elaborated in a formal [opinion](#) - *Ex Parte Merryman* - filed later. In it he focused on two fundamental principles: only Congress could provide for suspension of the writ of habeas corpus, and only members of the military could be subjected to military jurisdiction. Taney had issued the writ General Cadwalader of Fort McHenry to appear in the circuit courtroom with Merryman in order to explain why he should remain in custody. Cadwalader refused to appear, citing the suspension of the writ.

Taney recognized that he was powerless to force the issue and directed a court clerk to convey the opinion to Lincoln, who in exercise of his obligation to “take care that the laws be faithfully executed” should determine what actions are necessary to enforce the law.) In March 1863, Lincoln by then having suspended habeas corpus in other circumstances after Merryman, Congress gave Lincoln the authority to suspend habeas corpus during the duration of the hostilities “when the public safety may require it.”



declared to be an enemy combatant ([Hamdi v. Rumsfeld](#)). Also in 2004, the Supreme Court ruled that foreign detainees captured outside the United States and brought to Guantanamo Bay on suspected ties to terrorism had the right to challenge their detention in U.S. courts ([Rasul v. Bush](#)).

It is no surprise then that the doctrine has been at the heart of cases challenging deportations by the Trump administration. In the case involving Venezuelans deported under the Alien Enemies Act, the Supreme Court [reaffirmed](#) that the doctrine applies to the deportees and that each is entitled to challenge their deportation (“today’s order and *per curiam* confirm that the detainees subject to removal orders under the [Alien Enemies Act] are entitled to notice and an opportunity to challenge their removal.”) (04/07/25). Since then, federal judges in New York and Texas have blocked deportations and removals on habeas grounds.

Writing in The Atlantic (“[Kristi Noem Should Probably Know What Habeas Corpus Is But she doesn’t](#)”), Jonathan Chait summarized the exchange between DHS Secretary Noem and Senator Maggie Hassan: Hassan, “What is habeas corpus?” Noem, replied, “Habeas corpus is a constitutional right that the president has to be able to remove people from this country, and suspend their right to –.” Hassan interjected, “it’s the legal principle that requires that the government provide a public reason for detaining and imprisoning people.” Noem, “I support habeas corpus,” and, then, contradicting herself added, “I also recognize that the president of the United States has the authority under the Constitution to decide if it should be suspended or not.”

### **Context**

Georgetown University Law Center Professor Stephen I. Vladeck, in his Y1, Weekly newsletter, [On the Docket](#), set out the following data in his piece on “setting the record straight” after analyzing the 67 cases (as of 3/27/25) in which a District Court had ruled on a motion for a temporary restraining order or a preliminary injunction. He notes that the volume of cases reflects in part the flood of EOs – 100 in 65 days (previous record was FDR, 99 EOs in his first 100 days):

- courts in 46 of the 67 cases have granted some form of preliminary relief;
- the 67 rulings have come from 51 different district judges, appointed by seven different presidents sitting in 14 different District Courts, and relief has been granted by 39 different judges, appointed by five presidents sitting in 11 different District Courts;
- with one exception, none of the 67 suits has been filed in so-called “single-judge divisions,” with the overwhelming number of cases being filed in courts in which the chance of drawing a specific judge is less than 15% (note, “judge-shopping” is different from “forum-shopping,” with the latter being a selection based on the overall composition of the relevant bench) – note too, in contrast, a lawsuit was filed by the DoJ seeking declaratory judgment to terminate collective bargaining agreements in the Waco Division of the Western District of Texas, where it had

a 100% chance of the case being assigned to a Trump-appointed judge, and the appeal goes to the highly conservative Fifth Circuit;

- approximately one in five judges halting a Trump policy (9/46) were appointed by a Republican president, 10 of the 21 denials of preliminary relief were by judges appointed by Democratic presidents, in the 20 cases assigned to Republican-appointed judges, nine issued temporary restraining orders or preliminary injunctions, and in the eight cases assigned to Trump-appointed judges, all eight denied interim relief; and
- there is no evidence that judges have taken deliberate steps to insulate their rulings against appellate review.

### **Trump's Grasp of the Constitution and Declaration of Independence**

**Y1, Week Sixteen**, as the American Values Coalition [highlighted](#), in one week alone at the end of April, Trump betrayed a stunning ignorance of America's founding documents.

First, when asked what the copy of the Declaration of Independence in the Oval Office means to him, it was clear he had little idea what it says ("Well, it means exactly what it says, it's a declaration. A declaration of unity and love and respect, and it means a lot. And it's something very special to our country.").

On [Meet the Press](#), as noted below, when queried about whether due process protections apply to all in the United States, citizen and non-citizen alike (they do) and whether he has a duty to uphold the Constitution (he does – after all that is the oath that he took, two times), he replied "I don't know."

In responding to a question about judicial rulings in the deportation cases, he overlooked the right to trial under the Seventh and Eighth Amendments.

### **Vance's Warning**

**Y1, Week Eighteen**, [speaking](#) to Ross Douthat of the *New York Times*, Vance lectured Chief Justice Roberts on the role of the Supreme Court – the courts should not be in the business of checking the excesses of the Executive Branch, for in doing so the courts are overturning the will of the American people, and he (Roberts) should be checking the excesses of the Judicial Branch. Vance complained that one "cannot have a country where the American people keep on electing immigration enforcement and the courts tell the American people they're not allowed to have what they voted for. That's where we are right now." Recall, as Ruth Marcus reminded us in her article in The New Yorker ("[JD Vance Warns Courts to Get in Line](#)"), in 2021, the advice Vance would have given to Trump: "fire every single mid-level bureaucrat, every civil servant in the administrative state. Replace them with our people. And when the courts – because you will get taken to court – and when the courts stop you, stand before the country like Andrew Jackson did and say: 'The chief justice has made his ruling. Now let him enforce it.'"

### **Limits Of Supremacy Clause**

**Y1, Week Forty-Nine**, District Judge Anne M. Nardacci [ruled](#) that the government had failed in its challenge under the Supremacy Clause to New York State's Driver's

License Access and Privacy Act (known colloquially as the “Green Light Law”). The Green Light Law allows drivers in New York State to obtain driver’s licenses without having to prove they are in the country legally. It was enacted in part to improve road safety, increasing the likelihood that drivers would take road tests. It is also easier for license holders to get motor insurance, thus reducing the number of accidents involving uninsured drivers.

The government alleged that certain provisions of the Green Light Law interfere with the enforcement of federal immigration laws in New York State.

### **“Presumption of Regularity”**

*Just Security* reminds us about the “presumption of regularity,” which is a judicially-created doctrine of deference that essentially instructs courts to presume that, unless there is clear evidence to the contrary, officials of the executive branch have [“properly discharged their official duties”](#) and have acted with procedural regularity and with bona fide, non-pretextual reasons. What this means is that “the presumption can preclude discovery, limit review of the facts, and truncate cases.” It can limit or end civil suits challenging government action and constrain the ability of criminal defendants’ to claim [vindictive or selective](#) prosecution. *See also* [“The Presumption of Regularity in Judicial Review of the Executive Branch.”](#)

*Just Security* is [tracking](#) cases in which courts have made explicit statements about the conduct of the government in the context of the cases before them. The researchers looked at three category of cases: cases in which a court called out the government for non-compliance with its orders (over 15 cases); cases in which a court accused the government of providing false or highly misleading information, including false sworn declarations (over 35 cases); and cases in which a court found the government likely engaged in arbitrary and capricious conduct (over 50 cases).

### **Shirking Ethics Rules With Impunity**

Jamie Conrad, who works with Lawyers Defending American Democracy, in his Lawfare essay ([“Senior Government Lawyers Are Shirking Ethics Rules With Impunity”](#)), calls on state courts and bar associations to counter false claims that state ethics do not apply to senior government lawyers. In November 2024, I [explored](#) the ethical dilemmas that line government lawyers could potentially face under the incoming administration. Conrad comes at this issue from a different perspective, informed by the behavior of senior DoJ officials.

Conrad reminds us that government lawyers are subject to the same standards as private-sector lawyers, and state courts have, on various occasions [sanctioned](#) Assistant U.S. Attorneys for violating ethics rules in the course of prosecutions, in [several cases](#) over objections that the AUSA’s federal status insulated them from state ethical oversight. That said, Trump and his enablers have been pushing aggressively against the rule of law and norms in legal ethics, and state supreme courts have largely not pushed back. And they believe they are beyond the purview of state ethics obligations. “The net result,” he posits, “is that federal government lawyers are becoming insulated from investigation and discipline regarding their compliance with

rules of professional conduct. As a result, they are increasingly free to ignore those rules.”

Conrad also reminds us that, in the 1980s, controversy [arose](#) as to the ability of federal prosecutors to contact persons they knew to be represented by counsel, which is universally prohibited by state rules. DoJ argued that the Supremacy Clause [allowed](#) it to establish its own ethical standards for its lawyers. Congress in response enacted 28 U.S. Code 530B (the “[McDade Amendment](#)”) in 1998, which states that government lawyers, including the Attorney General and Deputy Attorney General, “shall be subject to State laws and rules ... to the same extent and in the same manner as other attorneys in that State.” Since then, DoJ’s Office of Professional Responsibility has conducted initial investigations of ethics complaints made to it, and where it has found misconduct, [referred](#) cases to the relevant state bodies.

But, in ethics complaints involving [Pam Bondi](#) and a pending case against former Assistant Attorney General Jeffery Clark for [disbarment](#) for his role in trying to overturn the 2020 election, DoJ [filed](#) amicus briefs suggesting that the department would no longer abide by the McDade Amendment, arguing that no law “suggests that State bars enjoy a roving commission to police the conduct of Department attorneys ... through the putative regulation of attorney bar licensure.” Deputy Attorney General Todd Blanche [double down](#) on this threat in a speech to the Federalist Society in November, when he exclaimed that DoJ would change its rules to take “activist, obnoxious bars ... out of the picture” by claiming sole authority to adjudicate ethics complaints against its lawyers. (In the same speech, Blanche also warned that DoJ was at “war” with “rogue activist judges.”)

These statements overlook, or ignore, the fact that the McDade Amendment is federal law. Moreover, in 1979, the Supreme Court (in [Leis v. Flynt](#)) stated that, “[s]ince the founding of the Republic, the licensing and regulation of lawyers has been left exclusively to the States,” including “the discipline of lawyers.”

Conrad concludes, “State courts and state bars have a momentous responsibility right now to step up and investigate lawyers who act as though neither the law nor professional ethics rules apply to them. We should all pay attention and make clear that we expect government lawyers to remember their legal and ethical obligations to the public – and speak up when state disciplinary authorities fail to hold such lawyers in check.”

*See also* a call to action from Lauren Stiller Rikleen, Susan Rubel, Amanda Cats-Baril and Arabella Meyer, the leadership team for the [Meeting the Moment](#) initiative of [Lawyers Defending American Democracy](#) (“[White House ‘Score Settling’ Raises Fears of a Weaponized Government](#)”).

## DEMOCRACY FIGHTS BACK – THE COURT CASES

### AFL-CIO, Department of People Who Work for a Living

**Y1, Week Three**, the AFL-CIO [launched](#) its counter-offensive against DOGE by forming the [Department of People Who Work for a Living](#). The exact scope, as [reported](#) by the *New York Times*, remains unclear, though the effort is likely to focus on highlighting what DOGE is doing and on the gap between the wealth of the emerging oligarch class and the federal employees being let go. It will also serve as a resource on fighting back.

### Alien Enemies Act

#### *J.G.G. et al.*

**Y1, Week Eight**, The ACLU, the ACLU of the District of Columbia and Democracy Forward, expecting invocation of the Alien Enemies Act on March 15 (it turns out the Proclamation was signed in secret on the 14<sup>th</sup>), [filed](#) pre-emptively a motion in the D.C. Circuit requesting a temporary restraining order on behalf of five Venezuelans scheduled for deportation. (See Democracy Forward [press release](#).) The bases for the [challenge](#) are violation of the statutory terms of the Alien Enemies Act (as the Act requires “declared war,” or an “invasion or predatory incursion” “perpetrated, attempted, or threatened against the territory of the United States by any foreign nation or government”); unlawful bypassing of the requirements of the INA; violations of the Administrative Procedures Act; and infringement of rights to Due Process under the Fifth Amendment. Plaintiffs also made a motion for [certification](#) as a class action covering all nationwide those nationwide who would be subject to the Alien Enemies Act Proclamation. See [Court Listener docket entries](#).

Chief Judge of the D.C. Circuit James E. Boasberg issued a 14-day temporary restraining order. Trump issued his Proclamation a short time later.

The Trump administration [made](#) an emergency motion for a stay pending appeal. The Trump administration advances the argument in effect of unlimited Article II powers of the President and that there should be judicial deference to “the President’s authority to declare an invasion of the United States and his inherent Article II authority to repel such an invasion... .” Note that the TdA was designated as a foreign terrorist organization, so it is unclear why wartime authority is at all justified. Plaintiffs posit that TdA is not a “foreign nation or government,” and is not engaged in an “invasion” or “predatory incursion” within the meaning of the Alien Enemies Act because criminal activity does not rise to the level of any of these requirements. The legislative intent was to cover “escalating military actions taken *en route* to a declared war.”

During an emergency hearing Saturday evening, Chief Judge Boasberg expanded his temporary restraining order to cover all noncitizens covered by the Proclamation who are in custody. A hearing on the merits was scheduled for March 21. (See [Docket Entries](#).)

It was then widely reported that 238 members of TdA and 23 members of the Salvadoran MS-13 had been deported to El Salvador. It is unclear as to what basis the deportations were ordered, and certainly the Salvadorans would not have been covered

by the Alien Enemies Act Proclamation. The following Monday (03/17/25), Chief Judge Boasberg took the Trump administration to task for not ordering the planes carrying the Venezuelans to turn back following his oral order. The DoJ attorney declined repeatedly to provide details of the flights, claiming somewhat incredulously that he was “not authorized” to do so and equally incredulously contended the order was not binding as it was given orally from the bench.

In response, the Chief Judge issued a “minute order” (03/17/25) calling for a sworn declaration that no one on any flight departing the United States after 7:25 p.m. on March 15, 2025 was removed solely on the basis of the Proclamation at issue; a sworn declaration setting forth when the Proclamation at issue was signed, when it was made public, and when it went into effect; the Government’s best estimate of the number of individuals subject to the Proclamation currently remaining in the United States and how many are currently in U.S. custody; and the Government’s position on whether, and in what form, it will provide answers to the Court’s questions regarding the particulars of the flight.

The Trump administration [appealed](#) the Chief Judge’s decision and [requested](#) that the case be reassigned to another judge. A Texas Republican member of the House has said he is launching an effort to impeach the Chief Justice. The border czar Tom Homan reportedly said in response to the decision “I don’t care what the judges think” and Stephen Miller characterized the decision as “patently unlawful.” (See *Washington Post* [reporting](#).) DoJ also claimed in a [motion to vacate](#) that the court ceased to have jurisdiction over the flights as they were over international waters when the order to turn back was given.

Tuesday (03/19/25), DoJ provided a sworn declaration, demanded by the Chief Judge following a hearing Monday evening in which DoJ attorneys repeatedly failed to answer his questions, regarding details of the flights. Shortly thereafter, the Chief Judge asked for more information. Trump, in a post on Truth Social, suggested the Chief Judge should be impeached. This prompted Chief Justice John Roberts to state, in a statement issued by the Supreme Court, that, “For more than two centuries, it has been established that impeachment is not an appropriate response to disagreement concerning a judicial decision. The normal appellate review process exists for that purpose.” Trump [doubled down](#) on his attacks the following day.

**Y1, Week Ten**, Six Republican members of Congress filed a resolution calling for the impeachment of Chief Judge Boasberg, claiming he overstepped his authority and that courts cannot second guess a president’s determination that the United States has been invaded. As Joyce Vance [pointed out](#) in a Substack, the points cited in the resolution mirror the arguments advanced by the Trump administration in front of a panel of three judges of the D.C. Court of Appeals on Monday. These arguments are three-fold:

- the District Court is interfering with presidential powers and, therefore, the government should be able to appeal the temporary restraining order, even though they typically are not appealable;
- the District Court lacked jurisdiction to enter the temporary restraining order because the invocation of the Alien Enemies Act cannot be reviewed by the



courts, based on the government's reading of the 1948 Supreme Court's decision in [Ludeke v. Watkins](#), which held that the president's finding that we were still at war several years after WWII ended cannot be reviewed by the courts, but that argument ignores the Supreme Court's acknowledgment that courts can review whether a person qualifies as "an enemy alien" subject to deportation for purposes of the Alien Enemies Act; and

- the plaintiffs' action constitutes a request for *habeas corpus* and was filed in the wrong place, as to which the plaintiffs maintain their action is not a *habeas* request since it is unclear where the members of the class are being held.

One of the three appellate court judges had this [to say](#) about the deportations: "There were plane loads of people. There were no procedures in place to notify people. Nazis got better treatment under the Alien Enemies Act."

The hearing before the Court of Appeals followed hours after Chief Judge Boasberg, focusing on due process rather than on the propriety of the invocation of the Alien Enemies Act, [ruled](#) that those deported were entitled to have a court hearing before their deportations to determine whether they belonged to the TdA gang (03/24/25). The administration, the following day, [invoked](#) the "state secrets privilege" as a basis for refusing to provide flight details and information demanded by Chief Judge Boasberg about who was aboard the flights, and in so doing declined to further respond to the District Court's March 17 "minute order."

The D.C. Circuit (2-1), on March 26, [denied](#) the government's motion to stay the temporary restraining orders. The government two days later [appealed](#) to the Supreme Court seeking an order to vacate the District Court order and for an immediate administrative stay. The March 15 temporary restraining orders have been [extended](#) to April 12 (03/28/25). Plaintiffs have [moved](#) for a preliminary injunction (03/29/25) to not remove plaintiffs or the provisional class from the country pursuant to the Alien Enemies Act.

Chief Judge Boasberg [reportedly](#) was considering holding administration officials in contempt for, in his words, acting in bad faith in sending the deportees to El Salvador while emergency proceedings were being pulled together.

And Chief Judge Boasberg cited a third problem in his [March 24 order](#) denying the government's motion to vacate his temporary restraining order – the deportations may have violated Section 1242 of the [Foreign Affairs Reform and Restructuring Act](#) (FARRA). FARRA codifies the [U.N. Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment](#) (UNCAT) and states, "It shall be the policy of the United States not to expel . . . any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture."

**Y1, Week Twelve**, the deportations remain front and center on court dockets.

Following the DC Circuit denial of the administration's appeal and the appeal to the Supreme Court, the Supreme Court [vacated](#) the temporary restraining orders issued by Chief Judge Boasberg in a 5-4 decision, with Justice Amy Coney Barrett siding with the minority (04/07/25). The Court expressly stated it was not reaching the merits of

whether the Alien Enemies Act was properly invoked or that the plaintiffs fall within the category of removable aliens. The Court essentially held that these cases must be brought in *habeas* and accordingly must be brought in the district of confinement. These plaintiffs are in Texas. The Court also confirmed that detainees subject to removal orders under the Alien Enemies Act are entitled to adequate notice and an opportunity to challenge their removal in court before they are removed. For the Court the only question they were ruling on was which court the challenges must be brought.

In her stinging dissent, Justice Sotomayor notes that the implication of the administration's position that even when it makes mistakes it cannot retrieve wrongfully deported individuals is that:

“not only noncitizens but also United States citizens could be taken off the streets, forced onto planes, and confined to foreign prisons with no opportunity for redress if judicial review is denied unlawfully before removal. History is no stranger to such lawless regimes, but this Nation's system of laws is designed to prevent, not enable, their rise.”

Justice Sotomayor concludes “In light of [agreement between the majority and the minority on due process], the Court's decision to intervene in [the] litigation is as inexplicable as it is dangerous.

With the Supreme Court directing detainees to the state of confinement, a class petition for writ of habeas corpus and class complaint for declaratory judgment and injunctive relief was [filed](#) in the Southern District of New York (04/08/25) on behalf of two Venezuelans in detention in New York State and at risk of imminent deportation and others similarly situated. Plaintiffs are represented by the American Civil Liberties Union Foundation and the New York Civil Liberties Union. (See also [memorandum in support of temporary restraining order](#) (04/08/25). District Judge Alvin K. Hellerstein [certified the class](#) and [granted](#) a temporary restraining order.

The complaint sets out the process by which ICE determines who can be removed in which points are tallied for alleged TdA membership characteristics, which relies “heavily on physical attributes like tattoos, hand gestures, symbols, logos, graffiti, and manner of dress.” The complaint goes on to note that “Experts who study the TdA have explained how none of these physical attributes are reliable ways of identifying gang members.” The complaint goes on to argue that the invocation of the Alien Enemies Act failed to meet the statutory requirements – no declared war against either Venezuela and TdA is not a nation, and neither Venezuela nor TdA has invaded the United States or undertaken a “predatory incursion within the meaning” of the Alien Enemies Act. Moreover, there is no process to challenge designation as alien enemies and the removals violate protections prescribed by Congress for removals of noncitizens.

A similar petition was [filed](#) in the Southern District of Texas on behalf of three Venezuelans in detention in Texas and at risk of imminent deportation (J.A.V., J.G.G. and W.G.H.) and others similarly situated (04/09/25). Plaintiffs are represented by the American Civil Liberties Union Foundation and the ACLU Foundation of Texas. See also [Emergency Application for a Temporary Restraining Order](#). District Judge Fernando Rodriguez Jr. [granted](#) a temporary restraining order. Another Venezuelan

national also [submitted](#) a petition for habeas corpus (03/14/25), and Judge Rodriguez has [issued](#) a temporary restraining order (04/07/25).

**Y1, Week Thirteen**, Judge Boasberg, citing 18 U.S. Code § 401, [finds](#) probable cause to hold Trump administration officials in criminal contempt for actions he says demonstrate a “wilful disregard” of his order to halt the transfer of deportees to El Salvador (04/16/25). The government, he sets out, “provide[s] no convincing reason to avoid the conclusion that appears obvious from the above factual recitation: that [it] deliberately flouted this Court’s written Order and, separately, its oral command that explicitly delineated what compliance entailed.” Judge Boasberg concludes that the Court “will provide the government with an opportunity to purge such contempt. If they opt not to do so, the Court will proceed to identify the contemnor(s) and refer the matter for prosecution.”

Judge Boasberg set out the following next steps: if the government does not choose “to purge their contempt, the Court will proceed to identify the individual(s) responsible for the contumacious conduct by determining whose “specific act or omission” caused the noncompliance. Should those be unsatisfactory, the Court will proceed either to hearings with live witness testimony under oath or to depositions conducted by Plaintiffs. The next step would be for the Court, pursuant to the Federal Rules of Criminal Procedure, to ‘request’ that the contempt be prosecuted by an attorney for the government. If the Government ‘declines’ or ‘the interest of justice requires,’ the Court will “appoint another attorney to prosecute the contempt.”

End of **Y1, Week Thirteen**, the government [appealed](#) the Chief Judge’s finding on criminal contempt to the D.C. Circuit (04/16/25). *See also* the government’s emergency [motion](#) for a stay pending appeal or, in the alternative, a writ of mandamus (04/17/25), taking issue with the choice of rectifying the conduct underlying (purging) the contempt or identify the individuals responsible and either prosecute them or have the court appoint counsel to prosecute them.

The appellate court injected a pause in the criminal contempt process by [granting](#) the government an administrative stay pending further order of the court (04/18/25). The order states that “[t]he purpose of this administrative stay is to give the court sufficient opportunity to consider the emergency motion for a stay pending appeal or a writ of mandamus and should not be construed in any way as a ruling on the merits of that motion.”

Separately, plaintiffs [moved](#) for an immediate ruling by the District Court on their temporary restraining order motion in light of pending deportations from a facility in Texas (04/18/25).

**Y1, Week Fourteen**, the plaintiffs [filed](#) an amended complaint that included habeas petitions for the class of deportees already sent to El Salvador (04/25/25) and [submitted](#) a motion for a permanent injunction (04/26/25). *See also* the [memorandum in support](#).

**Y1, Week Fifteen**, in the first ruling on the merits of whether or not it was proper to invoke the Alien Enemies Act, District Judge Rodriguez [ruled](#) in favor of the plaintiffs (J.A.V., J.G.G. and W.G.H. and others similarly situated) and declared the use of the

Alien Enemies Act by Trump to be illegal (*see also* [Order and Opinion](#)) (05/01/25). The Judge also granted certification of class action status to Venezuelans covered by the Alien Enemies Act EO that are resident or detained in the Southern District of Texas.

In the words of Judge Rodriguez, as to whether the President can use the Alien Enemies Act “to detain and remove Venezuelan aliens who are members of TdA, ... the historical record renders clear that the President’s invocation of the [Alien Enemies Act] through the Proclamation exceeds the scope of the statute and is contrary to the plain, ordinary meaning of the statute’s terms. As a result, the Court concluded that as a matter of law, the Executive Branch cannot rely on the [Alien Enemies Act], based on the Proclamation, to detain the Named Petitioners and the certified class, or to remove them from the country.”

Judge Rodriguez ruled that the political questions doctrine did not bar his inquiry and, turning to the merits of the invocation, found:

The historical records that the parties present, supplemented by the additional records that the Court reviewed, demonstrate that at the time of the [Alien Enemies Act]’s enactment, the plain, ordinary meaning of “invasion” was an entry into the nation’s territory by a military force or an organized, armed force, with the purpose of conquering or obtaining control over territory. In a similar vein, the common usage of “predatory incursion” and, to a lesser degree, “incursion,” referenced a military force or an organized, armed force entering a territory to destroy property, plunder, and harm individuals, with a subsequent retreat from that territory. Although other uses exist for these terms, those rare uses do not represent the ordinary meaning of those terms.

As for the activities of the Venezuelan-directed TdA in the United States, and as described in the Proclamation, the Court concludes that they do not fall within the plain, ordinary meaning of “invasion” or “predatory incursion” for purposes of the [Alien Enemies Act].

The Proclamation makes no reference to and in no manner suggests that a threat exists of an organized, armed group of individuals entering the United States at the direction of Venezuela to conquer the country or assume control over a portion of the nation. Thus, the Proclamation’s language cannot be read as describing conduct that falls within the meaning of “invasion” for purposes of the [Alien Enemies Act]. As for “predatory incursion,” the Proclamation does not describe an armed group of individuals entering the United States as an organized unit to attack a city, coastal town, or other defined geographical area, with the purpose of plundering or destroying property and lives. While the Proclamation references that TdA members have harmed lives in the United States and engage in crime, the Proclamation does not suggest that they have done so through an organized armed attack, or that Venezuela has threatened or attempted such an attack through TdA members. As a result, the Proclamation also falls short of describing a “predatory incursion” as that concept was understood at the time of the [Alien Enemies Act]’s enactment. For these reasons, the Court concludes that the President’s invocation of the [Alien Enemies Act] through the Proclamation exceeds the scope of the statute and, as a result, is unlawful. Respondents do not possess the lawful authority under the [Alien Enemies Act], and based on the Proclamation, to detain Venezuelan aliens, transfer them within the United States, or remove them from the country.

The ruling only applies to the Southern District of Texas, but it is expected to influence rulings in other jurisdictions. District Judge Rodriguez, incidentally, was appointed by Trump.

**Y1, Week Twenty**, one knew where Chief Judge Boasberg was heading when the first paragraph of his [Memorandum Opinion](#) cited exchanges from Kafka's *The Trial* between Josef K and his arresting officers and the second paragraph likened the predicament of the plaintiffs and scores of other Venezuelan noncitizens to Josef K's (06/04/25). (See also the related [Order](#).)

He ruled that the so-called CECOT plaintiff class was entitled to be certified as a class and entitled to preliminary relief. Specifically, the court found that the removal of the CECOT plaintiff class from the country, before they had received "constitutionally adequate notice of the reasons for that removal or any meaningful opportunity to 'actually seek habeas relief, violated their Fifth Amendment right to 'due process of law.'"

As such, the government "must facilitate the [CECOT plaintiff class's] ability to seek habeas corpus relief to contest their removal" under the Alien Enemies Act. He continued, "Although the Court is mindful that such a remedy may implicate sensitive diplomatic or national-security concerns within the exclusive province of the Executive Branch, it also has a constitutional duty to provide a remedy that will 'make good the wrong done.'"

A second class of plaintiffs, those in criminal custody throughout the United States subject to removal under the Alien Enemies Act, was deemed not entitled to relief as the court lacks statutory jurisdiction over them and they had not shown a reasonable likelihood of success on the merits of their habeas claim.

**Y1, Week Twenty-Five**, plaintiffs [filed](#) with the Court an English translation of a [report](#) from the UN Office of the High Commissioner for Human Rights, Working Group on Enforced or Involuntary Disappearances (UNHCR Report). The UNHCR Report on Enforced and Involuntary Disappearances sets out that the government of El Salvador, in response to a UN inquiry on behalf of the families of four Venezuelan men sent to El Salvador as part of the deportations to CECOT, disclaimed control of the men. Rather, the El Salvador stated that,

"The actions of the State of El Salvador have been limited to the implementation of a bilateral cooperation mechanism with another State, through which it has facilitated the use of the Salvadoran prison infrastructure for the custody of persons detained within the scope of the justice system and law enforcement of that other State. In this context, the jurisdiction and legal responsibility for these persons lie exclusively with the competent foreign authorities, by virtue of international agreements signed and in accordance with the principles of sovereignty and international cooperation in criminal matters."

In other words, these men are under the control of the United States, contrary to what the Trump administration has claimed in public and in court filings. Plaintiffs also contend that the U.S. government was aware of the report, but failed to provide it to them or the court. See Democracy Docket coverage, available [here](#) (07/07/25) and [here](#) (07/09/25).

End of **Y1, Week Twenty-Six**, the 250 Venezuelans deported to El Salvador and held in the Centro de Confinamiento del Terrorismo, or CECOT, were exchanged for a group of political prisoners held in Venezuela, including 10 Americans. It is unclear what happens to the cases challenging the legality of those deportations, the principal one being *J.G.G.* See [Bukele](#) post and [Rubio](#) statement. Recall the respective denials by the Trump and Bukele administrations regarding control over these deportees. See [Democracy Docket](#) coverage.

**Y1, Week Twenty-Eight**, DoJ [filed](#) a formal complaint against Judge Boasberg, accusing him of “making improper comments” about Trump and his administration. The complaint, signed by the Attorney General’s Chief of Staff Chad Mizelle, cites Judge Boasberg’s attendance at a Judicial Conference in March, in which the Judge warned that the Trump administration could “disregard rulings of federal courts” and trigger a “constitutional crisis.” The complaint was addressed to the Chief Judge of the United States Court of Appeals for the District of Columbia, Sri Srinivasan.

The *Washington Post* interviewed 16 former detainees held at CECOT for 125 days (“[‘Welcome to hell’: Inside the megaprison where the U.S. deported migrants](#)”) whose matching firsthand accounts of being beaten repeatedly, sexually assaulted and denied access to medical care and counsel likely violated [UNCAT](#), to which the United States and El Salvador are parties. **Warning:** The reports make for very hard reading. The *Washington Post* [has found](#) that many of the detainees entered the United States legally and were actively complying with U.S. immigration rules. A number of detainees suspected they had been detained and deported by the U.S. authorities based solely on their tattoos.

**Y1, Week Twenty-Nine**, the D.C. Circuit (2-1) granted the government’s petition for mandamus and vacated the District Court order’s order finding probable cause for criminal contempt. In short, the per curiam ruling with two concurring opinions was a win for the government and a setback from Judge Boasberg. There was a considerable delay between the temporary administrative stay it granted on April 18, the request on July 21 for additional briefings by the parties and the [ruling](#) (08/08/25).

Mattathias Schwartz, writing for the *New York Times*, [notes](#) that the plaintiffs could appeal to the Supreme Court or request a hearing of the full D.C. Circuit (*en banc*). He noted that Judge Rao’s concurrence left open the possibility that Judge Boasberg could go forward with a contempt proceeding despite ruling, though that option is a “problematic and uncertain path.” Judge Katsas wrote that any order to turn planes around midair would be “indefensible,” comparing it to a district judge who had ordered President Richard M. Nixon’s administration to stop bombing Cambodia during the Vietnam War, which was quickly stayed.

Judge Cornelia Pillard, dissenting, wrote that government officials “appear to have disobeyed” Judge Boasberg’s order and that she would have let Judge Boasberg move forward with criminal contempt proceedings. “The rule of law depends on obedience to judicial orders.” She referred to the whistleblower’s account of how senior DoJ reacted to Judge Boasberg’s initial ruling.



All three of the appellate judges agreed that they lacked appellate jurisdiction over the case, but two decided they had the jurisdiction to vacate Judge Boasberg's order.

Another panel of the D.C. Circuit [vacated](#) (per curiam, 3-0) another ruling by Judge Boasberg that the government was required to provide a means for the initial group of Venezuelans deported to El Salvador under the Alien Enemies Act to challenge their removals even as they were being held in CECOT (08/08/25). The ruling vacated Judge Boasberg's order due to "a fundamental change in circumstances" and sent the case back to him for further proceedings to determine how the deportees can get due process after being held in El Salvador.

**Y1, Week Forty-Three**, the full D.C. Circuit [announced](#) that it is not going to further review (*en banc*) the administration's challenge to Judge Boasberg's [April order](#) finding probable cause of contempt and directing the administration to "purge" the contempt. In so ruling, the majority (8-3) let stand the three-judge appellate decision dismissing the probable cause finding (11/14/25). Interestingly (and confusingly), the *per curiam* ruling allows the contempt proceeding to continue and has the effect of sending the matter back to Judge Boasberg. The judge is free to move ahead with his fact-finding inquiry. The Court noted

"... the peculiar circumstances of this case make en banc review an unnecessary and inapposite vehicle to vindicate either principle. As to the first, as just explained, the panel's order does not prevent the district court from exercising its contempt authority. *The district court remains free to require the government to identify the decision makers who directed the potentially contemptuous actions and to carefully consider next steps.* As to the second, en banc review could not undo the time that our court has devoted to this case at the expense of the district court's ability to proceed; further review could only prolong that delay. And because the panel's order has no precedential effect, en banc review is unnecessary to clarify the law and reaffirm the demanding requirements for issuing a writ of mandamus. (Emphasis added.)

The vote not to review the panel's order en banc should not be misinterpreted. We fully appreciate the seriousness of the governmental conduct the district court observed, and we do not endorse the panel's premature intervention in the district court's decision-making process. Nor should this vote be understood as judicial acquiescence to any disregard for court orders. It most assuredly should not be read to diminish the judiciary's proper use of its contempt power or to excuse noncompliance by government officials. To the contrary, respect for judicial orders, and courts' independence, are essential to the rule of law.

**Y1, Week Forty-Four**, after a seven-month pause due to legal challenges, the criminal contempt proceedings triggered by the Alien Enemies Act deportations to El Salvador resumed in a D.C. courtroom, with Judge Boasberg saying he wanted to hear testimony from those involved in the deportation effort, including the former DoJ prosecutor who came forward as a whistleblower, Erez Reuveni. He also wants to hear from Deputy Assistant Attorney General Drew Ensign, who represented the DoJ during the March 15 hearing and said was unaware of any plans for deportation flights, which the planes were ready to take off or were in the air.

"I certainly intend to find out what happened that day," Boasberg said, "and the government can assist me to whatever degree it wishes." Presumably the focus will be on whether any senior DoJ officials or officials at other federal agencies

purposefully disregarded Judge Boasberg's order to stop the planes from going to El Salvador? And if so, who gave the orders? And at whose direction? See [New York Times](#) and [POLITICO](#) coverage.

**Y1, Week Forty-Five**, a court filing (11/25/25) by the government [indicates](#) that the final decision to transfer detainees, who had been removed from the United States prior to Judge Boasberg's order, to the custody of El Salvador was made by DHS Secretary Noem, and that she had made that decision *after* being briefed on the March 15 oral order as to flights that had left the United States (to return the detainees onboard to the United States). Specifically, the filing states that Deputy Attorney General Todd Blanche and Principal Associate Deputy Attorney General Emil Bove provided DHS Acting General Counsel Joseph Mazzara with legal advice regarding the court's order and he, in turn, conveyed that legal advice, as well as his own legal advice, to Secretary Noem.

In their filing this week, plaintiffs [provided](#) a preliminary, non-exhaustive list of government witnesses that should be called.

**Y1, Week Forty-Nine**, Judge Boasberg again [rules](#) against the government in granting the plaintiffs their motion for a writ of habeas corpus and certifying the lawsuit as a class action (for all rendered to CECOT on March 15 and 16 under Trump's Proclamation). Specifically, after the D.C. Circuit vacated Judge Boasberg's prior preliminary injunction, plaintiffs again moved for an order enjoining the government to facilitate their return to the United States to pursue their individual habeas claims. The District Court "ultimately finds that the United States maintained constructive custody over Plaintiffs while they were imprisoned in El Salvador, thus affording the Court habeas jurisdiction over this action. In addition, it will certify a class of Plaintiffs who were removed on March 15 and seek to enforce their right to a hearing. On the merits, the Court concludes that this class was denied their due-process rights and will thus require the Government to facilitate their ability to obtain such hearing. Our law requires no less."

Although most of the men subject to rendition on March 15 have since been released and are in Venezuela, the Court addressed the question of remedies, noting that what should have happened is that the men should not have been removed from the United States in the first place and that "habeas-corpus remedies are not confined to release." The Court went on to state that:

"the only remedy that would give effect to its granting of Plaintiffs' Motion would be to order the Government to undo the effects of their unlawful removal by facilitating a meaningful opportunity to contest their designation and the Proclamation's validity. Otherwise, a finding of unlawful removal would be meaningless for Plaintiffs, who have already been sent back to Venezuela against their wishes and without due process. Expedited removal cannot be allowed to render this relief toothless. If secretly spiriting individuals to another country were enough to neuter the Great Writ, then "the Government could snatch anyone off the street, turn him over to a foreign country, and then effectively foreclose any corrective course of action."

The Court gave the government two weeks to propose remedial action.

**Y2, Week Two**, the [judicial misconduct complaint](#) against Judge Boasberg filed by DoJ with the Judicial Council of the Sixth Circuit was [dismissed](#) (under seal) in December (12/19/25) and the decision was just released (02/01/26). Chief Judge Jeffrey S. Sutton of the U.S. Court of Appeals for the Sixth Circuit noted that the government had failed to provide evidence that Judge Boasberg exhibited bias against the Trump administration. Judge Sutton noted that even if Judge Boasberg had said what he was alleged to have said in a closed-door meeting, the comments would not have amounted to prejudicial misconduct.

**Y2, Week Four**, Judge Boasberg, following up on his most recent order that found that the government had denied due process to a class of Venezuelans deported to El Salvador in defiance of his March 2025 court order, now [has ordered](#) the government to facilitate the return to the United States of those plaintiffs who so desire and will permit other plaintiffs (up to 137) to file their *habeas* supplements from abroad. The judge prefaced his order by noting that “the Court offered the Government the opportunity to propose steps that would facilitate hearings for the class members on their habeas corpus claims so that they could “challenge their designations under the [Alien Enemies Act] and the validity of the [President’s] Proclamation.” Apparently not interested in participating in this process, the Government’s responses essentially told the Court to pound sand.” The judge then concluded that “other courses would be both more productive and in line with the Supreme Court’s requirements outlined in *Noem v. Abrego Garcia*.”

### ***Kilmar Albrego Garcia***

**Y1, Week Ten**, the DoJ admitted in a court filing that a Salvadoran national with protective legal status, Kilmar Abrego Garcia, was removed to El Salvador as a result of an “administrative error.” Abrego Garcia entered the United States in 2011 when he was 16, fleeing gang violence. See [Complaint for Injunctive Relief and Declaratory Judgment](#) (03/24/25). The government filed its [memorandum in opposition](#) at the end of the week (03/31/25). See [Court Listener - District Court](#) docket entries and [Court Listener - Appeals Court](#) docket entries.

It is, as Joyce Vance posits, important to understand what is at stake in this case. If a president can single out any group as qualifying under the Alien Enemies Act for deportation and that decision is not subject to judicial review, then any one in America could be deported to a foreign prison. The “staggering implications” were captured in a plaintiffs’ [reply brief](#). The fact that the Trump administration has labelled those deported as “gang members” or “violent criminals” should not obscure what could happen. And incidentally, an ICE official subsequently [acknowledged](#) in a sworn declaration that “many” of the Venezuelans deported under the Alien Enemies Act did not have criminal records in the United States. And it gets worse if the government cannot cause the repatriation of those it has illegally deported.

**Y1, Week Eleven**, District Judge Paula Xinis ruled from the bench (04/04/25) that the government must return Abrego Garcia by Monday. The DoJ lawyer, a 15-year veteran prosecutor and recently promoted to acting Deputy Director of the Office of Immigration Litigation, Erez Reuveni, appeared to side with the plaintiff that even he struggled to understand why Abrego Garcia had been deported despite an order

forbidding it. Counsel conceded that the government should not have deported Abrego Garcia and was unable to answer the judge's questions about the government's legal authority to do so. It has since been [reported](#) that Reuveni was suspended by Deputy Attorney General and former Trump lawyer Todd Blanche for failing to "follow a directive from your superiors" and "engaging in conduct prejudicial to your client" (04/04/25).

The administration [filed](#) a notice of appeal with the Fourth Circuit to stay of Judge Xinis' order (04/04/25). Quinn Emanuel Urquhart & Sullivan has joined Murray Osorio as counsel to Abrego Garcia.

Early Sunday morning, Judge Xinis [issued](#) her written order (04/06/25), finding that "Defendants seized Abrego Garcia without any lawful authority; held him in three separate domestic detention centers without legal basis; failed to present him to any immigration judge or officer; and forcibly transported him to El Salvador in direct contravention of the INA. Once there, U.S. officials secured his detention in a facility that, by design, deprives its detainees of adequate food, water, and shelter, fosters routine violence; and places him with his persecutors." Earlier in the week, the Congressman in whose district Abrego Garcia and his family reside [wrote](#) to Secretaries Bondi, Rubio and Noem and the acting Director of ICE expressing grave concern about the deportation.

The government alleges that Abrego Garcia is a member of the MS-13 gang, which has ties to El Salvador, not Venezuela, which was the predicate for the invocation of the Alien Enemies Act in the first place. There appears to be a disconnect. Judge Xinis appeared sceptical about the alleged ties to MS-13, citing the lack of any evidence. The government appealed the case to the Fourth Circuit. White House Deputy Chief of Staff Stephen Miller called Judge Xinis a "Marist judge who now thinks she's president of El Salvador." The government now claims that it cannot repatriate Abrego Garcia as he is in El Salvador – never mind that the United States [reportedly](#) is paying El Salvador \$6 million for housing deportees for one year.

In his "One First" newsletter, Professor Vladeck [sets out](#) why the Abrego Garcia case is so significant. He writes a U.S. federal court "may not have the power to compel the release of an individual from a foreign prison, but they unquestionably have the power to order the *U.S. government* to take whatever steps it can to effectuate the same result." He goes on to frame the concern that should worry us all: "A world in which federal courts lacked the power to order the government to take every possible step to bring back to the United States individuals like Abrego Garcia is a world in which the government could send *any of us* to a Salvadoran prison without due process, claim that the misstep was a result of "administrative error," and thereby wash its hands of any responsibility for what happens next."

Edith Olmsted, writing in The New Republic ("[Homeland Security Secretary's El Salvador Stunt Just Got Worse](#)"), points out that in posting a video on X of her visit to the CECOT Homeland Secretary Kristi Noem may have violated the Geneva Conventions. As Jonathan V. Last noted in the Bulwark ("[This Is the Land of Wolves Now](#)"), the use of prisoners for propaganda purposes is a time-honored tradition of war – recall the use by the Viet Cong and the North Vietnamese of American POWs

as props. And as *Axios* [reported](#) (04/17/25) various Republican lawmakers have also used detainees as props for photo opps, though the House leadership has declined Democrats' requests to fund CoDels to visit CECOT.

Noem referred to CECOT as a tool in the toolkit the U.S. government will use against those who “commit crimes against the American people.” As noted above, an ICE official stated in a sworn statement that “many” individuals deported did not have a criminal record in the United States or in Venezuela. Moreover, several of the deportees were [lawfully awaiting asylum determinations](#) and were not in the United States illegally. But here is the second problem for the government: in invoking the Alien Enemies Act, are the detainees prisoners of war, the public exploitation of whom is barred by the Geneva Conventions? Article 13 of the [Geneva Convention relative to the Treatment of Prisoners of War](#) states that POWs “must at all times be protected, particularly against acts of violence or intimidation, and against insults and *public curiosity*” (emphasis added). The Geneva Conventions probably do not apply (there needs to be a war or an armed conflict), but nonetheless it shows a colossal lack of judgment and highlights the stretch made to invoke the Alien Enemies Act in the first place.

**Y1, Week Twelve**, the Fourth Circuit [denied](#) the government's request for a stay (04/07/25). The government via the Solicitor General [filed](#) with the Supreme Court an application to vacate the lower court injunction and to request an immediate administrative stay (04/07/25). Chief Justice Roberts issued a temporary stay and ordered the plaintiff to submit a reply the following day. That reply was [filed](#) the same day (04/07/25).

The Supreme Court, three days later, in an unsigned order (without dissent) [directed](#) the lower court (Judge Xinis) to clarify its ruling “with due regard for the deference owed the Executive Branch in the conduct of foreign affairs” (04/10/25). The Court further stated that “the Government should be prepared to share what it can concerning the steps it has taken and the prospect of further steps” to facilitate the release and return of Abrego Garcia. The ruling in effect is a win for Abrego Garcia, though it remains to be seen what efforts the government will make to “facilitate” his release and return to the United States.

As the Justin Jouvenal and Ann E. Marimow, writing in the *Washington Post*, [noted](#), “The court seemed to nod to an opinion from Judge J. Harvie Wilkinson III of the U.S. Court of Appeals for the 4th Circuit, who said in upholding Xinis' order that she could require the government to work to return Abrego Garcia but that demanding his release ‘would be an intrusion on core executive powers that goes too far.’” Judge Wilkinson had cited the apparent belief that the government can deport and incarcerate anyone, including U.S. citizens, without legal consequence (paraphrasing here Justice Sotomayor) “is a path of perfect lawlessness, one that courts cannot condone.”

Adam Serwer, writing in *The Atlantic*, [noted](#), “The fact that the order was issued without dissent was remarkable. ... Justice John Roberts and his colleagues have deployed a selective proceduralism to avoid directly confronting the Trump administration, one that contrasts with their alacrity in cases where they are seeking their preferred outcome. Yet the confrontation they sought to avoid has arrived



nonetheless, and even the Trumpiest justices, such as Samuel Alito and Clarence Thomas, joined their colleagues in informing the Trump administration that what it had done was illegal and should be remedied.” If the administration ignores the Supreme Court here, then we are in a full-blown constitutional crisis, as to which Serwer notes, the stakes “may explain the lack of dissent, a clear show of force – the justices have no power in a system in which court orders are optional.”

In effect, the Supreme Court has said that the government must “facilitate” the return and directed the lower court to articulate what it meant by “effectuate” that return.

End of **Y1, Week Twelve**, Judge Xinis, responding to the Supreme Court’s order, in turn [issues](#) an order directing the government to “take all available steps to facilitate the return of Abrego Garcia to the United States as soon as possible” (04/10/25). The next day, Judge Xinis [orders](#) (04/11/25) daily updates from the administration following testy exchanges in which counsel was unable to provide answers to three questions: Why did defendants not comply with order and give me someone with personal knowledge about Mr. Abrego Garcia's current location/status; What steps has the government taken thus far to facilitate return? The following day a State Department official [reported](#) that Abrego Garcia was “alive and secure in that facility. He is detained pursuant to the sovereign, domestic authority of El Salvador.”

**Y1, Week Thirteen**, Senator Chris Van Hollen, on his third attempt, was able to meet with Abrego Garcia – reading between the lines, Bukele may have sensed the tide is shifting following a sharp rebuke by a conservative appellate court judge in a ruling that could well be a turning point. The rebuke prompted various news outlets to reprint the order, with the *New York Times* [publishing](#) an annotated version of it. Earlier in **Y1, Week Thirteen**, Judge Xinis had [issued](#) an order for expedited discovery.

In his order denying the government’s [appeal](#) of Judge Xinis’ [order](#) to facilitate the return of Abrego Garcia, Judge Wilkinson, a Reagan appointee and [described](#) as one of the most prominent conservative judges, [writing](#) for the majority (04/17/25), hits out at the government in his opening paragraph: “While we fully respect the Executive’s robust assertion of its Article II powers, we shall not micromanage the efforts of a fine district judge attempting to implement the Supreme Court’s recent decision.” He continues, eschewing legalese to capture the essence of the moment: “The government is asserting a right to stash away residents of this country in foreign prisons without the semblance of due process that is the foundation of our constitutional order. Further, it claims in essence that because it has rid itself of custody that there is nothing that can be done. This should be shocking not only to judges, but to the intuitive sense of liberty that Americans far removed from courthouses still hold dear.”

Judge Wilkinson then turns to the heart of the matter “The Executive possesses enormous powers to prosecute and to deport, but with powers come restraints. If today the Executive claims the right to deport without due process and in disregard of court orders, what assurance will there be tomorrow that it will not deport American citizens and then disclaim responsibility to bring them home? And what assurance shall there be that the Executive will not train its broad discretionary powers upon its political enemies? The threat, even if not the actuality, would always be present, and the



Executive's [constitutional] obligation to 'take Care that the Laws be faithfully executed' would lose its meaning."

There is more. Judge Wilkinson concludes by calling for mutual respect – "The respect that courts must accord the Executive must be reciprocated by the Executive's respect for the courts." "Now the branches come too close to grinding irrevocably against one another in a conflict that promises to diminish both. This is a losing proposition all around. The Judiciary will lose much from the constant intimations of its illegitimacy, to which by dint of custom and detachment we can only sparingly reply. The Executive will lose much from a public perception of its lawlessness and all of its attendant contagions. The Executive may succeed for a time in weakening the courts, but over time history will script the tragic gap between what was and all that might have been, and law in time will sign its epitaph."

And finally, a note of optimism: "It is, as we have noted, all too possible to see in this case an incipient crisis, but it may present an opportunity as well. We yet cling to the hope that it is not naïve to believe our good brethren in the Executive Branch perceive the rule of law as vital to the American ethos. This case presents their unique chance to vindicate that value and to summon the best that is within us while there is still time."

**Y1, Week Fourteen**, the stand-off continues. Judge Xinis excoriated the government in her [order](#) denying the bulk of the government's objections to her discovery order. She notes:

- "Defendants' objection reflects a willful and bad faith refusal to comply with discovery obligations. The objection is overruled. Defendants are therefore ordered to supplement their answers in full compliance with the Federal Rules of Civil Procedure. Their answers must include facts responsive to the requests, not oblique and incomplete, non-specific characterizations."
- "Equally specious, Defendants' objections on the grounds of privilege are rejected." "[T]heir boilerplate, non-particularized objections are presumptively invalid and reflect a willful refusal to comply with this Court's Discovery Order and governing rules." Defendants have until the following day to support their objections on privilege grounds.

Naming just two individuals in the chain, she characterizes as "a deliberate evasion of their fundamental discovery obligations."

Among the talking points making the rounds, I suggest the following:

- The Trump Administration admitted it made a mistake in wrongfully deporting Kilmar Armando Abrego Garcia, a Maryland man to a brutal prison in El Salvador without due process, that is without any notice or a hearing. Federal courts have ordered that this wrong be righted.
- The Supreme Court ordered the wrongly imprisoned man returned and deferred to the District Court to set deadlines for doing so, deadlines the Administration has already missed.

- Both the Trump Administration and the Courts say that Abrego Garcia was improperly deported. Now he must be brought back. There can be no more delays if the Administration plans to comply with this direct order of the Supreme Court.
- If the Administration can secure Andrew Tate's freedom from Romanian custody, they can facilitate the return of Mr. Abrego Garcia from El Salvadoran custody.
- It defies common sense that the Administration is powerless to have Abrego Garcia returned from an ally the Trump Administration is paying to imprison Mr. Abrego and others. Failure to do so is simply unwillingness to do as the Courts have ordered.
- If Abrego Garcia remains in detention in El Salvador, the Administration's defiance would be a flagrant disregard for the Constitution and the checks and balances that prevent any branch of government from seizing our liberties. If this can happen to Abrego Garcia, it can happen to anyone in the United States, including American citizens.
- Trump and his allies' questioning of Court rulings creates a dangerous fog of misinformation. But don't be fooled by their rhetoric – what Trump and his allies are doing is an affront to the Constitution, puts all citizens at risk and undermines the core principles of our democracy.

End of **Y1, Week Fifteen**, during his [interview](#) with Kristen Welker on Meet the Press (05/04/25), in answer to the question of whether he is defying the Supreme Court in the Abrego Garcia case, Trump responds:

“No. I’m relying on the attorney general of the United States, Pam Bondi, who’s very capable, doing a great job. Because I’m not involved in the legality or the illegality. I have lawyers to do that and that’s why I have a great DOJ. We have a great one. We had a very corrupt one before. Now we have a great one. And they’re not viewing the decision the way you said it. They don’t view it that way at all. They think it’s a totally different decision.”

Welker presses on, “And this is the point, sir, about due process. The Constitution says every person, citizens and non-citizens, deserve due process. Why not push to have him come back, present all of that evidence in court, let a judge decide?” Trump responds: “Well, I’ll leave that to the lawyers, and I’ll leave that to the attorney general of the United States, because –.” He then changes to subject “– they’re in it. You have to understand. I’m dealing with Russia and Ukraine. I’m dealing with China –.”

Welker, undaunted, presses on again: “Your secretary of state says everyone who’s here, citizens and non-citizens, deserve due process. Do you agree, Mr. President?”

Trump: I don’t know. I’m not, I’m not a lawyer. I don’t know.

Welker: Well, the Fifth Amendment says as much.

Trump: I don’t know. It seems — it might say that, but if you’re talking about that, then we’d have to have a million or 2 million or 3 million trials. We have thousands of people that are some murderers and some drug dealers and some of the worst people on Earth.

...

Welker: *But even given those numbers that you're talking about, don't you need to uphold the Constitution as president?*

Trump: *I don't know.* I have to respond by saying, again, I have brilliant lawyers that work for me, and they are going to obviously follow what the Supreme Court said. What you said is not what I heard the Supreme Court said. They have a different interpretation."

(*Emphasis added*). Trump seems to have forgotten the oath of office he has taken twice: That oath, as set out in Article II, Section 1, Clause 8 of the Constitution, reads: "I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

**Y1, Week Sixteen** and almost a month after the Supreme Court ordered the government to "facilitate" the return of Abrego Garcia, the plaintiffs [moved](#) to take additional depositions (05/07/25). The motion contains an interesting footnote: "In fact, as seems apparent from its public statements, this case also involves decision-making at the White House in addition to the three Departments. Accordingly, depending on the testimony obtained in any authorized Department depositions, Plaintiffs may need to seek additional testimony from an appropriately knowledgeable representative of the White House."

The government apparently invoked the "state secrets" privilege and the "deliberative process" privilege to avoid turning over documents as part of court ordered discovery (see [Order](#) (05/07/25)). This is the second time the government has invoked the "state secrets" privilege, the first being in front of Chief Judge Boasberg. Judge Xinis had ordered discovery, then agreed to pause her order, and reversed that order, which presumably prompted the government to invoke the privileges. Separately, 14 news organizations [submitted](#) a motion to intervene in the case and to unseal the court records relating to the case.

**Y1, Week Seventeen**, the government appears to continue to be stonewalling, with Judge Xinis continuing to express frustration. She is expected to issue an order shortly. See [NBC News](#) coverage.

**Y1, Week Twenty**, Abrego Garcia returns to the United States and promptly appears in court on criminal charges of allegedly smuggling migrants (06/06/25). The decision to indict Abrego Garcia reportedly led to [the resignation](#) of a senior prosecutor (and former chief of its criminal division) in the U.S. Attorney's Office in Nashville, reportedly out of concern that the charges were politically motivated. The government has charged Abrego Garcia with alien smuggling and conspiracy to commit alien smuggling but so far Abrego Garcia is the only one charged. (See [ABC News](#) May coverage and [ABC News](#) June coverage.)

**Y1, Week Twenty-One**, District Judge Homes, signalled she is open to granting Abrego Garcia bail as he awaits trial, though if he is granted bail, he is likely to be taken back into custody by immigration authorities. The indictment was [unsealed](#) last week. The government reportedly advanced a range of arguments as to why Abrego

Garcia is a flight risk, including that sympathizers might help him escape if released on bail.

Although senior DoJ officials have maintained that the civil case against Abrego Garcia for removal to El Salvador should be dismissed as moot since Abrego Garcia is back in the country, Judge Xinis has allowed it to move forward. Counsel for Abrego Garcia [filed](#) this week with Judge Xinis a motion for discovery as part of an effort to seek sanctions against the government (under Rule 37 of the Federal Rules of Civil Procedure) for allegedly stonewalling during the discovery process. The filing calls for compelling production of previously withheld documents or the appointment of a special master to investigate government refusal to comply with discovery orders, and for financial sanctions. Among other serious allegations, the filing alleges that the acting General Counsel of DHS “may have given untruthful testimony” during a deposition in May. *See* [New York Times](#) coverage.

**Y1, Week Twenty-Three**, former acting Deputy Director of the Office of Immigration Litigation, Erez Reuveni [filed](#) a formal whistleblower complaint, in which he details alleged “violations of law, rules or regulations, and the abuse of authority by DoJ and White House personnel, as well as the creation of substantial and specific health and safety threats to noncitizens. These high-level governmental personnel knowingly and wilfully defied court orders, directed their subordinate attorneys to make misrepresentations to courts, and engaged in a scheme to withhold relevant information from the court to advance the Administration's priority of deporting noncitizens.”

The allegation that captured much of the attention in the media and on Capitol Hill was the disclosure that, in the context of responding to anticipated legal challenges to the deportation of Abrego Garcia, Principal Assistant Deputy Attorney General Emil Bove had suggested ignoring court orders. Specifically, per the filing, “Bove then made a remark concerning the possibility that a court order would enjoin [removals to El Salvador] before they could be effectuated. Bove stated that DOJ would need to consider telling the courts “fuck you” and ignore any such court order.” *See* [Department of Justice](#), below.

**Y1, Week Twenty-Four**, it was widely reported that in an amended and supplemental complaint for injunctive and declaratory relief, Abrego Garcia [alleged](#) he was “subjected to severe mistreatment upon arrival in CECOT, including but not limited to severe beatings, severe sleep deprivation, inadequate nutrition, and psychological torture.” *See* [Axios](#) coverage. At this point, Abrego Garcia is detained in Tennessee following his return to the United States and awaits trial on human smuggling charges stemming from a traffic stop for speeding in car with nine passengers (*see* [Associated Press](#) coverage).

**Y1, Week Twenty-Five**, Joyce Vance [summarizes](#) the week’s proceedings reporting on more stonewalling and obfuscation, observing that:

“By now, anyone who is paying attention understands that all people in the United States, not just citizens, are entitled to due process, even if it’s just a limited dose of it. It would be easy for the government to provide it. Their steadfast refusal, leading to this entire series

of confrontations with the courts, suggests that their objective here is to be so hateful and expose people to so much danger that migrants will deport themselves and stop coming to the United States because the risk of having horrors inflicted on them, being dropped into a dangerous country where they don't speak the language, or being sent to CECOT prison is too great."

In the process, the administration is not only trampling on rights guaranteed by the Constitution and shredding the rule of law, but has established cruelty as a governmental priority. Vance concludes:

Where does the line between enforcing U.S. law and utter inhumanity lie? We don't need to carefully parse its precise placement in order to understand that what this administration is doing has crossed it, is utterly reprehensible, and will be condemned by history, just as other governments that rounded up people and persecuted them are.

**Y1, Week Thirty-Two**, as expected and feared, when Abrego Garcia showed up at his ICE "check-in" he was again detained and his lawyers was advised he was going to be deported to Uganda, a country with which he has no connection and in spite of having agreed that if deported he would go to Costa Rica, which has agreed to accept him. Last week, he was [released](#) from custody in Tennessee and allowed to return to rejoin his family in Maryland. Over the weekend, his counsel [accused](#) the administration of using the threat to deport him to Uganda to get him to plead guilty to charges of smuggling.

Judge Xinis has blocked the removal of Abrego Garcia from the United States until she can hold a hearing to determine whether the administration will let him contest his removal to the third country. In court the directive to counsel for the government was clear: "Your clients are absolutely forbidden at this juncture to remove Mr. Abrego Garcia from the continental United States. That is the understanding that we have?" "Your honor, yes, we certainly understand that," replied counsel.

Abrego Garcia reportedly is now renewing a claim for asylum in the United States.

**Y1, Week Thirty-Nine**, Abrego Garcia's case is back in the news. He reportedly is fine with being deported to Costa Rica, but the administration so far has refused to do so, instead trying to deport him to Uganda, Ghana or Eswatini (none of which, reportedly, are prepared to receive him). Judge Xinis may release him, having expressed repeated frustrations with DoJ representatives in her court. See [New York Times](#) and [POLITICO](#) coverage.

And ten weeks later, **Y1, Week Forty-Seven**, Abrego Garcia again returns to the headlines. On Thursday, Judge Xinis [granted](#) his petition for a writ of habeas corpus and ordered his immediate release from ICE custody (12/11/25). He was [released](#) Thursday evening from ICE custody. On Friday, Judge Xinis blocked the administration from re-detaining or removing him.

**Y1, Week Forty-Nine**, District Judge Waverly D. Crenshaw, Jr. cancelled the trial of Abrego Garcia and scheduled a hearing to determine whether DoJ is being vindictive in pursuing a human smuggling case against him. In October, Judge Crenshaw had [ordered](#) discovery requiring the government to produce material relevant to its

charging decision on the smuggling charge (10/27/25). This follows Judge Crenshaw's [earlier](#) ruling "that the totality of events creates a sufficient evidentiary basis to conclude that there is a 'realistic likelihood of vindictiveness' that entitles Abrego to discovery and requires an evidentiary hearing before the Court decides his motion."

**Y1, Week Fifty**, the December 3 order in which Judge Crenshaw suggests DOJ may have pressed criminal charges against Abrego Garcia in retaliation for the federal court ruling by Judge Xinis that ultimately brought Abrego Garcia back to the United States [was unsealed](#) (12/30/25). Discovery documents suggest that senior DoJ officials only began discussing the charges after Judge Xinis' ruling.

Tennessee prosecutors had insisted that senior DoJ officials had no involvement in the decision to bring the smuggling charges related to the November 2022 traffic stop, but excerpts from several emails released by Judge Crenshaw appeared to directly contradict those assertions, suggesting that DoJ officials, including Deputy Attorney General Blanche, played a greater role in bringing the charges than DoJ prosecutors have acknowledged so far. Judge Crenshaw writes,

"Some of the documents suggest not only that [Middle District of Tennessee Acting U.S. Attorney Robert] McGuire was not a solitary decision-maker, but he in fact reported to others in DOJ and the decision to prosecute Abrego may have been a joint decision, with others who may or may not have acted with an improper motivation. The documents that must be produced connect back to Blanche because the documents suggest that [Aakash] Singh [who works in Blanche's office] had a leading role in the government's decision to prosecute and Singh works in Blanche's office.

Moreover,

"These documents show that McGuire did not act alone and to the extent McGuire had input on the decision to prosecute, he shared it with Singh and others. Specifically, the government's documents may contradict its prior representations that the decision to prosecute was made locally and that there were no outside influences."

See [New York Times](#) coverage.

***A.A.R.P., W.M.M. et al.***

A.A.R.P, W.M.M., et al., on behalf of a proposed class of Venezuelan men in immigration custody, filed an emergency application with the Supreme Court for a stay of removal and an immediate administrative stay to preserve the status quo for individuals challenging their removal under the Alien Enemies Act in the U.S. District Court for the Northern District of Texas (04/18/25). The motion warns that members of the proposed class are in imminent and ongoing jeopardy of being removed from the United States without notice or an opportunity to be heard, in direct contravention of this Court's order in *Trump v. J.G.G.* (being heard before Chief Judge Boasberg). The initial habeas action had been [brought](#) in the Northern District of Texas (04/09/25).

District Judge James Welsey Hendrix denied the application, failing to find an imminent threat of deportation (04/11/25). Plaintiffs [renewed](#) their application (04/18/25). The Fifth Circuit [denied](#) the appeal (04/18/25), but very early the following morning, the Supreme Court (7-2) [ordered](#) the government to not remove



any members of the putative class from the United States pending further order of the Court. Note that the filings in Texas flow from the [April 7<sup>th</sup> decision](#) of the Supreme Court in the *J.G.G. et al.* case.

**Y1, Week Fourteen**, the Supreme Court pause on deportations prompted Trump to [post](#) an attack on the decision on Truth Social (04/21/25). I am reminded of the apologists imploring us all to take Trump him seriously but not literally and the media view of taking him literally but not seriously. Either way, many did so at their (and our) peril – as we should have taken him literally and seriously, and the latest example of discarding a fundamental right under the Constitution is a case in point – “We cannot give everyone a trial,” he said “because to do so would take, without exaggeration, 200 years. We would need hundreds of thousands of trials for the hundreds of thousands of Illegals we are sending out of the Country. Such a thing is not possible to do.” So much for the President living up to his constitutional duty to “take Care that the Laws be faithfully executed.” As Robert Hubbell so aptly noted in his April 22 [post](#), “the Fifth Amendment’s guarantee of “due process” is not qualified by the phrase, ‘*if possible*.’”

**Y1, Week Seventeen**, the Supreme Court [ruled](#) (7-2) (05/16/25) that the case should be remanded (sent back) to the Fifth Circuit, which was directed to address the customary preliminary injunction factors, including likelihood of success on the merits, as to the named plaintiffs’ underlying habeas claims that the Alien Enemies Act does not authorize their removal and the issue of what notice is due, as to the putative class’s due process claims against summary removal. In the meantime, the government is enjoined from removing the named plaintiffs or putative class members in this action under the Alien Enemies Act pending order by the Fifth Circuit and disposition of the petition for a writ of certiorari. The Supreme Court also vacated (overruled) the Fifth Circuit decision in which it had concluded it did not have jurisdiction to hear the appeal.

Trump reacted with his usual restraint: “THE SUPREME COURT WON’T ALLOW US TO GET CRIMINALS OUT OF OUR COUNTRY!” Later he wrote, “The Supreme Court of the United States is not allowing me to do what I was elected to do,” and called it “a bad and dangerous day for America.”

**Y1, Week Thirty-Four**, the Fifth Circuit, on remand, [ruled](#) (2-1) that the plaintiffs were likely to succeed on the merits on the question of whether the Alien Enemies Act was improperly invoked, and granted the requested preliminary injunction blocking removal under the Act.

Recall that the Supreme Court had remanded the case to determine whether the factors for a preliminary injunction to block removal, including likelihood of success on the merits, as to the plaintiffs’ underlying habeas claims that the Alien Enemies Act does not authorize their removal pursuant to the March 14, 2025 Proclamation had been satisfied, and also whether the government’s notice to the plaintiffs of their removal satisfied due process. After first considering what the proper scope of its “interpretation” should be given recent Supreme Court pronouncements (in the *J.G.G.* case) and then considering the conditions for invoking the Alien Enemies Act –

namely, whether there had been (i) an invasion or a predatory incursion by (ii) a foreign nation or government, the Court determined that those conditions had not been met. In short, there had been no invasion or predatory incursion. The Court, not surprisingly given the paucity of relevant case law, noted that its “opinions rely to some extent on [its] independent historical research in order to interpret statutory language.”

**Y2, Week One**, the Fifth Circuit, now sitting *en banc*, is hearing the government’s appeal of the three-judge panel’s ruling in September against the government that found the invocation of the Alien Enemies Act to be illegal. As Professor Illya Somin [notes](#), the absurd implications of the government’s claim that the Trump is entitled to absolute deference when he claims an “invasion” exists, was highlighted during [oral argument](#) when Fifth Circuit Chief Judge Jennifer Elrod asked DoJ prosecutors whether Trump could invoke the Alien Enemies Act in response to the “British Invasion” of rock stars, like the Beatles. The response of Drew Ensign, yes, the logical conclusion of the government’s position is that the courts would have to defer to the president.

Professor Somin notes that the absurd implications of the government’s assertions were [highlighted](#) in an *amicus* brief that he, together with the Cato Institute, the Brennan Center and others, submitted in the case on behalf of the plaintiffs – “the government’s position would convert an emergency power that can only be used in extreme circumstances into a blank check the president can invoke any time he wants.” See also Professor Somin’s research paper (“[Immigration is Not Invasion](#)”), in which he incidentally cites the same example. See also [New York Times](#) coverage.

### ***D.V.D.; M.M.; E.F.D.; and O.C.G.***

A group of noncitizens with final removal orders resulting from proceedings in which they have been notified that they could be deported to a designated country of removal (usually their country of origin) and, in some cases, an alternative country of removal (usually a country of which they are a citizen or in which they hold status) [brought](#) a class action to challenge the policy or practice of Homeland Security of deporting, or seeking to deport, them to a *third* country – a country *never* designated for removal – without first providing them with notice or opportunity to contest removal on the basis that they have a fear of persecution, torture, and even death if deported to that third country (03/23/25).

The initial plaintiffs are from Cuba, Honduras, Ecuador and Guatemala. Additional members of the class included plaintiffs from Laos, Vietnam and the Philippines. See [Court Listener](#) docket.

District Judge Brian E. Murphy [issued](#) a temporary restraining order (03/28/25) and then [granted](#) class certification and a preliminary injunction (04/18/24). He then [issued](#) a clarifying order to cover (and block) removals to Libya and Saudi Arabia (05/07/25).

Fast forward to **Y1, Week Eighteen**, plaintiffs [filed](#) a motion seeking an emergency order enjoining the government from removing class members to South Sudan in violation of the extant preliminary injunction (05/20/25). Judge Murphy [ordered](#) the government to maintain custody and control of the class members (05/20/25), who by then were in an aircraft on the tarmac at Camp Lemonnier in Djibouti. The following

day (05/21/25), Judge Murphy [found](#) that the government had violated the preliminary injunction for “failing to provide six non-citizen class members a ‘meaningful opportunity’ to assert claims for protection under [\[UNCAT\]](#) before initiating removal to a third country.” During the hearing, the Judge was clear, the government’s actions he stated were “unquestionably in violation” of his order.

In effect spelling out what should have been abundantly clear to the government, the Judge [set out](#) the procedures (including notice and a meaningful opportunity to raise fear-based claims for CAT protection) that must be followed for those removals (05/21/25). Moreover, he made clear that the order applies not only to DHS but also any person acting in concert, and that “no Defendant may avoid their duty to follow the Preliminary Injunction by involving or ceding responsibility to any other person” (*i.e.*, the military). He declined to order the plane headed to South Sudan to return but [issued](#) an order on remedies for violation of the preliminary injunction – setting out procedures for the deportees while in DHS custody on the plane (05/21/25).

See generally, [New York Times](#) coverage, additional [New York Times](#) coverage and [AP](#) coverage.

Separately, Judge Murphy [ruled](#) that O.C.G., a Guatemalan man, should be returned to the United States (05/23/25) and ordered the government to “facilitate” his return. The court, in a footnote, noted that the order to “facilitate” in this case “should carry less baggage than in several other notable cases. O.C.G. is not held by any foreign government. Defendants have declined to make any argument that facilitating his return would be costly, burdensome, or otherwise impede the government’s objectives. The Court anticipates that Defendants will take at least the same level of action as is routine to return *lawfully* removed aliens. See ICE Policy Directive No. 11061.1, § 3.1. Given that this Court has found that Plaintiffs are likely to succeed in showing that O.C.G.’s removal was *not* lawful, there is no reason for Defendants to take *less* action than they would when returning a lawfully removed alien.”

As reported and outlined in the court ruling, the government had made two errors in its statements and filing, first claiming under oath that O.C.G. had affirmatively stated he did not fear being deported to Mexico (he does, based on his sexual orientation) and second revealing O.C.G.’s full name. (See [New York Times](#) coverage.) This case has echoes of the Abrego Garcia case in which errors were made and admitted by the government.

**Y1, Week Twenty**, O.C.G. became the first wrongly deported person to be returned to the United States in response to a judicial order. He had been deported to Mexico, and upon his return was taken into custody by ICE. At this point, federal judges had ordered two other men (the Salvadorian Albergo Garcia and the Venezuelan identified in court filings as Cristian) to be returned from CECOT.

**Y1, Week Twenty-Three**, the Supreme Court [granted](#) (6-3) the government’s motion for a stay of Judge Murphy’s preliminary injunction in the *D.V.D.* case (06/23/25). The following day, the government [filed](#) an emergency motion with the Supreme Court seeking clarification that the stay also paused Judge Murphy’s May enforcement order,

which the Judge had issued after he found the administration had violated his earlier court order.

**Y1, Week Twenty-Four**, the Supreme Court [granted](#) (7-2) the motion for clarification, paving the way for the eight plaintiffs to be sent from Djibouti to South Sudan (only one of the plaintiffs is from South Sudan) (07/03/25). The Supreme Court held that the May order issued by Judge Murphy “cannot now be used to enforce an injunction that our stay rendered unenforceable,” referring to the Judge Murphy’s April injunction that the Supreme Court paused June 23. See [CBS News](#) coverage.

On July 4, District Judge Randolph Moss briefly paused the deportation of the eight men, issuing an administrative stay in response to a last-ditch emergency motion filed immediately after the Supreme Court ruling. Judge Moss said he would allow his stay to expire at 4:30 p.m. ET and transferred the case back to Judge Murphy. Judge Murphy subsequently denied the request to block the deportation, ruling: “This Court interprets these Supreme Court orders as binding on this new petition, as Petitioners are now raising substantially similar claims, and therefore Petitioners motion is denied.”

### ***A.S.R.***

**Y1, Week Seventeen**, District Judge Stephanie L. Haines, sitting in Pennsylvania, became the first judge to [rule](#) that so long as the government provides “sufficient notice and due process,” Trump may rely on the Alien Enemies Act to direct the removal of Venezuelan citizens who are neither naturalized or lawful permanent residents who are members of TdA.

The Judge found that the Proclamation satisfied the test for invocation based on a “predatory invasion” within the meaning of the Alien Enemies Act and accorded substantial deference to the conclusions of the President as to whether the “predatory invasion” is by a “foreign nation or government.” That said, the Judge also found that the notice given to deportees was insufficient, and ordered the government to give deportees at least 21 days’ notice and the opportunity to challenge their deportations in court. The Judge concluded with an interesting twist, “Having done its job, the Court now leaves it to the Political Branches of the government, and ultimately to the people who elect those individuals, to decide whether the laws and those executing them continue to reflect their will.”

At this point, judges in Colorado, New York and South Texas had reached the opposite conclusion on the underlying merits of the challenge to the invocation of the Alien Enemies Act, and a judge in West Texas barred deportations without 30 days’ notice. See above regarding the NIC [Sense of Community](#) memorandum that undercuts the idea that Venezuela supports TdA.

### ***W.J.C.C.***

**Y1, Week Twenty-Two**, District Judge Haines [issued](#) a preliminary injunction barring the removal of another Venezuelan man under the Alien Enemies Act absent 21 days’ notice and an opportunity to be heard, consistent with her ruling in the *A.S.R.* case. Previously the Court had issued a temporary restraining order in plaintiff’s favor following his filing of a habeas petition. This ruling had the benefit of the Supreme

Court ruling in the [A.A.R.P case](#), which was issued three days *after* the *A.S.R.* ruling. The Court found it appropriate “to persist in requiring the notice that it articulated in *A.S.R.*,” rejecting the government’s reliance on “expedited removal procedures” under 8 U.S. Code § 1225.

***Group of Guatemalan Children (L.G.M.L., L.M.R.S., M.O.C.G., H.L.E.C, T.A.C.P., M.F.A.P.V., L.F.M.M., G.A.B.B., A.R.M.D. M.Y.A.T.C.)***

**Y1, Week Thirty-Three**, counsel (the National Immigration Law Center) representing 10 unaccompanied minors aged 10-17 subject to removal [sought](#) emergency relief on Sunday to block the removal pending further proceedings (08/31/25). See [Memorandum in Support](#).

District Judge Sparkle L. Sooknanan ruled that “given the exigent circumstances” the Court “has determined that an immediate Order is warranted to maintain the status quo until a hearing can be set.” The Court ordered that the plaintiffs’ motion for a temporary restraining order is granted; the government shall not remove any of the individual plaintiffs from the United States for 14 days absent further order of the Court; and the parties shall appear for a hearing on August 31, 2025. The Associated Press [reported](#) that Sen. Ron Wyden had detailed plans by the administration to remove close to 700 Guatemalan children who had come the United States without their parents.

As for those “exigent circumstances,” Heather Cox Richardson [lays out](#) what looks very much like the stealth deportation of 250 Venezuelans to CECOT. Recall that the invocation of the Alien Enemies Act was done in secret late on a Friday, with renditions taking place on Saturday. Trump denied he had signed the order (“other people handled it”). Think about it – one of the most consequential acts in our history (invocation of the Alien Enemies Act has occurred only three times – each time during a declared war), and this disavowal merited nary a footnote.

The administration attempted to remove the children from custody of the HHS Office of Refugee Resettlement (ORR) and deport them alone to Guatemala. They attempted to do so in the early hours of Sunday of Labor Day Y1, Weekend. The children are covered by the 2008 Trafficking Victims Protection Law, which provides enhanced protections and allows removal only under special circumstances. Advocates for the children filed their lawsuit at 1:00 a.m., the Judge was called at 2:36 am and issued her order at 4:00 a.m. blocking the removals. The Judge initially scheduled a virtual hearing on the matter for 3:00 p.m. Sunday, but later moved up the hearing to 12:30 p.m. after being notified that some plaintiffs were “in the process of being removed from the United States.” One plane loaded with children took off and was returned. The government was ordered to report on the status of each child, and by noon, all reportedly had been returned to ORR custody.

### ***National TPS Alliance***

The National TPS Alliance, which represents individuals with Temporary Protected Status (TPS) in the United States, and Venezuelans in the United States who have TPS [challenged](#) the administration's decision to terminate TPS for Venezuelans (02/19/25) and [moved](#) to delay the agency action (02/20/25). Plaintiffs [amended](#) their complaint



to cover Haitians with TPS (03/20/25). District Judge Edward M. Chen [granted](#) the plaintiffs' motion to delay the agency action (03/31/25). The government [appealed](#) to the Ninth Circuit (04/02/25), which, as **Y1, Week Thirteen** ended, [denied](#) the government's emergency appeal (04/18/25).

TPS recipients do not have a path to a green card or U.S. citizenship, but they remain in lawful status, with Social Security numbers and employment authorization, as long as the government extends the protection, typically every 18 months.

**Y1, Week Fifteen**, the government [filed](#) an appeal with the District Court, arguing among other grounds that the court lacked jurisdiction (04/29/25), and then [filed](#) a motion before the Supreme Court to stay the order of the District Court (05/01/25).

**Y1, Week Eighteen**, the Supreme Court [stayed](#) (8-1, Justice Jackson voting to deny the government's application) the District Court order pending disposition of the appeal to the Ninth Circuit and disposition of the appeal to the Supreme Court (the petition for a writ of certiorari).

In a similar case, noncitizen residents in the country benefitting from various so-called "categorical parole" programs, including Uniting for Ukraine ("U4U"), for Ukrainians displaced by the war with Russia; the processes for nationals of Cuba, Haiti, Nicaragua, and Venezuela ("CHNV"), countries that have been ravaged by natural disasters and/or political strife; and Operation Allies Welcome ("OAW"), for Afghans fleeing the newly resurgent Taliban [sued](#) to restore those programs (02/28/25). Plaintiffs then [filed](#) an amended complaint to include additional classes of plaintiffs and [moved](#) for a preliminary injunction. Plaintiffs are represented by Human Rights First, Justice Action Center, Arnold & Porter Kaye Scholer and Law Office of Justin B. Cox.

Federal Judge Indira Talwani [granted](#) class certification and [granted](#) a temporary stay on behalf of the CHNV plaintiffs (04/14/25). The government appealed the District Court order staying parole terminations to the First Circuit (04/18/25).

**Y1, Week Sixteen**, the government's appeal was [denied](#) by the First Circuit (05/05/25), prompting the government to [apply](#) to the Supreme Court for an emergency stay of the District Court order.

End of **Y1, Week Nineteen**, the Supreme Court (7-2, an unsigned order, with Justices Jackson and Sotomayor dissenting) [ruled](#) in favor of the government and granted its motion for a stay of Judge Talwani's injunction (05/30/25). This lifts the block on administration efforts to end the parole (permission to stay for humanitarian reasons) program of CHNV migrants (more than 500,000 noncitizens). See [SCOTUSblog](#) coverage.

**Y1, Week Twenty-Eight**, District Judge Trina L. Thompson [granted](#) plaintiffs' motion to postpone terminations of Nepalese, Honduran and Nicaraguan TPS (07/31/25). The complaint was [brought](#) on behalf of the National TPS Alliance and three individual plaintiffs (07/07/25) and challenged the terminations of TPS for citizens of these three countries as unlawful under the Administrative Procedures Act and unconstitutional under the Due Process Clause. The postponement is intended to preserve the status quo until a hearing on the merits on November 18.



The plaintiffs were represented by the National Day Laborer Organizing Network, the Center for Immigration Law and Policy at the UCLA School of Law, ACLU Foundations of Northern California and Southern California, and Haitian Bridge Alliance.

The order affects 60,000 people. All TPS holders from Nepal have lived in the United States for over a decade, and the TPS holders from Nicaragua and Honduras have lived in the United States for over 26 years. See [ACLU NorCal](#) press release.

In its ruling, the Court led off with the following: “The freedom to live fearlessly, the opportunity of liberty, and the American dream. That is all Plaintiffs seek. Instead, they are told to atone for their race, leave because of their names, and purify their blood. The Court disagrees.”

The Court noted, among other grounds, that DHS Secretary Noem was motivated by “animus against immigrants and the TPS program even though individuals with TPS hold lawful status – a protected status that was expressly conferred by Congress with the purpose of providing humanitarian relief.” The Court goes on to note that “By stereotyping the TPS program and immigrants as invaders that are criminal, and by highlighting the need for migration management, Secretary Noem’s statements perpetuate the discriminatory belief that certain immigrant populations will replace the white population.”

Moreover, “The political climate surrounding the Secretary’s comments on immigrants further supports the likelihood of racial animus.” “In totality, Plaintiffs have produced sufficient evidence demonstrating racial and discriminatory animus in support of their Fifth Amendment claim. Color is neither a poison nor a crime.”

The Court also called out what so few have advanced, namely that mass deportations if carried out have the potential to have significant net adverse effects on the U.S. economy. The Court posits that the economy will suffer if TPS holders are forced to leave the country:

- The majority of TPS holders are in the work force (approximately 87% of TPS holders in the United States participate in the labor force, a substantially higher rate than the U.S. labor force participation rate overall (about 62%)); This will result in reductions in tax revenue and Social Security and Medicare contributions for the United States
- Deportation costs could amount to \$863 million.
- Because TPS holders would lose their employer-based health insurance by losing TPS, the cost of public health care will increase by increasing the proportion of immigrants on public health care and thereby increasing public expenditures on emergency care provided to uninsured patients.
- Termination of TPS would harm communities by reducing contributions to housing wealth and property tax revenue.

The *Washington Post* [reports](#) on two former Afghan interpreters for U.S. forces who were operating in Afghanistan who face deportation back to Afghanistan, where they likely would face retribution, despite following the applicable immigration processes.

These and others at risk are casualties of the unrealistic 3,000 arrests per day quota set by the White House. As noted elsewhere, the easiest targets are those who are following the rules. *See also* [immigration law blog](#).

**Y1, Week Thirty-Three**, the Ninth Circuit [upheld](#) the lower court ruling by Judge Chen maintaining TPS for Venezuelans. The ruling keeps in place protections for 600,000 Venezuelans. The Ninth Circuit found that plaintiffs were likely to succeed on their claim that DHS Secretary Noem had no authority to vacate a prior TPS extension granted by DHS Secretary Mayorkas because the governing statute (8 U.S. Code § 1254) does not permit for it.

**Y1, Week Thirty-Five**, the First Circuit [ruled](#) in favor of the administration, vacated Judge Talwani's order and remanded the case for further proceedings (09/12/25).

The three-judge panel found that the plaintiffs were unlikely to succeed in showing that the DHS Secretary exceeded her discretion under the INA in terminating the CHNV parole program. The Court did “recognize the risks of irreparable harm persuasively laid out in the district court's order: that parolees who lawfully arrived in this country were suddenly forced to choose between leaving in less than a month – a choice that potentially includes being separated from their families, communities, and lawful employment and returning to dangers in their home countries (as well as potentially abandoning their [Administrative Procedures Act claims) or staying after the loss of their legal status, which means the risk of removal proceedings and detention, the loss of any work authorization, and potential effects on their eligibility for other forms of immigration relief in the future.”

The ruling clears the way for deportations of 500,000 from Cuba, Haiti, Nicaragua and Venezuela. *See* [Justice Action Center](#) press release.

**Y2, Week Two**, a three-judge panel of the Ninth Circuit [ruled](#) in favor of Venezuelan TPS holders in an appeal brought by the government of the lower court ruling by District Judge Chen. The Court found that the DHS Secretary had exceeded her authority under the TPS statute – “The Secretary’s actions fundamentally contradict Congress’s statutory design, and her assertion of a raw, unchecked power to vacate a country’s TPS is irreconcilable with the plain language of the statute. The district court correctly set aside the Secretary’s unlawful actions.”

In his concurring opinion, Judge Salvador Mendoza Jr. said he wanted to underscore “the ample evidence of racial and national origin animus” that had underpinned the Secretary’s actions in ending TPS status. He noted “[t]he record is replete with public statements by Secretary Noem and President Trump that evince a hostility toward, and desire to rid the country of,” Haitian and Venezuelan TPS holders. He continued, “And these were not generalized statements about immigration policy toward Venezuela and Haiti or national security concerns to which the Executive is owed deference. Instead, these statements were overtly founded on racist stereotyping based on country of origin.” And, concluded, “while the Executive may certainly shape an agency’s policy within the scope granted by Congress, it may not do so by subverting the APA’s requirements or by smuggling racial or national origin animus into the

administrative process. Animus is never a legitimate basis for agency action and will always constitute arbitrary and capricious decision-making.”

The Court rejected the government’s argument that it was bound by the Supreme Court’s October determinations that the government was likely to succeed on the merits, noting that the two emergency stay orders did not expressly address the merits.

The decision does not have immediate practical effect for Venezuelan TPS holders, however, as the Supreme Court had put the lower court’s decision on hold but had permitted this appeal to the Ninth Circuit. The government can either request an *en banc* hearing of the full Ninth Circuit or appeal to the Supreme Court. A district court is expected in short order to rule on Haitian TPS status, both on a preliminary injunction to pause the termination as well as case on the merits.

See [New York Times](#) coverage and the [Hill](#) coverage.

**Y2, Week Three**, District Judge Ana C. Reyes [granted](#) the motion of five Haitian TPS holders to temporarily enjoin the termination of their TPS designation (02/02/26). The order affects around 352,959 Haitian nationals who currently hold TPS designations. The Memorandum Opinion begins,

“On December 2, 1783, then-Commander-in-Chief George Washington penned: ‘America is open to receive not only the Opulent & respected Stranger, but the oppressed & persecuted of all Nations & Religions.’ More than two centuries later, Congress reaffirmed President Washington’s vision by establishing the Temporary Protected Status (TPS) program. It provides humanitarian relief to foreign nationals in the United States who come from disaster-stricken countries. It also brings in substantial revenue, with TPS holders generating \$5.2 billion in taxes annually.”

The Court goes on to note that plaintiffs have alleged that the DHS Secretary

“preordained her termination decision and did so because of hostility to nonwhite immigrants. This seems substantially likely. Secretary Noem has terminated every TPS country designation to have reached her desk—twelve countries up, twelve countries down. Her conclusion that Haiti (a majority nonwhite country) faces merely ‘concerning’ conditions cannot be squared with the ‘perfect storm of suffering’ and ‘staggering’ ‘humanitarian toll’ described in page-after-page of the Certified Administrative Record (CAR). She ignored Congress’s requirement that she ‘review the conditions’ in Haiti only ‘after’ consulting ‘with appropriate agencies.’ Indeed, she did not consult other agencies at all. Her ‘national interest’ analysis focuses on Haitians outside the United States or here illegally, ignoring that Haitian TPS holders already live here, and legally so.”

“Taken together, the record strongly suggests that Secretary Noem’s decision to terminate Haiti’s TPS designation was motivated, at least in part, by racial animus. The mismatch between what the Secretary said in the Termination and what the evidence shows confirms that the termination of Haiti’s TPS designation was not the product of reasoned decision-making, but of a preordained outcome justified by pretextual reasons.”

Recall that, at the end of December, federal judges had temporarily blocked terminations of TPS for more than 60,000 from Honduras, Nepal and Nicaragua and 230 from South Sudan and more recently, as noted above, Venezuelans. As

[reported](#) by the *New York Times*, the administration has moved to terminate TPS for around one million people from at least nine countries. As federal agents deployed to Minnesota, the administration announced that it would end TPS for Somalis.

### ***D.A., T.L., I.O., D.S and K.S.***

**Y1, Week Thirty-Five**, a group of noncitizen plaintiffs (three from Nigerian and two from The Gambia) have [filed a lawsuit](#) on behalf of a group deported to Ghana (09/12/25). None of the plaintiffs are Ghanaian, have ties to Ghana or had Ghana designated as a potential country for removal during the course of their immigration proceedings. They all have some form of fear-based immigration relief. They and nine others were placed on a military cargo plane on September 5. Plaintiffs allege that, for the five days preceding the filing of the complaint, they have been detained in squalid conditions and surrounded by armed military guards in an open-air detention facility believed to be known as Dema Camp. The plaintiffs are represented by Asian Americans Advancing Justice and Grossman Young & Hammond.

Ghana joins Eswatini, Rwanda and South Sudan in accepting third country deportees.

### ***Family Reunification***

**Y1, Week Fifty**, District Judge Talwani [issued](#) an emergency 14-day stay of the “Termination of Family Reunification Parole (FRP) Processes for Colombians, Cubans, Ecuadorians, Guatemalans, Haitians, Hondurans and Salvadorans” (Dec.15, 2025) insofar as it revokes previously granted parole and work authorization issued to noncitizens paroled into the United States pursuant to the FRP programs prior to the noncitizens’ originally stated parole end dates.

The ruling follows the [filing](#) of an amended complaint just before the end of the year (12/29/25) following the announcement by DHS that it would revoke parole as of January 14 for immigrants covered by the FRP program, all of whom have sponsors in the United States and are in the country legally. The complaint covers, in addition to the FRP:

- Uniting for Ukraine, for Ukrainians displaced by the war with Russia;
- the processes for nationals of Cuba, Haiti, Nicaragua, and Venezuela, countries that have been ravaged by natural disasters and/or political strife;
- Operation Allies Welcome, for Afghans fleeing the newly resurgent Taliban;
- the Military Parole in Place program, so that U.S. military servicemembers may seek parole for their parents, children, and spouses, and need not worry about the immigration status of these close family members while serving their country; and
- the Central American Minors (“CAM”) parole process, which reunites parents who are already in the United States with their children who remain behind.

These cases underscore the extent to which the administration has moved well beyond Trump’s stated justification of removing dangerous criminals from the United States. See generally, Joyce Vance’s 1/11/26 [Substack](#). The plaintiffs are represented by

Arnold & Porter Kaye Scholer, the Justice Action Center, Human Rights First and Justin B. Cox.

### *Adrian Conejo Arias and his Five-Year Old Son*

**Y2, Week Two**, the image of five-year old Liam Conejo Ramos, in his oversized blue winter hat and Spider-Man backpack while in ICE custody in suburban Minneapolis, provoked outrage across the United States. As it should have. That outrage touched Judge Fred Biery sitting in the District Court for the Western District of Texas. Liam and his father had been taken to a detention facility near San Antonio. Counsel for the family had stated that the father had entered the United States legally under then extant guidelines for asylum. DHS claimed the father had entered illegally in 2024. The Writ for Habeas Corpus and motion for a temporary restraining order were filed 01/24/26.

Judge Bierly [issued](#) a blistering order directing the release of both Liam and his father (01/31/26). (*See also* the Judgment [issued](#) the same day.) The judges starts out by noting that the case before him “has its genesis in the ill-conceived and incompetently-implemented government pursuit of daily deportation quotas, apparently even if it requires traumatizing children.” He continues, “Apparent also is the government's ignorance of an American historical document called the Declaration of Independence.” He cites “that pesky inconvenience called the Fourth Amendment.” Calling out the administrative warrants countenanced by DHS fiat, he writes, “Civics lesson to the government: Administrative warrants issued by the executive branch to itself do not pass probable cause muster. That is called the fox guarding the henhouse. The Constitution requires an independent judicial officer.”

The judge orders the release of both Liam and his father and then throws in: “Observing human behavior confirms that for some among us, the perfidious lust for unbridled power and the imposition of cruelty in its quest know no bounds and are bereft of human decency. And the rule of law be damned.”

Note this order addressed process. We don’t have any decision on the merits at this point, which will depend on whether the government appeals.

### **American Bar Association & the Legal Profession**

#### ***ABA***

The American Bar Association (ABA) has a tradition of issuing President’s letters on the rule of law. These letters are addressed to foreign national governments and express the ABA’s concerns about alleged intimidation, harassment, or abuse of lawyers, judges, and human rights advocates.

**Y1, Week Four** saw the ABA publish a similar letter, but this time addressed to a domestic audience about the threat to the rule of law in America.

In his February 10 [letter](#), ABA President William R. Bay cited, among other things, “wide-scale affronts to the rule of law itself, such as attacks on constitutionally protected birthright citizenship, the dismantling of USAID and the attempts to criminalize those who support lawful programs to eliminate bias and enhance diversity.” Altogether there were four themes covered, defending the courts and judges, acknowledging the role of the courts, adhering to the rule of law and respecting

the separation of powers. The ABA President called on elected officials to insist on adherence to the rule of law and warned that we cannot remain silent in the face of an administration that seeks to choose which law it will follow or ignore. Further, reminding lawyers of the oath we all took when we became lawyers, it urged every attorney to echo the ABA and insist that our government follow the law.

**Y1, Week Seven**, the ABA President issued a second [letter](#) (03/30/25), prompted by government actions since February 10 that “evidence a clear and disconcerting pattern” – of judges being targeted if they issue decisions that with which the administration does not agree and of counsel representing parties in dispute with the administration or which the administration does not like being similarly targeted. The letter chronicles high-ranking administration officials calling for “corrupt judges” (*i.e.*, corrupt for issuing orders with which the administration does not agree) to be impeached or criticizing judges for not following the “will of the people” (ignoring the fact that judges swear oaths to follow the law “not public opinion or political chatter or what someone contends is the will of the people”). The letter also cited the action taken by EO against [Covington & Burlington](#) and attacks against [DoJ lawyers and Assistant US Attorneys](#). The letter concludes by calling on the entire legal profession, including counsel who serve in elected position, “to speak out against intimidation. If the ABA and lawyers fail to speak out, who will speak for the judiciary or protect the system of justice in our country.

**Y1, Week Twenty-Two**, the ABA [sued](#) the United States as well as federal departments and agencies that have been directed, pursuant to what the complaint calls Trump’s “Law Firm Intimidation Policy,” to implement a series of EOs against law firms and the heads of those departments and agencies (06/16/25). The complaint seeks declaratory and injunctive relief declaring each of the provisions of the law firm EOs unconstitutional and enjoining the enforcement of those provisions. The ABA is represented by Susman Godfrey. *See also* [Court Listener](#) docket.

### ***Perkins Coie***

**Y1, Week Eight**, Perkins Coie [filed](#) a lawsuit against a series of defendants including DOJ, FCC, OMB, EEOC, OPM, GSA, ODNI and individual cabinet secretaries (03/11/25) seeking a declaration that the EO is unconstitutional as violative of separation of powers by exercising judicial powers and because no statute grants such authority, as well as violative of the First, Fifth (Due Process and Equal Protection) and Sixth Amendments to the Constitution. The firm is represented by Williams & Connolly. On March 12, Judge Howell issued a temporary restraining order [from the bench](#), blocking enforcement of sections 1 (purpose), 3 (contracting) and 5 (access to federal buildings) of the EO; sections 2 (security clearances) and 4 (investigations of racial discrimination) were not included in the request for the temporary restraining order. Judge Howell [issued](#) a written order later that day.

**Y1, Weeks Nine – Ten**, the government [moved](#) to disqualify Judge Howell from the Perkins case (03/21/25), arguing lack of impartiality. The District Court, describing the government’s tactic as: “when you can’t attack the message, attack the messenger,” and its case as one relying on “speculation and innuendo,” [denied](#) the motion (03/26/25).



**Y1, Week Eleven - Twelve**, a number of additional *amicus* briefs were submitted in support of Perkins Coie, including by:

- [Munger, Tolles & Olsen](#), with over 500 law firm signatories;
- [ACLU, Knight Institute, Cato Institute, EFF, Reporters Committee for the Freedom of the Press et al.](#);
- a group of over [360 law professors](#);
- the [Lawyers' Committee for Civil Rights under Law](#);
- [National Association of Criminal Defense Lawyers and New York Council of Defense Lawyers](#);
- a group of over [former judges](#);
- a group of [16 bar associations](#), including the New York City Bar Association;
- [the NAACP Legal Defense & Educational Fund](#);
- a group of [litigation firms](#);
- the [International Academy of Trial Lawyers](#);
- a group of [former and current general counsel](#); and
- a group of [former national security, foreign policy, intelligence, legal, and other public officials who have worked on security matters at the most senior levels of the United States government](#).

A letter [signed](#) by over 1,000 lawyers, organized by Democracy Forward and sent to Attorney General Bondi, urged her to reject the political attacks on lawyers and law firms.

At the hearing before Judge Beryl Howell on the Perkins Coie motion for a permanent injunction, the DoJ appeared to roll out once again what seems to be its standard operating procedure, sending a government attorney who appeared woefully unprepared, pleaded ignorance of the facts and declined to answer questions from Judge Howell. ABC [reported](#) that Judge Howell appeared inclined to grant the permanent injunction.

End of **Y1, Week Fifteen**, Judge Howell [issued](#) a scathing ruling striking down Trump's EO targeting Perkins Coie, as unconstitutional under the First, Fifth and Sixth Amendments. The ruling represented the first time a federal judge had ruled on the merits of Trump's attack on law firms. Judge Howell wrote,

“By its terms, this Order stigmatizes and penalizes a particular law firm and its employees—from its partners to its associate attorneys, secretaries, and mailroom attendants—due to the Firm's representation, both in the past and currently, of clients pursuing claims and taking positions with which the current President disagrees, as well as the Firm's own speech. In a cringe-worthy twist on the theatrical phrase ‘Let's kill all the lawyers,’ [the Perkins Coie EO] takes the approach of ‘Let's kill the lawyers I don't like,’ sending the clear message: lawyers must stick to the party line, or else. Using the powers of the federal government to target lawyers for their representation of clients and avowed progressive employment policies in an overt attempt to suppress and punish certain viewpoints, however, is contrary to the Constitution, which requires that the government

respond to dissenting or unpopular speech or ideas with ‘tolerance, not coercion.’ [citations omitted]

...

EO 14230, the accompanying fact sheet, and the context surrounding the Order’s issuance each express President Trump’s disapproval of plaintiff’s First Amendment activity and demonstrate that EO 14230 targeted plaintiff because the Firm expressed support for employment policies the President does not like, represented clients the President does not like, represented clients seeking litigation results the President does not like, and represented clients challenging some of the President’s actions, which he also does not like. That is unconstitutional retaliation and viewpoint discrimination, plain and simple.”

Judge Howell concluded her 102-page ruling as follows: “The U.S. Constitution affords critical protections against Executive action like that ordered in EO 14230. Government officials, including the President, may not ‘subject[] individuals to ‘retaliatory actions’ after the fact for having engaged in protected speech.’ They may neither ‘use the power of the State to punish or suppress disfavored expression,’ nor engage in the use of ‘purely personal and arbitrary power.’ In this case, these and other foundational protections were violated by EO 14230. On that basis, this Court has found that EO14230 violates the Constitution and is thus null and void. For the reasons explained, plaintiff is entitled to summary judgment and declaratory and permanent injunctive relief on Counts II through IX of the Amended Complaint. The government’s motion to dismiss is denied.”

In a statement issued after the ruling, Perkins Coie said the ruling “affirms core constitutional freedoms all Americans hold dear, including free speech, due process, and the right to select counsel without the fear of retribution.”

### ***Jenner & Block***

Separately, Jenner & Block, represented by Cooley, [sued](#) the government and [moved](#) for a temporary restraining order (3/28/25). District Judge John D. Bates [granted](#) Jenner’s motion for a temporary restraining order.

Twenty-one states attorneys general published an [open letter](#) standing with the legal community (03/26/25), as [did](#) the ABA on behalf of itself and a 77 other bar associations in support of the rule of law (03/26/25). The American College of Trial Lawyers issued a [press release](#) condemning the unconstitutional nature of the EOs naming Jenner & Block and WilmerHale, characterizing both as retaliatory measures that “violate bedrock principles of our legal system” and undermine the rule of law (03/30/25).

**Y1, Week Eighteen**, Judge Bates [ruled](#) on First Amendment grounds that the EO targeting Jenner & Block was unconstitutional, and must be enjoined (05/23/25). See also the related [Order](#) and the [Appendix](#) listing all federal agencies subject to the injunction. This ruling follows the similar ruling of Judge Howell in the Perkins Coie case. Judge Bates was crystal clear in his framing of the issue:

This case arises from one of a series of executive orders targeting law firms that, in one way or another, did not bow to the current presidential administration’s political orthodoxy. Like the others in the series, this order—which takes aim at the global law firm Jenner &

Block – makes no bones about why it chose its target: it picked Jenner because of the causes Jenner champions, the clients Jenner represents, and a lawyer Jenner once employed. Going after law firms in this way is doubly violative of the Constitution.

Most obviously, retaliating against firms for the views embodied in their legal work—and thereby seeking to muzzle them going forward—violates the First Amendment’s central command that government may not “use the power of the State to punish or suppress disfavored expression.” More subtle but perhaps more pernicious is the message the order sends to the lawyers whose unalloyed advocacy protects against governmental viewpoint becoming government-imposed orthodoxy. This order, like the others, seeks to chill legal representation the administration doesn’t like, thereby insulating the Executive Branch from the judicial check fundamental to the separation of powers. It thus violates the Constitution, and the Court will enjoin its operation in full.

### ***WilmerHale***

WilmerHale followed the Jenner approach and, represented by Clement & Murphy, [sued](#) (03/28/25). District Judge Richard J. Leon [granted](#) WilmerHale’s motion for a temporary restraining order that same day (03/28/25).

**Y1, Week Nineteen**, Judge Leon [ruled](#) the EO targeting WilmerHale to be unconstitutional and issued a permanent injunction (05/27/25). He based his ruling on violations of the First, Fifth and Sixth Amendments and the Separation of Powers clause, concluding that the EO “must be struck down in its entirety as unconstitutional. Indeed, to rule otherwise would be unfaithful to the judgment and vision of the Founding Fathers!”

### ***Mark Zaid***

**Y1, Week Sixteen**, Mark Zaid, in response to the revocation of his security clearance, [sued](#) the Executive Office of the President, the DoD, Defense Counterintelligence and Security Agency, the CIA, the ODNI and the United States seeking declaratory and injunctive relief (05/05/25). He is represented by the Lowell & Associates (the firm newly formed by Abby Lowell), Democracy Defenders Fund, Kevin Carroll, Koskoff, Koskoff & Bieder, Kohn, Swift & Graf, Feldesman Leifer, and Lankford & Reed. The Complaint cites claims under the Administrative Procedures Act, the Fifth Amendment (due process; right to counsel and vagueness) and First Amendment (speech, association and petition).

**Y1, Week Forty-Nine**, District Judge Amir Ali [in effect ordered](#) the administration to reinstate Zaid’s security clearance (12/23/25). The preliminary injunction does not go into effect until January 13, 2026 to allow time for the government to decide on its next steps including an appeal. It has until December 30 to decide on next steps.

The Court’s order starts out:

“The Constitution forbids government officials from using their power to retaliate against people for their speech, and that is so even when the speech is critical of the government. Eighty years ago, the Supreme Court captured that foundational promise in this way: “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.” Last year, the

Supreme Court put it like this: A government official cannot “use the power of the State to punish or suppress disfavored expression.” (Citations omitted)

The Court concluded that Zaid “is likely to succeed, at a minimum, on his claims that the government’s summary revocation of his security clearance and access to classified information violated the First Amendment, procedural due process, and the right to counsel.” Addressing national security concerns, the Court noted that “the summary revocation of Zaid’s security clearance was not based on any national security interest. Instead, on this record, the government’s sole interest was retribution against an attorney for representing clients adverse to the government. That is not a legitimate governmental interest, and it cannot override the right of Zaid’s clients to their chosen counsel.”

The government had argued that the executive branch has the exclusive power to determine who meets the requirements for security clearance. The Court responded that, while that principle “is well established,” it “does not answer the question in this case,” as “[i]t is equally well established that the executive branch’s exclusive power to determine who satisfies the eligibility criteria for security clearance does not mean it can conduct that determination however it wants and free from the Constitution’s limits.”

In ruling in favor of Zaid, the Court aligned itself with the decisions made in the cases of the four law firms, *Perkins Coie*, *Jenner*, *WilmerHale* and *Susman Godfried*, that enjoined the administration “from using the summary revocation of security clearances to penalize lawyers for representing people adverse to it.”

### ***EEOC investigation***

**Y1, Week Thirteen**, a group of law students [sued](#) the EEOC challenging the investigation by the EEOC of 20 law firms on DEI grounds (04/15/25). The law students seek to block the handover of sensitive data of lawyers who work at, and students who applied to work at, 20 law firms targeted by the EEOC. The students are represented by Democracy Forward. The complaint [was amended](#) to convert the action to a class action (05/16/25).

**Y1, Week Fourteen**, the *New York Times* [reported](#) that the EEOC’s investigations into hiring practices of 20 law firms “has raised alarm among some current and former employees that the commission is being weaponized to ratchet up the pressure on law firms seen as unfriendly to the White House.”

**Y2, Week Four**, the law students who sued the EEOC secured a significant victory after the EEOC backed away from its effort to collect sensitive demographic information from specific law firms about their attorneys and job applicants (02/09/26). In the Stipulation of Dismissal in *Doe I v. EEOC*, the EEOC [acknowledged](#) that, despite its attempt to threaten law firms to believe otherwise, its data requests were voluntary, that most firms did not comply, that it received no personally identifying information, and that the matter is now closed. As Democracy Forward [noted](#) in its press release, the dismissal brings to “an end to an episode that had threatened the privacy and careers of current and future lawyers.”

## *Georgetown Law Center*

In a related development, the Dean of the Georgetown Law Center, William Treanor, [rebuked](#) Trump's pick for D.C. U.S. Attorney Martin (03/06/25) for [advising](#) Treanor that his office would not hire any GLC students if the school does not remove DEI from its curriculum. Treanor reminded Martin that "The First Amendment ... guarantees that the government cannot direct what Georgetown, and its faculty teach and how to teach it. The Supreme Court has continually affirmed that among the freedoms central to a university's First Amendment rights are its abilities to determine, on academic grounds, who may teach, what to teach, and how to teach it." See discussion of [Department of Education](#) edicts. Note that this tactic has been used by conservative judges in the past (see [Above the Law](#).)

## *Other responses*

Democratic lawmakers also are stepping up. Democratic members of the Senate Judiciary Committee sent a [letter](#) (03/06/25) to the Office of the Disciplinary Counsel of the D.C. Bar requesting a disciplinary investigation against Martin for possible violations of the D.C. Rules of Professional Conduct. The letter cites possible conflicts of interest and threats of prosecution as well as threats of investigation against government officials as part of Operation Whirlwind, including investigations of two Democratic members of Congress.

There is yet another irony in the Martin threats. Recall that as part of right-wing efforts to shut down content moderation by social media platforms, the Biden administration was accused of "[jawboning](#)," that is, of impermissibly threatening social media platforms to in effect censor "conservative free speech" through content moderation edicts. This effort was thwarted by the Supreme Court. See [Content Moderation and Free Speech](#), above.

Bradley Bondi, brother of AG Pam Bondi, and Alica Long, chief deputy to Ed Martin, are [ran](#) for president and treasurer, respectively, of the DC Bar Association and would sit on the Bar's 23-person Board of Governors. As NBC News [pointed out](#), while the Bar does not have a direct role in addressing misconduct among the more than 120,000 members of the Bar (including a significant number of federal government lawyers), its Board of Governors does recommend members to sit on the D.C. Board of Professional Responsibility, which is the disciplinary arm of the D.C. Court of Appeals. **Y1, Week Twenty-One**, when the results were tallied, Bondi and Long were roundly defeated (34,982 to 3,490 and 26,380 to 8,854). Turnout typically in the range of 8% was 43% for this election.

**Y1, Week Twenty**, a group of lawyers, law professors and returned judges, headed by Lawyers Defending American Democracy [filed](#) an ethics complaint with The Florida Bar, where Pam Bondi is admitted, against the Attorney General for professional misconduct. The essence of the complaint is that she has sought to compel DoJ lawyers to violate their ethical obligation under the guise of "zealous advocacy." The complaint notes that the applicable Rules of Professional Conduct limit the "zeal" to "lawful and ethical measures." Examples cited include the firings of [Erez Reuveni](#)

and [Denise Cheung](#), and the attempted firing of [Danielle Sassoon](#) and other prosecutors over the dismissal of charges against Mayor Eric Adams.

**Y1, Week Forty-Three**, after ten years in DoJ followed by more than 40 years on the federal bench, Judge Mark L. Wolf stepped down, warning of “an existential threat to democracy and the rule of law.” In his announcement, published in *The Atlantic* (“[Why I Am Resigning](#)”) and citing both the late [Sen. Bobby Kennedy](#) (“each time a man stands up for an ideal, or acts to improve the lot of others, or strikes out against injustice, he sends forth a tiny ripple of hope”) and [Nobel Laureate Seamus Heaney](#) (sometimes the “longed-for tidal wave of justice can rise up, and hope and history rhyme”), Wolf explained his decision to resign:

“I no longer can bear to be restrained by what judges can say publicly or do outside the courtroom. President Donald Trump is using the law for partisan purposes, targeting his adversaries while sparing his friends and donors from investigation, prosecution, and possible punishment. This is contrary to everything that I have stood for in my more than 50 years in the Department of Justice and on the bench. The White House’s assault on the rule of law is so deeply disturbing to me that I feel compelled to speak out. Silence, for me, is now intolerable.”

Wolf concluded, “I resigned in order to speak out, support litigation and work with other individuals and organizations dedicated to protecting the rule of law and American democracy.” He also intends “to advocate for the judges who cannot speak publicly for themselves.”

### **Governors and Attorneys General in Blue States**

The 23 Democratic attorneys general started preparing for Trump 2.0 over a year ago and hit the ground running on Inauguration Day. This is a supremely coordinated effort, which explains for example the flurry of lawsuits brought to date. See “[23 Dem AGs think they’ve cracked the code to fighting Trump](#).”

**Y1, Week Thirty-Nine**, Gabrielle Gurley, writing in the *American Prospect* (“[Governors Plunged Into Constitutional Crisis](#)”), captures the state of the resistance – with House and Senate Democrats, with some exception, struggling to find their voices, governors have stepped up – Govs. Newsom and Pritzker, in particular, the “assertive dissenters,” as she calls them. Govs. Hochul, Mills and Moore have had their more singular moments, as well.

Gurley writes that “Navigating legal thickets may not provide near-term solutions to this chaos, especially if the president blatantly sidesteps the court’s authority. But these regional power brokers undoubtedly recognize they’re the ones who’ll be left to pick up and reassemble the pieces of a country that’s careened into the breakdown lane. She quotes Saladin Ambar, a professor of political science at Rutgers University–New Brunswick, “Governors are poorly equipped to respond in terms of legislation, [that is] in terms of any kind of constitutional authority. What they do have is a kind of bully pulpit and success in their states.”



## Birthright Citizenship

The ACLU, among others, wasted no time and [sued](#) the Trump administration hours after Trump was inaugurated, on behalf of organizations with members whose children will be denied citizenship under the EO, over its effort to end birthright citizenship. A group of 18 states also [sued](#) “to protect their states, localities and residents from the President’s flagrant unlawful attempt to strip hundreds of thousands of American-born children of their citizenship based on their parentage.” Trump’s move, in the [words](#) of Kica Matos, head of the National Immigration Law Center, underscores his lack of regard for the Constitution. His repeal attempt is “both absurd and unconstitutional.”

Trump’s first contact with the legal system was reassuring – guardrails still exist. Federal Judge John Coughenour (appointed by President Ronald Reagan) temporarily blocked implementation of the birthright EO, finding it “blatantly unconstitutional.” In an exchange no lawyer would ever want to hear, the judge was unsparing, “Frankly, I have difficulty understanding how a member of the Bar could state unequivocally that this is constitutional. It just boggles the mind.”

**Y1, Week Three**, a second federal judge, Judge Deborah Boardman, in a case [brought](#) by CASA, Inc., the Asylum Seeker Advocacy Project, Inc. and individual plaintiffs, and supported by the Institute for Constitutional Advocacy and Protection (01/21/25), weighed in on the birthright issue in crystal clear terms, issuing a nationwide injunction. The judge characterized the EO as “conflict[ing] with the plain language of the 14th Amendment, contradict[ing] 125-year-old binding Supreme Court precedent and run[ning] counter to our nation’s 250-year history of citizenship by birth.” The Judge [issued](#) a preliminary nationwide injunction blocking implementation of the EO (02/05/25). The Trump administration [appealed](#) to the Fourth Circuit requesting a partial stay of the injunction (02/13/25), which [denied](#) the motion for the partial stay (02/28/25). The Trump administration then [appealed](#) to the Supreme Court (03/13/25).

And the following day, Judge Coughenour issued a nationwide [preliminary injunction](#) blocking implementation of the birthright EO and enjoining its enforcement. Once again, the Judge’s order was equally crystal clear, “the government’s position is unavailing and untenable. It does not have the text or precedent to supports its interpretation of the Citizenship Clause. And it rehashes losing arguments from over a century ago.” The Judge concludes, “Citizenship by birth is an unequivocal Constitutional right.... The President cannot change, limit, or qualify this Constitutional right via executive order.” In court, the Judge reportedly said, “It has become ever more apparent that to our president the rule of law is but an impediment to his policy goals. In this courtroom, and under my watch, the rule of law is a bright beacon which I intend to follow.”

**Y1, Week Thirteen**, acting on [appeals](#) from the administration seeking a partial stay to lower court injunctions, the Supreme Court [agreed](#) to hear three now consolidated birthright cases (04/17/25) and set May 15 to hear oral argument. This had the effect of continuing the pause nationwide on enforcement of the EO ending birthright citizenship. See the [response](#) of Washington, Arizona, Illinois and Oregon to the

government's application for a partial stay of the injunction against enforcement of the birthright EO.

**Y1, Week Seventeen**, on May 15, the Supreme Court heard an expedited oral argument on three separate injunctions (*Trump v. Casa*, *Trump v. Washington* and *Trump v. New Jersey*) that have blocked implementation of the EO ending birthright citizenship. The issue raised by the [government appeal](#) is the legality of the nationwide injunction. In other words, do federal judges sitting in one District Court have the ability to issue nationwide injunctions while the underlying case is pending? (See [Courthouse News Service](#) summary.) The government wants to limit each injunction to the advocacy groups and individuals that brought the respective birthright cases.

As Amanda Frost [cited](#) in her article in The Atlantic, Trump's Solicitor General got the question he could not answer from Justice Brett Kavanaugh, "On the day after [a birthright citizenship ban] goes into effect, how's it going to work – what do hospitals do with newborns? What do states do with a newborn? Answer: "We don't know." This is why nationwide relief is imperative.

A record 40 nationwide injunctions have been issued, but keep in mind there have been a record number of Trump EOs (150 and rising). And, yes, nationwide injunctions encourage forum shopping, as we saw during the Biden administration when red state judges blocked Biden policies (consider the nationwide ban injunction banning the drug mifepristone) – six of the ten courts where challenges against Biden administration policies were filed were in Fifth Circuit districts (Texas, Louisiana and Mississippi). If the Supreme Court lifts the nationwide injunctions, then the birthright EO would go into effect in the states not involved in any of the legal challenges. (See generally [CBS News](#) coverage, which includes data on the federal court districts where more than 300 lawsuits challenging administration actions have been filed.)

As Frost argues, there are cases where nationwide relief is warranted, and this would be one of them. Otherwise, birthright citizenship would turn on which state a baby was born in and presumably would motivate pregnant women who can move to states covered where the ban was rejected. Justice Ketanji Brown Jackson best captured the government's argument: You would "turn our justice system, in my view at least, into a catch-me-if-you-can kind of regime ... where everybody has to have a lawyer and file a lawsuit in order for the government to stop violating people's rights."

End of **Y1, Week Twenty-Three**, the Supreme Court handed down its ruling in *Casa*. Setting the procedural stage: a number of plaintiffs, including several states, challenged the birthright citizenship EO as unconstitutional. Each court that heard a birthright case ruled the EO was unconstitutional to the extent it sought to limit birthright citizenship. Three district courts granted nationwide injunctions blocking enforcement of the EO.

In a 6-3 decision authored by Justice Barrett that is, at best, muddled, with a concurrence by Justice Kavanaugh, and that elicited a stinging dissent from Justice Sotomayor, the Court ruled that, in most cases, federal courts do not have the authority to issue nationwide injunctions. The Court side-stepped the merits of whether or not the EO is unconstitutional. As result, for the moment, the EO is in effect in some states

but not in others, which means there could be different impacts depending on the state in which a baby is born and potentially where that baby moves to and not surprisingly also means there is huge uncertainty across the country (if a baby is born in a state that was a plaintiff, say New Jersey, and moved to a state that was not a plaintiff, say Texas, is the child protected from deportation)?

Professor Vladeck, in his June 27 [Substack](#), poses three questions as being the key to understanding the ultimate impact of the *Casa* decision:

- When will parties (particularly states) need a universal injunction in order to obtain “complete” relief? A universal injunction protects all subject to a challenged action, and not just the specific plaintiffs who brought the case. Technically the Court ruled that a universal injunction to protect non-plaintiffs is only permissible if necessary to protect the plaintiffs who sought the injunction. Said another way, if the injunction is sufficient to protect the plaintiff then a universal injunction is not needed. So, go back to the hypothetical – if that baby moved to Texas, you would think it was appropriate to have a universal injunction.
- If lower courts start certifying more nationwide classes in suits challenging federal policies, will the Supreme Court approve? In other words, does the availability of so-called [Rule 23\(b\)\(2\)](#) class action certifications, where a small group of plaintiffs seek relief for themselves and all others across the country similarly situated, render nationwide injunctions less necessary. And what happens when the administration challenges these class certifications? Professor Vladeck points out that “Without universal injunctions *or* nationwide class actions, we’d be left to individual lawsuits – or, at best, district-wide lawsuits – to conclusively resolve the validity of nationwide policies. As the Alien Enemies Act cases [have demonstrated](#), that’s a recipe for a huge mess, and one in which there’s way too much room for shell games by the executive branch.”
- To what extent is Justice Kavanaugh’s concurrence (and the normalization of emergency relief for which it argues), speaking for a majority?

In the meantime, expect to see the filing of thousands of individual cases as well as cases seeking nationwide class certification. As Robert Hubbell [pointed out](#) in his Substack, the chaos will be evident across the country and the blatant unfairness of this ruling and the birthright EO with luck will engender broader grassroot revulsion.

Heather Cox Richardson [reported](#) in her Substack post, following the decision, Trump claimed “If you look at the end of the Civil War – the 1800s, it was a very turbulent time. If you take the end day – was it 1869? Or whatever. But you take that exact day, that’s when the case was filed. And the case ended shortly thereafter. This had to do with the babies of slaves, very obviously.” Richardson then noted, “[Trump’s statement] is a great example of a politician rooting a current policy in a made-up history. There is nothing in Trump’s statement that is true, except perhaps that the 1800s were a turbulent time. Every era is.”

**Y1, Week Twenty-Five**, District Judge Joseph N. Laplante [granted](#) nationwide class certification and [issued](#) a preliminary injunction in favor of Barbara (pseudonym of a

citizen of Honduras), Sarah (pseudonym of citizen of Taiwan) and Mark (pseudonym of citizen of Brazil) (07/10/25), whose complaint was [filed](#) 06/27/25, and all similarly situated. The preliminary injunction was stayed for seven days pending appeal. The Court noted that “Nothing in this order should be construed as conflicting with the Supreme Court’s ruling in *CASA*, including its specific holding allowing executive agencies to develop and issue public guidance about the Executive’s plans to implement the Executive Order.” See [Court Listener](#) docket.

This is the first decision since the Supreme Court ruling in *Casa*. The Court reached much the same goal as the universal injunction struck down by the Supreme Court by granting nationwide class certification, meaning the ruling applies to all current and future persons who are born on or after February 20, 2025 where (a) that person’s mother was unlawfully present in the United States and the person’s father was not a United States citizen or lawful permanent resident at the time of said person’s birth, or (b) that person’s mother’s presence in the United States was lawful but temporary, and the person’s father was not a United States citizen or lawful permanent resident at the time of said person’s birth.

**Y1, Week Twenty-Seven**, the Ninth Circuit [affirmed](#) (2-1) the ruling by District Court Coughenour granting a preliminary injunction and determining that a universal preliminary injunction is appropriate, concluding the birthright citizenship EO is unconstitutional because it violates the 14<sup>th</sup> Amendment. The Ninth Circuit ruling represents the first appellate court ruling on the merits of Trump’s attempt to end birthright citizenship.

Separately, District Judge Leo T. Sorokin joined District Judges LaPlante and Coughenour as well as the Ninth Circuit in ruling against the administration on birthright citizenship. The Judge [found](#) that the nationwide injunction he had issued in cases [brought](#) by two groups of plaintiffs (*Doe et al. v. Trump* and *State of New Jersey v. Trump* – the latter filed on behalf of 18 states, D.C. and the City of San Francisco) remained in force under an exception to the Supreme Court’s ruling in *Casa*. The Court considered whether its initial order, in light of *Casa*, “swept too broadly,” and concluded that it did not – “no workable, narrower alternative to the injunction issued originally would provide complete relief to the plaintiffs in this case.” The Court therefore declined to modify its initial injunction.

In short, three courts have ruled against the administration (to enjoin or uphold an injunction) *after* the Supreme Court ruling in *Casa*. Next likely step, an appeal to the Supreme Court by the administration on the merits.

**Y1, Week Thirty-Seven**, as expected on Friday, the administration [filed](#) a petition for a writ of certiorari (its appeal on the merits) with the Supreme Court. A ruling would be unlikely to come before next June. Note that the prior ruling on birthright citizenship by the Supreme Court was only on the question of nationwide injunctions and not on the merits of whether Trump’s birthright EO is constitutional. See [POLITICO](#) coverage.

**Y1, Week Forty-Six**, the Supreme Court [agreed](#) to hear the administration’s appeal.

## Blue State Legislative Efforts

**Y1, Week Twenty-Two**, California State Senators Scott Wiener and Jesse Arreguin introduced [SB 627](#), the No Secret Police Act. SB 627 would prohibit law enforcement at all levels from covering their faces while conducting operations in the state of California and would require officers to be identifiable via their uniform, whether with name or other identifier.

## Buyout of Federal Employees

The American Federation of Government Employees (AFGE), AFL-CIO and two other unions, represented by [Democracy Forward](#), [sued](#) OPM and its acting director to block the buyouts of federal employees (using the defined term the “Fork Directive”) (02/04/25). The federal judge in the case (District Court Judge George A. O’Toole, Jr.) [declined](#) to block the buyouts on the ground that the unions did not have the standing to challenge the buyouts and the court lacked subject matter jurisdictions. While a setback that allowed Trump to close the offers, the underlying legality of the offers is yet to be tested.

## Central Intelligence Agency/Office of the Director of National Intelligence

A group of career intelligence officers assigned by CIA and ODNI to personnel management functions involving DEIA sued CIA and ODNI as well as their respective directors to enjoin being terminated (02/17/25). The plaintiffs are represented by Kevin Carroll. A federal judge (District Court Judge Anthony J. Trenga), citing the fact that the 51 intelligence officer plaintiffs all are at-will employees, refused to halt the firings (02/27/25).

[Dr. Adirim](#) sued the CIA, challenging her dismissal.

## Congressional Calls for Investigations

**Y1, Week Fourteen**, Rep. Jamie Raskin sent a [letter](#) to FBI Director Patel calling for an investigation into the failure by Ed Martin to disclose in his Senate Judiciary Committee questionnaire more than 150 appearances by Martin over eight years on Russian state controlled news outlets, RT and Sputnik, as reported by the *Washington Post* (04/23/25). Rep. Raskin also sent a [letter](#) to Senate Judiciary Chairman Chuck Grassley and Ranking Member Dick Durbin urging them to place a hold on Martin’s nomination until the investigation is complete. *See* [press release](#).

**Y1, Week Fifteen**, an NPR [investigation](#), including a direct email exchange with Martin and a review of a series of podcast interviews he conducted, casts doubt on the accuracy of Martin's sworn testimony to the Senate Judiciary Committee regarding alleged contacts with a man described by federal prosecutors as a Nazi sympathizer.

**Y1, Week Sixteen**, after Republican Senator Thom Tillis [announced](#) he could not support Martin’s confirmation, Trump withdrew the Martin nomination and, in his place [appointed](#), on an interim acting basis, Fox News host, election denier and

former prosecutor Jeanine. The DNC War Room [notes](#) that Pirro joins 21 other former Fox News and/or Fox Business alums nominated by the White House.

**Y1, Week Eighteen**, Martin is now in charge of the DoJ’s “[Weaponization Working Group](#)” and the “pardon office” and, as reported by the [New York Times](#) (among others), he intends to “use his authority to expose and discredit those he believes to be guilty, even if he cannot find sufficient evidence to prosecute them – weaponizing an institution he has been hired to de-weaponize, in the view of critics. ‘If they can be charged, we’ll charge them,’ told reporters before stepping down as interim U.S. Attorney in Washington. ‘But if they can’t be charged, we will name them. And we will name them, and in a culture that respects shame, they should be people that are ashamed.’”

Note that the head of the pardon office was vacant because the former “pardon attorney,” Elizabeth Oyer was fired in April. Oyer [maintains](#) she was fired because the day before her firing she had refused to restore the right to own a gun to actor and Trump supporter Mel Gibson, who had been convicted of a misdemeanor domestic violence conviction. (See [New York Times](#) coverage.) Oyer advised that DoJ leadership had attempted to intimidate her into not testifying before Congress by planning to dispatch US deputy marshals to her home with a letter warning her not to testify; she was able to forestall that delivery by acknowledging receipt of a copy of the letter sent via email. (See [Guardian](#) coverage.)

**Y1, Week Twenty-Eight**, following the withdrawal of the Martin nomination, the Senate confirmed former Fox News host and former judge and prosecutor in Westchester County, NY, Jeannine Pirro as the U.S. Attorney for the District of Columbia (50-45, with all Democrats voting against). The nomination came during a rare Saturday session before the Senate broke for its August recess. Pirro declined to answer questions about whether January 6<sup>th</sup> insurrectionists should have been pardoned. Pirro was one of the Fox News hosts [named](#) in the lawsuit filed by Dominion Voting Systems against Fox for defamation.

The Pirro confirmation comes as the 120-day terms for a number of interim U.S. attorneys are set to expire. The maneuvering by the DoJ to keep Alina Habba [in place](#) represents one of the [tactics](#) being deployed by DoJ to retain more of Trump’s U.S. attorney selections across key jurisdictions.

### **Consumer Financial Protection Board**

The National Treasury Employees Union, representing employees across 37 federal agencies and departments, [sued](#) the CFPB, seeking declaratory and injunctive relief in the face of efforts to shut down the agency (02/06/25). An amended complaint, adding the National Consumer Law Center, the NAACP, the Virginia Poverty Law Center, Pastor Eva Steege and the CFPB Employee Association, was [filed](#) a Y1, Week later (02/13/25).

**Y1, Week Ten**, District Court Judge Amy Berman Jackson [granted](#) plaintiffs’ motion for a preliminary injunction (03/28/25). Judge Jackson noted that the government was “fully engaged in a hurried effort to dismantle and disable the agency entirely.” She continued, “These actions were taken in complete disregard for the decision Congress



made 15 years ago, which was spurred by the devastating financial crisis of 2008 and embodied in the United States Code, that the agency must exist and that it must perform specific functions to protect the borrowing public. The elimination of the agency was interrupted only because plaintiffs sought and obtained the Court's intervention on the day the overwhelming majority of the employees were going to be fired."

**Y1, Week Twenty-Eight**, legal watchdog the Legal Accountability Center reportedly filed complaints with the Massachusetts, Nebraska, Texas, Virginia and Washington, DC Bars against three DoJ attorneys, alleging that they made misrepresentations to District Judge Amy Berman Jackson in *National Treasury Employees Union v. Vought* (07/31/25). The complaint states that Deputy Assistant Attorney General Eric Hamilton, Special Counsel Brad Rosenberg, and trial attorney Liam Holland made "materially misleading" statements in an effort to assure the District Court that the Trump administration had no plans to shut down the CFPB. Internal emails from CFPB acting Director Russell Vought amounted to a stop-work order for staff, contradicting the administration's assertions in its court filings. Emery Celli Brinckerhoff Abady Ward & Maazel LLP represents the Legal Accountability Center.

### **Consumer Product Safety Commission**

**Y1, Week Twenty-One**, District Judge Matthew J. Maddox [granted](#) a motion for summary judgment in favor of Mary Boyle, Alexander Hoehn-Saric, and Richard Trumka Jr., who were appointed by President Biden to serve as members of the CPSC for terms prescribed by statute, subject to removal only for neglect of duty or malfeasance (06/13/25). They had received notice of termination in early May. They were seeking declaratory and injunctive relief to block their removal. Their complaint was [filed](#) against Trump, Secretary Bessent, OMB Director Vought and the acting chairman of the CPSC (05/21/25).

**Y1, Week Twenty-Four**, following a [ruling](#) by the Fourth Circuit (07/01/25) denying the administration's motion for and administrative stay of the District Court order to allow it to fire the three members of the CPSC, the administration [applied](#) to the Supreme Court for a stay of the judgment of the District Court and an administrative stay (07/02/25).

**Y1, Week Twenty-Seven**, the Supreme Court, citing its interim order in [Trump v. Wilcox](#), ruled in favor of the administration and [granted](#) an emergency application for stay pending appeal (07/23/25). Justice Kagan wrote the dissenting opinion, joined by Justices Sotomayor and Jackson. Once again, the Court ruled on its shadow docket. See list of the sixteen rulings [rendered](#) by the Supreme Court in favor of the administration, compiled by NewsY1, Week. See [SCOTUSblog](#) coverage.

### **Corporation for Public Broadcasting**

**Y1, Week Fifteen**, the Corporation for Public Broadcasting (CPB), the parent company for National Public Radio and the Public Broadcasting Corporation, [sued](#) the administration, seeking a judicial declaration that an email, purportedly from Trent Morse, Deputy Director of Presidential, to three of the CPB Board members asserting that President Trump had purportedly terminated their positions on the Board is of no

legal effect given that the President has no power to remove or terminate CPB's Board members (04/29/25). CPB is represented by Saul Ewing. As [reported](#) above, Congress voted to shut down CPB.

### **DEI Plaintiffs**

As **Y1, Week Five** came to a close, with chaos at the Pentagon, Trump's efforts to cut federal funding from programs that incorporate DEI were blocked by a federal judge (District Court Judge Adam B. Abelson). The EOs at issue were the "[Ending Radical and Wasteful Government DEI Programs and Preferencing](#)" EO (14151) and the "[Ending Illegal Discrimination and Restoring Merit-Based Opportunity](#)" EO (14173). The Judge issued a [memorandum opinion](#) and [granted](#) a nationwide preliminary injunction in large part, enjoining implementation of the termination provision of EO 14151 and of the certification and enforcement threat provisions of EO 14173 (02/21/25).

The ruling was based on First and Fifth Amendment grounds and covers terminations of "equity-related" grants and contracts, requirements that contracts and grant awards include certifications by contractors or awardees that they do not operate DEI programs and threats of DoJ enforcement against private sector companies to deter DEI programs.

The underlying action was [brought](#) by counsel from Democracy Forward Foundation and Asian Americans Advancing Justice on behalf of the National Association of Diversity Officers, the American Association of University Professors, the Restaurant Opportunities Centers United and the Mayor and City Council of Baltimore. (*See also* [motion](#) filed 02/13/25.)

At the end of **Y1, Week Eight**, the Fourth Circuit [granted](#) the Trump administration's motion to stay the preliminary injunction pending appeal. Interestingly, all three judges on the panel issued separate concurring opinions.

### **Defense (Restricted Military) Zones**

**Y1, Week Seventeen**, in legal challenges involving trespass charges in [military zones established](#) in various states along the southern border, U.S. Chief Magistrate Gregory B. Wormuth of Las Cruces, New Mexico dismissed nearly 100 charges against undocumented migrants for trespassing in a national defense zone in New Mexico. Judge Wormuth found that the government had failed to show that the arrested migrants actually knew they had entered a restricted military zone. The migrants could nonetheless be deported for entering the country illegally. The administration's rationale for establishing the zones is to permit active-duty troops to detain migrants on military land, although to date [reportedly](#) troops largely have limited their involvement to providing support and surveillance for Border Patrol arrests.

### **Department of Agriculture**

Plaintiffs that include an NGO of farmers and gardeners, the Natural Resources Defense Council and the Environmental Working Group [sued](#) the Department of Agriculture over the removal of climate-related policies, guides, datasets and resources from its websites (02/24/25). They seek declaratory and injunctive relief and are

represented by Earthjustice and Knight First Amendment Institute at Columbia University.

**Y1, Week Seven**, the MSPB [granted](#) a 45-day stay on the dismissal of all probationary employees (over 5,000) at the Department of Agriculture. All such employees are reinstated, at least temporarily. The stay was requested by the Office of the Special Counsel (see [below](#)). Special Counsel [applauded](#) the 45-day stay, only to have the block on his removal [lifted](#) only hours later.

**Y1, Week Seventeen**, privacy and civil liberties advocates urged third-party payment processors to resist demands from the USDA directed at states and their contractors to provide sensitive, personal data for food stamp recipients under the Supplemental Nutrition Assistance Program (SNAP). See the letter [issued](#) by Protect Democracy (PD), the Center for Democracy and Technology (CDT) and the Electronic Privacy Information Center (EPIC). Nicole Schneidman, the lead author from PD of the letter, was [quoted](#) by NPR as saying that “If any private company who processes and has access to states’ sensitive data complies with these kinds of federal demands, that is a dangerous and very slippery slope. It would validate a tactic where government pressure on vendors effectively allows the federal government access to states’ data while making an end run around states.”

**Y1, Week Eighteen**, four individual plaintiffs who receive SNAP benefits, together with Mazon: A Jewish Response to Hunger and EPIC sued seeking a declaratory judgment that USDA acted unlawfully in initiating collection of information of SNAP applicants and recipients without complying with the requirements of the Privacy Act, the Paperwork Reduction Act, and the Administrative Procedure Act and to enjoin the collection of such information without compliance with the foregoing statutes (05/22/25). The plaintiffs are supported by Protect Democracy Project, the National Center for Law and Economic Justice, the National Student Legal Defense Network and EPIC.

The complaint notes that “litigation seeks to ensure that the government is not exploiting our most vulnerable citizens by disregarding longstanding privacy protections, depriving the public of critical information regarding data collection and protections, and eviscerating the public’s right to comment on the mass collection and consolidation by the federal government of sensitive, personal data of tens of millions of individuals who rely on federal food assistance benefits.”

**Y1, Week Forty-One**, District Judge Indira Talwani [ordered](#) the USDA to disburse contingency funds to pay SNAP benefits and gave the administration until Monday to decide whether or not to voluntarily fund some of the SNAP benefits (10/31/25). See [Court Listener](#) Docket. District Judge John McConnell, ruling in a separate case from the bench, went further and ordered the USDA to use emergency funds to fund SNAP payments otherwise payable November 1. The case before Judge Talwani was [brought](#) by the attorneys general of 22 states and the District of Columbia, as well as the governors of Kansas, Kentucky and Pennsylvania (10/28/25). The case before Judge McConnell was [brought](#) the Rhode Island State Council of Churches, the National Council Nonprofits, the Service Employees International Union (SEIU) and various cities and other plaintiffs (10/30/25).

The SNAP program is the primary federal program to combat hunger for low-income Americans (annual net income under approximately \$31,000 for a family of four). Recipients received benefits electronically through Electronic Benefit Cards. In 2024, SNAP helped more than 41 million people avoid hunger or malnutrition; more than 62% of SNAP participants are in families with children and more than 37% are in families with members who are elderly or have disabilities. The plaintiff states provide close to 25 million individuals in nearly 14 million households with food assistance through the SNAP program. SNAP is overseen by a component of USDA.<sup>10</sup> See [Common Dreams](#) coverage.

**Y1, Week Forty-One**, Judge McConnell [issued](#) his order (11/01/25), ruling in summary, “the Government must make the full SNAP benefit payments by Monday, November 3, 2025. If they chose to use their discretion and not use other funds in additional [*sic*] to the contingency funds to make a full payment, then they must make a partial payment of the total amount of the contingency funds, and they must do this by Wednesday, November 5, 2025.” See [Democracy Forward](#) summary.

On Friday, Judge McConnell [granted](#) plaintiffs’ motion to enforce and as well as plaintiffs’ motion for a new temporary restraining order, the effect of which is to order full payment of SNAP benefits owing for November to the states by the following day, November 7 (11/06/25). The administration is directed to use contingency funds in combination with funds available under Section 32 of the Agricultural Adjustment Act of 1935. Among other findings, the Court noted that it is “not naïve to the administration’s true motivations. Far from being concerned with Child Nutrition funding, [statements on the USDA website and Trump’s social media posts] make clear that the administration is withholding full SNAP benefits for political purposes.

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<sup>10</sup> While Congress has not yet provided appropriations for FY 2026 SNAP benefits, in 2024 it enacted an appropriations law funding \$3 billion in a contingency reserve to remain available through the end of FY 2026 (September 30, 2026). The appropriation law stated that the \$3 billion “shall be placed in reserve for use only in such amounts and at such times as may become necessary to carry out program operations.”

A continuing resolution in 2025 funded another \$3 billion in a contingency reserve for these same purposes, also to remain available at least through September 30, 2026. All \$6 billion is available for disbursement, but on October 10, despite having acknowledged congressional intent to continue SNAP operations and the apparent availability of sufficient appropriations to fund November benefits, USDA sent a letter to state SNAP agencies saying that “if the current lapse in appropriations continues, there will be insufficient funds to pay full November SNAP benefits for approximately 42 million individuals across the Nation.”

On October 24, USDA suspended all November 2025 benefits “until such time as sufficient federal funding is provided or until [the USDA component] directs State agencies otherwise.”

Such ‘unjustifiable partisanship’ has infected the USDA’s decision-making, rendering it arbitrary and capricious.”

The administration promptly [filed](#) its notice of appeal to the First Circuit. The First Circuit declined to issue an administrative stay while it considered the administration’s appeal, prompting the administration to file an application with the Supreme Court seeking an administrative stay rather than wait for the First Circuit’s ruling on the merits (11/07/25). As a result of the First Circuit’s denial of the administrative stay, the lower court’s order directing payment of the SNAP benefits in full remained in effect as of Friday midday. However, Friday evening, Justice Jackson [granted](#) the administrative stay, pausing for the moment the obligation of the administration to pay full SNAP benefits for November, pending the First Circuit’s decision on the merits of the appeal. For a discussion of the likely tactical reason why Judge Jackson granted the administrative stay, see Robert Hubbell’s [analysis](#).

### **Department of Education**

The University of California Student Association [sued](#) the Department of Education accusing DOGE of illegally accessing “sensitive personal and financial information” of about 42 million federal student loan borrowers (02/07/25).

California, Massachusetts, New Jersey, Colorado, Illinois, Maryland, New York and Wisconsin [sued](#) the Department of Education seeking a temporary restraining order in respect of termination of grants previously awarded under the Teacher Quality Partnership Program and the Supporting Effective Educator Development (SEED) Grant Program (03/06/25). District Court Judge Myong J. Joun [granted](#) the request for a temporary restraining order (03/10/25). The government [appealed](#) to the First Circuit seeking a stay of the temporary restraining order (03/12/25), which was [denied](#) (03/21/25). The government [appealed](#) to the Supreme Court to vacate the District Court order and issue an administration stay (03/26/25). **Y1, Week Eleven**, the Supreme Court, in a *per curiam* [decision](#) (5-4 decision, with the Chief Justice in the minority) handed the government a victory by vacating the District Court’s temporary restraining order (04/04/25).

A similar suit was [brought](#) by the American Association of Colleges for Teacher Education, the National Center for Teacher Residencies and the Maryland Association of Colleges for Teacher Education seeking a declaration that the termination of SEED, as well as Teacher Quality Partnership Program (TQP) and Teacher and School Leader Incentive Program (TSL) grants was unlawful, a temporary injunction and a permanent injunction (03/3/25). The plaintiffs are represented by Saul Ewing LLP. District Judge Julie R. Rubin [granted](#) a temporary restraining order in respect of the Administrative Procedures Act claim (03/17/25). An appeal is pending in the Fourth Circuit.

A broader group of Blue states (20 altogether, led by New York) and the District of Columbia [sued](#) the Department of Education seeking injunctive relief declaring the order to dismantle the Department of Education unconstitutional (03/13/25). The causes of action include violation of the Separation of Powers doctrine (usurping legislative authority and a violation of the Take Care Clause) and violations of the



Administrative Procedures Act. On March 24, plaintiffs [submitted](#) a motion for a preliminary injunction. See [Court Listener](#) docket.

**Y1, Week Ten**, on March 24, Somerville and Easthampton public schools, the American Federation of Teachers, the American Federation of State, County and Municipal Employees, the American Association of University Professors and the Service Employees International Union [sued](#) challenging the reduction in force covering 2,000 employees (nearly half of the Department of Education's workforce) and the EO purporting to dismantle the Department. The plaintiffs are represented by Democracy Forward.

**Y1, Week Eighteen**, Judge Joun [issued](#) a preliminary injunction enjoining the government from dismantling the Department of Education (05/22/25), including halting the reduction-in-force (RIF) ordered for the agency and reinstating employees covered by the RIF order. The court found that "[t]he record abundantly reveals that Defendants' true intention is to effectively dismantle the Department without an authorizing statute. ... The idea that Defendants' actions are merely a "reorganization" is plainly not true."

Separately, District Judge Paul T. Friedman [granted](#) a preliminary injunction and temporary injunction to halt the termination of grants awarded to the Southern Education Foundation (SEF). SEF was founded in 1867 to advance equitable education practices and policies in the South following the end of the Civil War, and since then has fostered economic opportunities, ranging from educating formerly enslaved persons to advocating against segregation. In 2022, the Department of Education awarded the SEF a federal grant to operate EAC-South, a technical assistance center to address the effects of desegregation. These funds were terminated by the Trump administration.

**Y1, Week Twenty-Six**, I am reminded of conversations with Hillary Clinton during the 2016 campaign in which she stressed the importance of early childhood education and framed the imperative in supporting education in the context of our competitive position vis-à-vis China: imagine the disadvantage we will have in 25 years if we have not invested anywhere near as much as the Chinese in education. Fast forward to 2025 and another tragic move that will have untold consequences, including our ability to compete in the world of 2050. This Y1, Week, the administration will begin in effect shutting down the Department of Education (though it will do so by slashing the workforce as it does not have the authority, in theory, to simply shut out all the lights).

Once again, in an unsigned order (6-3), the Supreme Court has [granted](#) an administrative stay in favor of the administration, this time of Judge Joun's preliminary injunction that had been affirmed by the First Circuit, blocking the dismantling of the Department of Education (07/14/25). Judge Joun's order covered a variety of similar challenges brought by Blue states, school districts and unions that had been consolidated. The ruling in *McMahon v. New York et al.* in effect paves the way for the dismantling of the Department. In March, half the workforce had been fired, but those firings were paused by the preliminary injunction, and 1,400 employees were reinstated. Within two hours of the ruling, the Department of Education sent notices



to employees indicating it is immediately resuming its plans to slash the workforce in the Department.

In the dissent she authored, Justice Sotomayor pointed out that Education Secretary McMahon was explicit in her intention to shut down a federal agency established and funded by Congress. Achieving that goal is illegal; the courts are the check on that lawlessness. While the District Court and Circuit Court, in her words, “rose to the occasion,” the majority has intervened, lifting the injunction and permitting the dismantling to go forward. “That decision,” she writes, “is indefensible. It hands the Executive the power to repeal statutes by firing all those necessary to carry them out. The majority is either willfully blind to the implications of its ruling or naive, but either way the threat to our Constitution’s separation of powers is grave.”

She notes that the government, trying to end run around the absence of any authority of the President to shut down a federal agency, is disingenuous in asserting that it seeks only to “cut bureaucratic bloat.” “The record unambiguously refutes that account. Indeed, ... neither the President nor Secretary McMahon made any secret of their intent to ignore their constitutional duties. President Trump repeatedly called for the immediate abolition of the Department both during his campaign and after taking office.” “The record evidence credited by the District Court and unrebutted by the Government thus leads to one conclusion: The Executive has seized for itself the power to repeal federal law by way of mass terminations, in direct contravention of the Take Care Clause and our Constitution’s separation of powers.”

She concludes: “The President must take care that the laws are faithfully executed, not set out to dismantle them. That basic rule undergirds our Constitution’s separation of powers. Yet to-day, the majority rewards clear defiance of that core principle with emergency relief. Because I cannot condone such abuse of our equitable authority, I respectfully dissent.”

So, what exactly does this all mean? Trump wants to return oversight of education to the states. According to reporting in the *Washington Post*, the states do provide close to 90% of the funding for education, but the federal government plays key roles as well. It provides supplemental funding to K-12 schools with high levels of poverty (under Title I, \$18.4 billion) and helps cover the cost of providing education to students with disabilities (\$15.5 billion). The Department of Education also oversees the \$1.6 trillion student loan program. The Department also is responsible for enforcing civil rights laws that prohibit discrimination in federally funded schools. Trump has been a vocal critic of federal efforts to promote racial equality in schools and protect the rights of transgender students. The *Washington Post* reporting notes that the consequence of the dismantling over and above the symbolic impact will depend on how Congress chooses to restructure the work of the Department.

Vox [labelled](#) this Supreme Court decision “the biggest victory” of Trump’s second term, and as the opinion was rendered on the shadow docket, there was no need for the majority to explain the rationale for their decision.

**Y1, Week Thirty**, District Judge Stephanie Gallagher [ruled](#) that the Department’s “Dear Colleague Letter” setting out the administration’s positions on DEI principles

and federal antidiscrimination law and its announcement that it would require states and school districts to affirmatively certify their compliance with its interpretations of Title VI and *Students for Fair Admissions v. Harvard* were unlawful and granted summary judgment in favor of the plaintiffs (08/14/25). The case was [brought](#) by the American Federation of Teachers, the American Sociological Association, the American Federation of Teachers – Maryland and Eugene School District 4J (03/05/25). The plaintiffs were represented by Democracy Forward Foundation. See [Democracy Forward](#) press release, which noted that the Dear Colleague Letter “threatened that federal funding would be withheld from education institutions that teach students critical history, sociology, and other lessons that may reference race, provide support to students in the form of diversity, equity, or inclusion programming, or attempt to foster inclusive school environments for students of all backgrounds, among other efforts.”

**Y1, Week Thirty-Seven**, the AFGE [sued](#) the Department of Education (10/03/25) over revisions to an out-of-office message for furloughed employees during the shutdown blaming the shutdown on Senate Democrats on the ground that the unilateral change violated the First Amendment rights of the employees. **Y1, Week Forty-Two**, District Judge Christopher R. Cooper [agreed](#) and granted summary judgment (11/07/25), finding that:

“The Department has infringed upon its employees’ First Amendment rights. Non-partisanship is the bedrock of the federal civil service; it ensures that career government employees serve the public, not the politicians. But by commandeering its employees’ e-mail accounts to broadcast partisan messages, the Department chisels away at that foundation. Political officials are free to blame whomever they wish for the shutdown, but they cannot use rank-and-file civil servants as their unwilling spokespeople. The First Amendment stands in their way. The Department’s conduct therefore must cease.”

The AFGE was represented by the Public Citizen Litigation Group and Democracy Forward Foundation.

### **Department of Health & Human Services/NIH**

On February 7, the Trump administration declared that it would cut funding for life-saving medical research. Limiting Facilities and Administrative (F&A) reimbursements for all NIH research grants would have an immediate and dire impact on critical biomedical and health research nationwide. F&A costs are the real and necessary costs of conducting the groundbreaking research that has led to so many medical breakthroughs over the past decades. A cut to F&A for NIH grants is a cut to the medical research that helps countless American families whose loved ones face incurable diseases or untreatable debilitating conditions. This [warning](#) came from the American Council on Education, the Association of American Universities and the Association of Public and Land-grant Universities as part of an announcement of a [lawsuit](#) they and a group of affected universities had filed (02/10/25) against the Department of Health & Human Services and the National Institutes of Health seeking to halt the cuts.

District Judge Angel Kelly [enjoined](#) the F&A cuts (03/05/25).

Twenty-two Democratic states, led by Massachusetts, [sued NIH](#) over its decision to place a 15% cap on indirect funding for research projects (02/10/25). District Court Judge Mary Page Kelly enjoined the cap pending litigation.

**Y1, Week Twenty-Four**, 20 states led by California, [sued](#) HHS and DHS after HHS officials directed that sensitive data about Medicaid recipients be shared with DHS (07/01/25). The data transfer was [first reported](#) by the Associated Press, which noted that HHS officials had directed the Centers for Medicaid & Medicare Services (CMS) to share data with DHS from California, Illinois, Washington and Washington, D.C., about millions of their Medicaid recipients. The complaint seeks declaratory and injunctive relief.

**Y1, Week Twenty-Five**, District Judge Indira Talwani [issued](#) an amended temporary restraining order enjoining the enforcement of an order to defund health centers associated with Planned Parenthood through restrictions on Medicaid reimbursements (07/11/25). The action brought by Planned Parenthood entities [challenges](#) Section 71113 of the OBBA (07/07/25). The plaintiffs are represented by WilmerHale.

**Y1, Week Twenty-Seven**, Judge Talwani [issued](#) a preliminary injunction in favor of Planned Parenthood, but it does not cover other organizations affected by Section 71113 (07/21/25). As federal law already prohibits funding for most abortions, Section 71113 affects other health services provided by Planned Parenthood and other health centers, such as screening for cancer and treatment of STD.

**Y1, Week Twenty-Eight**, Judge Talwani in effect [broadened](#) the scope of her preliminary injunction, making it applicable to all Planned Parenthood Federation members (07/28/25). This is now nationwide relief. *See [New York Times](#) coverage.* While the ruling was not a determination on the merits, the Court did find that plaintiffs are likely to succeed in showing that Planned Parenthood members engage in constitutionally protected expression and expressive association via membership in the Planned Parenthood Federation. Plaintiffs argued that Section 71113 violates the Constitution by subjecting the Federation and its members to a bill of attainder (a [law](#) that declares a specific person or group guilty of a crime and imposes punishment without going through a judicial process), by retaliating against them in violation of the First Amendment and by denying them equal protection of the law.

**Y1, Week Thirty-Six**, the *New York Times* [paints](#) a heartbreaking picture of the cancer research landscape as the Trump administration cancels millions of dollars in cancer-related research grants and contracts, and delays or suspends payments for hundreds of millions more. The article quotes former NIH Deputy Director as saying the administration's tactics represent "an absolutely unmitigated disaster. It will take decades to recover from this, if we ever do."

**Y1, Weeks Thirty-Eight**, six former Surgeons General [penned](#) an op-ed warning that the actions of HHS Secretary Kenney are endangering the health of the country – "Never before have we issued a joint public warning like this. But the profound, immediate and unprecedented threat that Kennedy's policies and positions pose to the nation's health cannot be ignored." They cite:

- As the country faced its worst measles outbreak [in more than 30 years](#), Kennedy [de-emphasized vaccination](#) and directed HHS resources toward unproven [vitamin therapies](#), resulting in [months-long outbreak](#), three preventable deaths and the first measles-related child death in the country in over two decades.
- Kennedy removed every member of the [Advisory Committee on Immunization Practices](#), replacing its scientific experts with individuals who often lacked basic qualifications, some of whom are vaccine conspiracy theorists. The replacement committee has already begun [casting doubt](#) on the hepatitis B vaccine for newborns, despite decades of data affirming its effectiveness and strong safety profile.
- Kennedy continues to ignore science and most recently HHS [proposed](#) new warning labels on products containing acetaminophen (Tylenol), citing a supposed link between prenatal use and autism. The [American Academy of Paediatrics](#), the [American College of Obstetricians and Gynecologists](#) and [other leading health organizations](#) issued public guidance urging physicians and patients to disregard HHS's recommendation.
- Kennedy is continuing to amplify health misinformation and disinformation.
- Kennedy has “silenced and sidelined hundreds of scientists, public health officials and medical professionals, creating an atmosphere of fear and distrust.” Professionals report a “culture of intimidation, where scientific findings are censored, evidence is disregarded and career officials are pressured to rubber stamp conclusions that are not backed by science.”
- In response to the [shooting at](#) CDC headquarters, Kennedy [denigrated](#) CDC staff “as corrupt and repeated conspiracy theories that contribute to the targeting of the very staff he is charged with protecting.”

On Saturday, it was widely reported that HHS is scrambling to rehire employees fired through RIFs on Friday. These include staff who work on the Morbidity and Mortality Weekly Report, the director's office of the Global Health Center, staff working on the measles response and Ebola outbreak response in the DRC, fellows in the Laboratory Leadership Service, who work on laboratory safety and testing accuracy and staff in the Epidemic Intelligence Service officers, who investigate disease outbreaks. *See [Denver Gazette](#) coverage.*

**Y1, Week Fifty-One**, District Judge Arun Subramanian [issued](#) a temporary restraining order (01/09/26) temporarily blocking the administration from freezing approximately \$10 billion in federal funding for child care and social services (food and safe housing) in a case [brought](#) by five Democratic led-states (New York, as well as California, Colorado, Illinois and Minnesota). The funding programs subject to the freeze are the Child Care and Development Fund, Temporary Assistance for Needy Families and the Social Services Block Grant. The complaint notes that the government said that the freeze “is necessary to root out ‘potential’ fraud, but this is pretext. Their transparent motivation is to punish “Democrat-led” states who are disfavored by the Administration based on numerous public statements identified below.” The emergency motion was handled by Judge Subramanian, but the case was assigned to

District Judge Vernon S. Broderick, who will handle future motions. See [New York Times](#) coverage.

### **Department of Homeland Security**

Make the Road New York, supported by the ACLU, [sued](#) the DHS claiming that the expanded use of expedited removal under the INA to include noncitizens located anywhere in the United States who cannot prove they have been continuously present in the United States for more than two years violates the Fifth Amendment, the Due Process Clause, the INA and the [Administrative Procedure Act](#) (01/22/25).

For years, fast track deportation has been limited to migrants caught at the border or within 100 miles of the border and within two weeks of entering the country illegally. In 2019, the first Trump administration expanded the policy to apply across the country and to any migrant who was unable to prove they had been in the country for more than two years. That policy was rolled back during the Biden years, and reinstated in January (the January 21 Designation), allowing ICE to deport any noncitizen “who are encountered anywhere in the United States more than 100 air miles from a U.S. international land border, and who have been continuously present in the United States for at least 14 days but for less than two years.”

**Y1, Week Six**, a federal judge (District Court Judge Theodore D. Chuang) [granted](#) a motion for a preliminary injunction in favor of a diverse group on faith groups (Quakers, Cooperative Baptists and Sikhs) blocking DHS, ICE and CBP from immigration enforcement in or near places of worship operated by any of the plaintiffs (02/24/25). The Court [issued](#) a Memorandum Opinion as to why it declined to issue a nationwide injunction.

**Y1, Week Twelve**, In a case [brought](#) by the Coalition for Humane Immigrant Rights, United Farmers Workers of America, CASA and Make the Road New York against DHS (03/31/25), District Judge Trevor N. McFadden denied plaintiffs motion for a stay and preliminary injunction, on the ground of success on the merits based on lacked of standing (04/10/25). This allows the administration to proceed with the [alien registration requirements](#) applicable to all noncitizens 14 years of age or older who remain in the United States for at least 30 days and are not currently registered and fingerprinted.

The Refugee and Immigrant Center for Education and Legal Services (RAICES), Las Americas Immigration Advocacy Center, and Florence Immigrant & Refugee Rights Project [sued](#) DHS over the return of asylum seekers to countries where they would face persecution or torture without allowing them to invoke the protections Congress had provided. The ACLU, National Immigrant Justice Center (NIJC), Center for Gender & Refugee Studies (CGRS), Texas Civil Rights Project (TCRP), ACLU of the District of Columbia, and ACLU of Texas represented the plaintiffs. See [Court Listener](#) docket.

**Y1, Week Twenty-Four**, District Judge Randolph D. Moss [granted](#) class certification and [granted](#) plaintiffs’ motion in part for summary judgment. See also [Memorandum Opinion](#) (07/02/25). In the words of the ACLU, the court blocked Trump’s [Proclamation](#) aimed at completely shutting down asylum at the border. The court



rejected use of the “INA 212(f)” proclamation (expedited removal and direct repatriation), which falsely cited an “invasion” as justification to deny asylum protections and summarily deport families and individuals to countries where they are at risk of persecution.

Specifically, the Court enjoined the defendants from implementing the Proclamation, including by adopting extra-statutory expulsion procedures pursuant to 8 U.S. Code § 1182(f) and § 1185(a) and the President’s residual constitutional authority; removing aliens without complying with 8 U.S. Code § 1158(a); narrowing eligibility for asylum without complying with 8 U.S. Code § 1158(b)(2)(C); or altering the so-called [UNCAT](#) procedures” in violation of the Foreign Affairs Reform and Restructuring Act of 1998.

**Y1, Week Twenty-Two**, the Los Angeles Press Club, NewsGuild - Communications Workers of America, and various reporters, legal observers and protesters [sued](#) DHS to enjoin it from using unnecessary and excessive violence to prevent them from exercising their First Amendment rights to report on, observe, and protest government actions (06/18/25). The case was consolidated and [transferred](#) to District Judge Hernan D. Vera (07/08/25). **Y1, Week Twenty-Five**, Judge Vera [issued](#) a temporary restraining order barring the Los Angeles Police Department from obstructing journalists who are covering immigration protests or from using ammunition and crowd-control weapons against those journalists (07/10/25).

The *Guardian*, in May, filed FOIA requests with ICE seeking arrest records to understand who was being targeted for detention and deportation, and why. ICE had failed to comply, prompting the news outlet and the Reporters Committee for Freedom of the Press to [sue](#) ICE for unlawfully withholding documents that represent a clear and overwhelming matter of public interest (06/30/25).

Among its last decisions of the October 2024 term, the Supreme Court, in *Riley v. Bondi*, [addressed](#) two technical legal questions regarding removals: whether final administrative removal orders (FAROs) constitute final orders of removal for purposes of 8 U. S. C. §1228(b)(1) or whether a later Board of Immigration Appeals dismissal of a CAT petition constituted that final order of removal, the answer to which would have triggered different 30-day deadlines, and whether the underlying 30-day deadline petitions (§1228(b)(1) petitions “must be filed not later than 30 days after the date of the final order of removal”) is a jurisdictional question or a claims processing rule. The Supreme Court ruled the FARO was the appropriate trigger (5-4) and ruled that the question is a claims processing rule (9-0), and remanded the case back to the Fourth Circuit. The Fourth Circuit had ruled that Riley’s petition for review was filed too late as it was more than 30 days after the FARO, and that because the matter was a jurisdictional one, dismissed the case. See [American Immigration Lawyers Association](#) takeaways.

**Y1, Week Twenty-Eight**, in a case [brought](#) by the Coalition for Humane Immigrant Rights, CASA and UndocuBlack Network challenging “expedited removal” (03/24/25), District Judge Jia M. Cobb [granted](#) plaintiffs’ motion for a stay of agency action as to all noncitizens who have been, at any time, paroled into the United States at a port entry (08/01/25). See also the Court’s [Memorandum Order](#). The Court found



that the challenged actions exceed DHS's statutory authority and are arbitrary and capricious.

At issue were three actions, the January 23 memorandum from Acting DHS Secretary issued to USCIS and CBP, a February 18 internal ICE directive on expedited removal and termination of March 25 of the CHNV parole programs, which in the words of the Court "terminated parole for hundreds of thousands of noncitizens for the express purpose of subjecting them to expedited removal when they otherwise would not be." Parole allowed the CHNV citizens to legally work and live in the United States while their cases were heard, the point of the program being to create a legal pathway to enter the country to discourage mass border crossings.

See [Washington Post](#) coverage, which quotes Kathleen Bush-Joseph, counsel at the Migration Policy Institute, as saying "that expedited removal has been one of the 'key strategies' of the Trump administration's mass deportation campaign. If not blocked on appeal, the restrictions will present a 'major roadblock'" for pursuing the deportations.

African Communities Together and The Door [brought](#) an action challenging the administration's campaign of targeting noncitizens at their immigration court "full removal" proceedings (under 8 U.S. Code § 1229a) by denying them the rights to seek relief from removal from the courtroom and summarily arresting them as they exit (08/01/25).

The challenge focuses on two administration policies: an ICE policy that abandons restrictions ICE had previously adopted to protect noncitizens' access to the courts by broadly authorizing arrests at immigration courthouses and an Executive Office of Immigration Review policy that encourages immigration judges to depart from the agency's own regulations and Immigration Court Practice Manual by summarily dismissing noncitizens' full removal proceedings without any meaningful process. Plaintiffs are represented by the New York Civil Liberties Union Foundation, the American Civil Liberties Foundation, Emery Celli Brinckerhoff Abady Ward & Maazel and Make the Road New York. See [ACLU](#) press release.

**Y1, Week Thirty-Three**, Judge Jia Cobb [ruled](#) in favor of Make the Road and granted a stay in respect of expedited removal (08/29/25). Specifically, the January 21 Designation Notice and the January 23 Huffman Memorandum insofar as it implements the January 21 Designation Notice are stayed pending conclusion of the review proceedings.

The Court noted that it "does not cast doubt on the constitutionality of the expedited removal statute, nor on its longstanding application at the border. It merely holds that in applying the statute to a huge group of people living *in the interior of the country* who have not previously been subject to expedited removal, the Government must afford them due process. The procedures currently in place fall short" (emphasis added). See also [ACLU](#) press release.

The Court found it "startling" that the administration maintained

“that those who entered the country illegally are entitled to no process under the Fifth Amendment, but instead must accept whatever grace Congress affords them. Were that right, not only noncitizens, but everyone would be at risk. The Government could accuse you of entering unlawfully, relegate you to a bare-bones proceeding where it would “prove” your unlawful entry, and then immediately remove you. By merely accusing you of entering unlawfully, the Government would deprive you of any meaningful opportunity to disprove its allegations. Fortunately, that is not the law. The Constitution guarantees that “no person shall be removed from the United States without opportunity, at some time, to be heard.”

The stay pending a decision on the merits is particularly urgent as ICE ramps up staking out immigration courthouses, arresting migrants when they appear for scheduled appointments and then seeking to quickly deport them without due process. Judge Cobb denied a request by the administration for a two-Y1, Week stay to allow it to appeal.

**Y1, Week Forty-Four**, the D.C. Circuit (2-1) [denied](#) the administration’s motion for an administrative stay and its motion for a stay pending appeal were denied (11/22/25). The majority concluded that DHS “is not likely to succeed in showing that its systems and procedures are constitutionally adequate to provide detained individuals an opportunity to demonstrate their ineligibility for removal on the ground that they have resided in the United States continuously for two or more years, or to otherwise ensure that Expedited Removal operates within its statutorily delimited bound.”

Among other observations, the majority noted that DHS “is unlikely to succeed given the Eligibility System’s serious risks of erroneous summary removal – risks that, according to the record at this stage, have actually materialized in wrongful inclusion in the Expedited Removal process and removals.” The majority also found that, “[i]n expanding Expedited Removal away from land and sea borders so that it now covers the entire United States and its full population, the need for [DHS] to ensure that the summary removal process stays within statutory bounds has become exponentially more acute. The district court found that the ‘vast majority’ of undocumented individuals present in the United States have been living here for over two years – and are thus statutorily ineligible for Expedited Removal if given a chance to prove the duration of their residence.”

**Y2, Week Four**, in a second court ruling blocking ICE from raiding houses of worship (the first being in [last February](#)), District Judge F. Dennis Saylor IV, [ruled](#) in favor of various Christian church organizations that challenged DHS and ICE policy guidance on conducting immigration-enforcement operations, including searches, interrogations and arrests, at so-called “sensitive places” or “protected areas,” such as houses of worship (02/13/26). The prior policy, adopted in 2021, stated that DHS agents should avoid such enforcement actions “[t]o the fullest extent possible,” and that “[a]bsent exigent circumstances,” agents “must seek prior approval from their Agency’s headquarters . . . before taking an enforcement action in or near a protected area” such as a church. See [Democracy Forward](#) press release.

The complaint was filed by the New England Synod, Evangelical Lutheran Church in America; Greater Milwaukee Synod, Evangelical Lutheran Church in America; Southwest California Synod, Evangelical Lutheran Church in America; Southwestern Texas Synod, Evangelical Lutheran Church in America; Sierra Pacific Synod, Evangelical Lutheran Church in America; San Francisco Friends Meeting of the Religious Society of Friends; Pacific Yearly Meeting of the Religious Society of Friends; North Pacific Yearly Meeting of the Religious Society of Friends; American Baptist Churches USA; Alliance of Baptists; and Metropolitan Community Churches (07/28/25). Plaintiffs are represented by Democracy Forward Foundation, the Washington Lawyers' Committee for Civil Rights and Urban Affairs and Gilbert LLP.

### **Department of Housing and Urban Development**

A coalition of four fair housing groups across Massachusetts, Idaho, Texas and Ohio that receive federal grants [sued](#) the Department of Housing and Urban Development (HUD) and DOGE over the cancellation Fair Housing Initiatives Program (FHIP) grants (03/13/25). The suit seeks to be declared a class action on behalf of more than 60 groups that receive congressionally authorized grants that were terminated. FHIP grants are the primary source of funding for fair housing organizations in 33 states. These organizations fight housing discrimination and enforce fair housing laws. The plaintiffs are represented by Heisler, Feldman & Ordorica P.C. and Relman Colfax PLLC. Joyce Vance in her March 14 Substack [examined](#) the real world impact of the termination of the grants on the affected communities.

**Y1, Week Ten**, on March 26, District Judge Richard G. Stearns granted plaintiffs emergency motion for a temporary restraining order, reinstating the FHIP grants previously terminated and enjoining HUD from terminating relevant FHIP grants.

**Y1, Week Sixteen**, in response to a complaint [filed](#) by Martin Luther King, Jr. County; Pierce County; Snohomish County; City and County of San Francisco; County of Santa Clara; Boston; Columbus and New York City to restore certain grants issued by HUD (Continuum of Care) and the Department of Transportation (DoT), District Judge Barbara Jacobs Rothstein [issued](#) a temporary restraining order (05/07/25).

### **Department of the Interior**

**Y1, Week Thirty-Seven**, Judge Royce C. Lamberth [issued](#) a preliminary injunction in favor of Revolution Wind, which had challenged a “stop work” order issued by the Department of the Interior’s Bureau of Ocean Energy Management (BOEM) in late August (09/22/25). Revolution Wind [filed](#) a complaint in respect of an offshore wind project that had been approved close to two years ago and is 80% complete (09/04/25). The company cited the absence of statutory authority for the stop work order, in violation of agency regulations and the Due Process Clause under the Fifth Amendment. See [Court Listener](#) docket. The Court has yet to issue its full order setting forth its reasoning.

*POLITICO* [describes](#) the multi-billion dollar offshore wind project, which is being developed by the Danish offshore wind company [Ørsted](#) and BlackRock’s Global Infrastructure Partners’ Skyborn Renewables, as one of the highest profile renewable

energy projects that the Trump administration has sought to suspend. The project comprises 65-turbines (45 of which have been completed) expected to generate enough electricity for more than 350,000 homes in Rhode Island and Connecticut by next spring. Revolution Wind has spent or committed around \$5 billion on the project and expects to incur more than \$1 billion in costs if the project is cancelled. In issuing the stop work order, the Trump administration [made reference](#) to vague national security concerns and reasonable uses of federally managed waters. The Attorneys General of Connecticut and Rhode Island also [sued](#) the administration to overturn the stop work order (09/04/25).

A similar situation is [playing out](#) in Maryland federal court where U.S. Wind is challenging the revocation of permits for the Maryland Offshore Wind Project, the [Construction and Operations Plan](#) for which was [approved](#) by BOEM in December 2024. U.S. Wind said the project would include 114 turbines generating up to two gigawatts of power, enough to supply about 718,000 homes. It was the 10th commercial-scale wind project approved in the United States. U.S. Wind is [owned](#) by funds managed by Apollo Global Management and Renexia SpA, a subsidiary of Toto Holding SpA.

See generally [“Turbulent Times for the Wind Energy Industry: Action in the Three Branches”](#) (Georgetown Environmental Law Review).

**Y1, Week Forty-Nine**, Dominion Energy [filed](#) a lawsuit against the Department of the Interior and BOEM seeking declaratory and preliminary and permanent injunctive relief following the issuance of a stop work order relating to its Coastal Virginia Offshore Wind Commercial Project (“CVOW”), which has been fully permitted and under construction on the Outer Continental Shelf and onshore since early 2024 (12/23/25). According to the complaint, CVOW is projected to begin generating electricity in early 2026, and will be capable of supplying 9.5 million megawatt hours of energy per year, enough to power approximately 660,000 homes.

CVOW is one of five offshore wind projects under construction off the east coast that were subject to stop work orders the day before. As [reported](#) by the *New York Times* (quoting figures from Turn Forward), the stop work orders affect \$25 billion worth of wind projects that are expected to power more than 2.5 million businesses and homes across the eastern United States and create more than 10,000 jobs. The orders do not cover a small project off Rhode Island that began running in 2016 and a larger project off New York that has been fully operational since 2023. The administration cited unspecified national security concerns as a basis for the orders.

The other four projects are [Vineyard Wind 1](#) (which is already [partially running](#) with half of the 62 turbines delivering power to the grid), Sunrise Wind (being developed by Ørsted, and Empire Wind (being developed by Equinor) off New York, and Revolution Wind (also being developed by Ørsted) off Rhode Island and Connecticut.

The administration claims that DoD has produced classified reports that found that wind farms pose national security risks and that an unclassified report from the Energy Department has found that wind farms could interfere with radar systems.

Industry experts take issue with these claims. Reportedly these projects had undergone rigorous scrutiny, including by DoD.

**Y1, Week Fifty**, in response to the latest stop work order, Revolution Wind [files](#) a motion for leave to file a supplemental complaint (01/01/26) and [files](#) a motion for an expedited hearing to allow it to file that supplemental complaint (01/02/26).

According to the Ørsted [press release](#), the Revolution Wind project now is 87% complete with all offshore foundations and 58 of 65 wind turbines in place. The export cable installation is complete and the offshore substations have been installed. The project was expected to begin generating power as soon as January 2026. The project has supported thousands of American jobs, including more than 1,000 union jobs that have contributed 2 million union work hours. The project is expected to provide affordable power to more than 350,000 homes in Connecticut and Rhode Island, and to support the growing power needs of data centers and AI. Revolution Wind is represented by Latham & Watkins.

**Y1, Week Fifty-Two**, in the first of three cases (the other two involving Equinor’s Empire Wind, off the coast of New York, and Dominion’s CVOW facility) pending before the courts this week relating to offshore wind projects, a federal court ruled against the administration in its efforts to shut down these projects. District Judge Royce Lamberth ruled in favor of Ørsted, granting a preliminary injunction that allows it (for the second time) to continue work on its Revolution Wind project off the coast of Rhode Island. (Judge Lamberth had issued a preliminary injunction in September, and Interior had tried a second time to shutdown projects citing new national security concerns.)

Ruling from the bench, Judge Lamberth said “When I stayed the bureau’s first stop-work order back in September 2025, I said the bureau’s failure to provide any reasoning for its decision was the height of arbitrary and capricious action. This time the government did provide a reason for its decision, but its failure to explain or apply that reasoning suggests the stated national security reason may have been pre-textual.” He noted that his concerns were “heightened” after Interior Secretary Burgum criticized offshore wind projects in December “for a variety of reasons unrelated to national security.” “The balance of equity is clearly cut in favor of Revolution Wind continuing work while the government considers ways to mitigate any new national security concerns that the project may implicate.”

On Friday, while meeting with oil company executives on Venezuela, Trump referring to “windmills,” said they are “losers” and “I’ve told my people we will not approve” them. See [NPR \(WBEZ\)](#) coverage.

## **Department of Justice**

### ***Danielle Sassoon, Hagan Scotten and others***

**Y1, Week Four**, Danielle R. Sassoon, the interim US Attorney for the Southern District of New York (SDNY), resigned after acting Deputy Attorney General Bove [directed](#) her to drop the corruption charges against New York City Mayor Eric Adams. When the case was transferred to the DoJ’s Public Integrity Unit, the two heads of the unit resigned. An additional three officials in the Public Integrity Unit and the lead

prosecutor in the Adams case Assistant US Attorney for SDNY Hagan Scotten also resigned.<sup>11</sup> Sassoon was interim US Attorney pending Senate confirmation of Jay Clayton.

The New Yorker's [headline](#) captured the moment most succinctly, "Danielle Sassoon's American Bravery: A conservative prosecutor in New York makes the first bold move against Donald Trump's rampaging Presidency." And, as the *New York Times* [observed](#), "[t]he consequences of the confrontation extend far beyond the fate of Mr. Adams. It has set up what promises to be a protracted and damaging battle over the integrity, independence and direction of a department that Mr. Trump views like a piece of captured battlefield artillery he is now able to turn against his attackers.

Sassoon, a former law clerk to Supreme Court Justice Antonin Scalia and a member of the Federalist Society, issued a scathing [rebutal](#) to Attorney General Pam Bondi, noting that the reasons advanced by Bove for dismissing the charges against Adams "are not ones I can in good faith defend as in the public interest and as consistent with the principles of impartiality and fairness that guide my decision-making."

In her letter, Sassoon refers to the rationale for dismissing the charges that included an analogy to the prisoner swap by which Brittany Griner was exchanged for Viktor Blout. She writes, "Adams's advocacy should be called out for what it is: an improper offer of immigration enforcement assistance in exchange for a dismissal of his case. Although Mr. Bove disclaimed any intention to exchange leniency in this case for Adams's assistance in enforcing federal law, that is the nature of the bargain laid bare in Mr. Bove's memo. That is especially so given Mr. Bove's comparison to the Bout prisoner exchange, which was quite expressly a quid pro quo, but one carried out by the White House, and not the prosecutors in charge of Bout's case." She also refers to a pending superseding indictment that would have been based "on evidence that Adams destroyed and instructed others to destroy evidence and provide false information to the FBI."

Sassoon also reveals that during a meeting with Bove, Adams's counsel, and members of her office, "Adams's attorneys repeatedly urged what amounted to a quid pro quo, indicating that Adams would be in a position to assist with the Department's enforcement priorities only if the indictment were dismissed. Mr. Bove admonished a member of [her] team who took notes during that meeting and directed the collection of those notes at the meeting's conclusion." Further reporting suggests that Bove seems to have guided Adams' counsel to a rationale for dropping the charges, which as the *New York Times* [put it](#), "represents an extraordinary shattering of norms of an agency charged with enforcing the laws of the United States." The DoJ is open for business, namely reaching prosecutorial decisions on the basis of political considerations, not the merits.

In his [resignation letter](#), Scotten wrote, "No system of ordered liberty can allow the Government to use the carrot of dismissing charges, or the stick of threatening to bring

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<sup>11</sup> **Y1, Week Thirty-Nine**, in commentary on the indictment of the NY AG, reporting notes that the Public Integrity Unit is now down to two prosecutors. There were around 30 on Inauguration Day.



them again, to induce an elected official to support its policy objectives.” He continued, “any assistant U.S. attorney would know that our laws and traditions do not allow using the prosecutorial power to influence other citizens, much less elected officials, in this way. If no lawyer within earshot of the President is willing to give him that advice, then I expect you will eventually find someone who is enough of a fool, or enough of a coward, to file your motion. But it was never going to be me.”

In what appears to be one of the new weapons to thwart resistance to the new regime, Bove, in his February 13 [letter](#) responding to Sassoon, said he would open an investigation into Sassoon’s “conduct” and that of other prosecutors who worked on the prosecution of Adams.

This all flies in the face of longstanding precedent, perhaps best captured, as the *New York Times* [pointed out](#), in the enduring legacy (at least until a month ago) of the sentiments captured in [1940](#) in [remarks](#) delivered by Robert H. Jackson (later Supreme Court Justice). Sassoon captured this in noting that “[b]ecause the law does not support a dismissal, and because I am confident that Adams has committed the crimes with which he is charged, I cannot agree to seek a dismissal driven by improper considerations.” She then quoted Jackson: “The prosecutor at his best is one of the most beneficent forces in our society; when he acts from malice or other base motives, he is one of the worst.”

As for the “improper considerations” to which Sassoon refers, the February 10 [directive](#) to dismiss the prosecution delivered to Sassoon by Bove [reportedly](#) admits that the DoJ “reached this conclusion without assessing the strength of the evidence or the legal theories on which the case is based.” Rather, it made this determination for two reasons, improper timing and a diversion of resources away from “illegal immigration and violent crime.” In his February 13 letter, Bove confirms that he directed dropping charges not based on the evidence or lack thereof, but rather on “well-founded concerns regarding weaponization, election interference and the impediments that the case has imposed on Mayor Adam’s ability to govern and cooperate with federal law enforcement to keep New York City safe.”

There is an irony in all of this in that Adams’ *quid pro quo* for charges being dropped was to assist in immigration enforcement, premised on the need to remove “criminal” undocumented migrants! He charges were to be dropped without prejudice, meaning that Adams could again be charged.

Separately, the remaining Biden-era US Attorneys are being [fired](#) at the direction of the White House. This is a departure from past practice when US Attorneys are asked to resign by an incoming administration and typically given a grace period to do so (and the departures are coordinated with the DoJ’s Executive Office for US Attorneys, which apparently also did not happen). The replacement of US Attorneys likely hastens implementation of mass deportations and other Trump priorities.

### ***Denise Cheung***

**Y1, Week Five**, the Chief of the Criminal Division in the U.S. Attorney’s Office for the District of Columbia, Denise Cheung, resigned rather than comply with a demand to open a criminal investigation into whether a contract had been unlawfully awarded

by the Biden administration for an environmental grant initiative. In her [resignation letter](#), Cheung sets out that she did not believe there was sufficient evidence to take the action requested.

### ***Office of Violence Against Women***

**Y1, Week Twenty-Two**, 17 anti-domestic violence and sexual violence coalitions [sued](#) the DoJ over grant application requirements that groups seeking funds under the Violence Against Women Act from the Office of Violence Against Women (OVW) do not promote “gender ideology,” run DEI programs or prioritize illegal aliens (06/17/25). The complaint notes that OVW has structured the certification requirements with the intention of exposing grantees to liability under the False Claims Act.

**Y1, Week Twenty-Nine**, District Judge William E. Smith essentially [granted](#) the plaintiffs the injunctive relief they requested, with the Court basing the preliminary injunction on Section 705 of the Administrative Procedures Act (08/08/25) and a finding that the placing of conditions on all future grants issued under the Violence Against Women Act violated the prohibition under the Act against “arbitrary and capricious agency action.”

### ***Erez Reuveni***

**Y1, Week Twenty-Three**, Erez Reuveni [filed](#) a formal whistleblower complaint, in which he details alleged “violations of law, rules or regulations, and the abuse of authority by DoJ and White House personnel, as well as the creation of substantial and specific health and safety threats to noncitizens. These high-level governmental personnel knowingly and wilfully defied court orders, directed their subordinate attorneys to make misrepresentations to courts, and engaged in a scheme to withhold relevant information from the court to advance the Administration's priority of deporting noncitizens.”

The allegation that captured much of the attention in the media and on Capitol Hill was the disclosure that, in the context of responding to anticipated legal challenges to the deportation of Abrego Garcia, Principal Assistant Deputy Attorney General Emil Bove had suggested ignoring court orders. Specifically, per the filing, “Bove then made a remark concerning the possibility that a court order would enjoin [removals to El Salvador] before they could be effectuated. Bove stated that DOJ would need to consider telling the courts “fuck you” and ignore any such court order.”

Recall that Reuveni, as set out in his filing, “had candidly and truthfully informed the court, based on the evidentiary record, that Mr. Abrego Garcia’s removal from the United States was a mistake. Later that evening, Mr. Reuveni refused directions from his superiors to file a brief misrepresenting those facts to the court. As a result, Mr. Reuveni was put on administrative leave on April 5, 2025, and his employment was ultimately terminated on April 11, 2025.”

The Bove instructions garnered the attention of much of the media, but Bove’s actions are only part of the broader alleged attempts to obstruct justice set out in Reuveni’s complaint. The complaint covers “three separate cases to secure the government’s

compliance with court orders, and [Reuveni's] resistance to the internal efforts of DoJ and White House leadership to defy them through lack of candor, deliberate delay, and disinformation. ... Mr. Reuveni tried to do so and was thwarted, threatened, fired, and publicly disparaged for both doing his job and telling the truth to the court."

Reuveni sets out that he directly witnessed and reported:

- DoJ officials undermining the rule of law by ignoring court orders;
- DoJ officials presenting "legal" arguments with no basis in law;
- high-ranking DoJ and DHS officials misrepresenting facts presented before courts; and
- DoJ officials directing Mr. Reuveni to misrepresent facts in one of these cases in violation of his legal and ethical duties as an officer of the court.

Reuveni is represented by the Government Accountability Project and Gilbert Employment Law.

*See generally*, Joyce Vance's coverage in her [Civil Discourse Substack](#) and Asha Rangappa's coverage in her [Freedom Academy Substack](#).

**Y1, Week Twenty-Five**, American Oversight [sued](#) DoJ to obtain information about Bove responsive to its FOIA request that had been ignored (07/10/25).

**Y1, Week Twenty-Six**, 75 former state and federal judges [submitted](#) a letter to the Senate Judiciary Committee urging that Bove not be confirmed to the Third Circuit appellate bench. A similar letter was [submitted](#) by more than 900 former DOJ attorneys, who wrote, "We are all alarmed by DOJ leadership's recent deviations from constitutional principles and institutional guardrails. We also share a grave concern over the senseless attacks on the dedicated career employees who are the backbone of the Department. Emil Bove has been a leader in this assault."

**Y1, Week Twenty-Eight**, according to *Washington Post* [reporting](#), a third whistleblower reportedly has come forward with evidence suggesting that Bove misled Senate Judiciary Committee members during his confirmation hearing in June. The evidence reportedly contradicts claims Bove made regarding a different DoJ prosecution. Nonetheless, Bove was confirmed with lifelong tenure on the Third Circuit (50-49, with Sens. Collins and Murkowski joining all of the Democrats voting against).

### ***Mauren Comey***

**Y1, Week Twenty-Six**, Earlier in the week, Maureen Comey, daughter of former FBI Director James Comey, was fired from her position as a federal prosecutor. Comey, served as a chief prosecutor of the violent and organized crime unit in the US Attorney's Office in SDNY, where she led the prosecution of Ghislaine Maxwell, Epstein's former girlfriend, who was jailed for 20 years for her role in helping Epstein exploit teenage girls. Comey also led the prosecution of Sean Combs. Comey

reportedly learned of her firing in a letter that cited Article II of the Constitution, which describes the powers of the president, as the basis for her removal.

**Y1, Week Thirty-Six**, Comey [sued](#) challenging her dismissal on the Separation of Powers, Administrative Procedures Act, Fifth Amendment and First Amendment grounds, and seeking reinstatement (09/15/25). She accuses DoJ of firing her without cause and seeks reinstatement.

**Y1, Week Forty-Three**, the *New York Times* [reports](#) that DoJ is struggling to respond to the Comey lawsuit. SDNY declined to work on the case, as did EDNY and the Federal Programs Branch of the Civil Division. Finally, the NDNY stepped up on October 31. Incidentally, the legitimacy of the acting U.S. Attorney in that office, John Sarcone, is being [challenged](#) by NY AG James. The *New York Times* points out that because the Attorney General [announced](#) in February that prosecutors who decline to act because of personal political views of judgments, or to advance good-faith arguments on behalf of the administration or otherwise impede DoJ's mission will be subject to discipline and potential termination, to shield individual prosecutors from turning down cases, the entire office is doing so.

### ***Erik Siebert***

**Y1, Week Thirty-Six**, career prosecutor and the U.S. Attorney for EDVA, Erik Siebert, was forced to resign due to pressure from the White House. Siebert has been investigating the [allegations of mortgage fraud](#) against NY AG Letitia James for five months, but after interviewing 15 witnesses reportedly had been unable to find incriminating evidence that the AG knowingly committed fraud.

Siebert reportedly was also investigating former FBI Director Jim Comey, whom Trump had [suggested](#) in an interview at the end of August with the Daily Caller should be arrested. The five-year statute of limitations for any charges arising from congressional testimony in 2020 runs on September 30, 2025 (assumed to be relevant, per [Lawfare](#), based on a subpoena sent to Columbia law professor and close friend and adviser to Comey, Daniel C. Richman in connection with an investigation into whether the former director had lied about whether he authorized Mr. Richman to leak information to the news media).

The *New York Times* [reports](#) that Comey may be subject to three investigations, the one in EDVA, a second in the Western District of Virginia (WDVA), which reportedly is looking at the handling of classified documents inside FBI headquarters and one in a third federal district, the location and subject matter of which could not immediately be determined.

Administration officials reportedly pushed Siebert to bring charges, nevertheless. Trump called for Siebert to be “out” of his job, basing his decision on the fact that both Democratic Senators in Virginia (Kaine and Warner), in a much needed show of bipartisanship, had provided “unusually strong support” for Siebert’s [nomination](#) by submitting [blue slips](#). Note that Republican Gov. Youngkin also supported his nomination. Following his resignation, Trump claimed “he didn’t quit, I fired him!” The bipartisan support was a short-lived smokescreen.

After Siebert's 120-day term as interim U.S. Attorney expired in May, the District Court for EDVA unanimously extended his term.

The second in command in the office, Maya D. Song, who previously served in the office of Biden's Deputy AG Lisa Monaco, reportedly faces dismissal as well. *POLITICO* [reports](#) that Mary "Maggie" Cleary, who recently joined DoJ's Criminal Division, says she has been named the acting head in Siebert's stead. Later [reporting](#) suggests that insurance lawyer, White House aide (reportedly, most recently working on the purge of the Smithsonian) and former counsel to Trump in the early days of the classified documents case, Lindsey Halligan, would be nominated by Trump to replace Siebert.

Trump referred to Halligan in a Trust Social message [addressed](#) to "Pam" and likely posted by accident (it was subsequently taken down). In the post, Trump expresses frustration that "nothing is going to be done" about "Comey, Adam 'Shifty' Schiff, Leticia" and then lashes out at Siebert. Halligan appears to have never handled prosecutions, and is unlikely to last in the job beyond the 120 days. *See also* [Civil Liberties Watch, Dear Pam](#), below.

EDVA is among the most high-profile of the federal prosecutorial offices in the country. Because of its proximity to D.C. and a number of federal government offices in the district, it often handles terrorism and sensitive intelligence cases.

*POLITICO* [reports](#) that the U.S. Attorney in Maryland Kelly O. Hayes may be the next target, as she is leading the investigations into Sen. Schiff and John Bolton.

Ruth Marcus, in her New Yorker article ("[Donald Trump's Firing of a Federal Prosecutor Crosses the Reddest of Lines](#)"), writes that:

"In the hierarchy of the Administration's horrors, the Siebert firing is about as bad as it gets. Since Trump regained office, the Department of Justice has dismissed career prosecutors for an array of unjustified and self-serving reasons: for daring to have worked on the criminal cases against Trump; being the daughter of Comey; failing to remove personal pronouns in a signature block. It has dismissed pending cases to serve political ends, such as that of New York City's mayor, Eric Adams. What's happening now is worse. Dropping the criminal charges against Adams amounted to a political perversion of the justice system. But using the criminal law to punish political opponents as retribution inflicts far greater damage."

Sens. Kaine and Warner [issued](#) a statement responding to the forced resignation by Erik Siebert:

"The American people are begging for lower costs and for the Trump Administration to undo its attacks on their health care. But what is Trump focused on? Threatening to pull anyone who criticizes him on TV off the air. And now, pushing out the interim U.S. Attorney for the Eastern District of Virginia that we recommended and he himself nominated because Erik Siebert is an ethical prosecutor who refused to bring criminal charges against Trump's perceived enemies when the facts wouldn't support it. The Eastern District of Virginia is at the forefront of significant cases essential to our national security, and just like any court in America, should be focused on justice instead of a thin-skinned president's vendettas."

As for the chapter and verse, DoJ's [Principles of Federal Prosecution](#) (9-27.220) provides:

The attorney for the government should commence or recommend federal prosecution if he/she believes that the person's conduct constitutes a federal offense, and that the admissible evidence will probably be sufficient to obtain and sustain a conviction, unless (1) the prosecution would serve no substantial federal interest; (2) the person is subject to effective prosecution in another jurisdiction; or (3) there exists an adequate non-criminal alternative to prosecution.

The comment to JM 9-27.220 explains that the provision:

“sets forth the longstanding threshold requirement from the *Principles of Federal Prosecution* that a prosecutor may commence or recommend federal prosecution only if he/she believes that the person will more likely than not be found guilty beyond a reasonable doubt by an unbiased trier of fact and that the conviction will be upheld on appeal.”

See generally, [New York Times](#) coverage and Barbara McQuade's "[Pam Bondi Isn't the President's Enforcer](#)."

As the week progressed, so did the odds that before the statute of limitations runs out next week Comey would be criminally indicted for lying to Congress about whether he leaked information to the media. Thursday, that indictment was announced. See [Civil Liberties Watch – Indictment of Jim Comey](#).

**Y1, Week Thirty-Eight**, Song as well as a second long-serving prosecutor, Micheal Ben'Ary, [were fired](#). The week before, Troy A. Edwards Jr., deputy chief of the national security unit in the Virginia office, resigned after Jim Comey was indicted. Edwards is Comey's son-in-law.

ABC [reports](#) that prosecutors assigned to the Comey case had concluded that it would be “problematic” for them to bring a case on the basis of Comey's statements to Congress where the underlying claim was based on interactions with Professor Richman. These concerns reportedly underpinned the conclusions set forth in the memorandum recommending that the EDVA office not move forward with charges against Comey.

As Reuters [reports](#), the trial has been scheduled for January 5, 2026. Before then, Judge Nachmanoff could dismiss the indictment outright, if he finds Comey's motion provides sufficient evidence that the prosecution was vindictive or the judge could compel discovery if he finds the DoJ likely acted vindictively. In the Abrego Garcia, District Judge Waverly Crenshaw ordered discovery on October 3, citing Deputy Attorney General Todd Blanche's statement in an interview that the criminal investigation began after a judge sided with Abrego Garcia in a civil suit.

**Y1, Week Thirty-Eight**, CNN was the first to [report](#) that Maggie Cleary (who ever so briefly led the U.S. Attorney's office in EDVA) has been removed from her position in the office.

**Jon Hooks**



**Y1, Week Thirty-Eight**, Jon Hooks, head of the public corruption and fraud unit in the U.S. Attorney's Office in D.C., resigned. Hooks reportedly was handling a possible investigation of Open Society Foundations.

### ***Michelle Beckwith***

**Y1, Week Thirty-Eight**, media reported that the U.S. Attorney in Sacramento had been fired in July immediately after she warned the Border Patrol chief in charge of the raids in Southern California, Gregory Bovino, that a federal court order prevented him from arresting people without probable cause (*i.e.*, indiscriminately) in her district. Two days later, the Border Patrol conducted a raid at a Home Depot parking lot in Sacramento. See [New York Times](#) coverage. Beckwith reportedly has appealed her termination. She [told](#) the Guardian, "I'm an American who cares about her country. We have to stand up and insist the laws be followed."

### ***Todd Gilbert***

**Y1, Week Thirty-Eight**, the *New York Times* [sets out](#) the backstory on the forced resignation in August of Todd Gilbert, a former Republican congressman and the U.S. Attorney in WDVA.

Apparently, Gilbert was directed to open an investigation into the handling within the FBI of documents related to Russian intelligence reports. This was the so-called "burn bag" case, in which the Director and the Deputy Director of the FBI believed that senior FBI officials had conspired to protect other FBI agents and CIA officers by hiding or destroying documents.

Following his review of the evidence, Gilbert indicated that he did not believe there was sufficient evidence for a grand jury investigation. This led aides to the Attorney General and the Deputy Attorney General to conclude that Gilbert's deputy, Zachary Lee, was to blame for the intransigence. Lee was veteran prosecutor with over 20 years of experience with public corruption and narcotics cases. Gilbert was ordered to demote Lee and replace him with Robert Tracci. That, however, did not allay fears that Lee was still influencing Gilbert, and Gilbert then was directed to remove or otherwise sideline Lee. Gilbert resisted doing so, was told he would be fired, and resigned. Lee has also now left the office. Tracci is now serving as the U.S. Attorney for WDVA.

### ***Elizabeth Yusi and Kristin Bird***

**Y1, Week Thirty-Eight**, a DoJ prosecutor in EDVA, Elizabeth Yusi, [reportedly](#) was fired for being unwilling to bring charges against NY AG Letitia James. She apparently had pushed back against Trump's claims about James and had told colleagues she felt there was insufficient evidence to go to the grand jury. Yusi's deputy, Kristin Bird, also was fired. These add to the toll in the office, which now includes Siebert, Comey, Song, Cleary, Edwards and Ben'Ary.

### ***Tania Nemer***

**Y1, Week Forty-Six**, a former DoJ immigration judge, Tania Nemer, has [sued](#) DoJ on the grounds that she was fired on the basis of gender (she is a woman) and national origin (she is American and Lebanese) in violation of Title VII of the Civil Rights Act,

and because of a prior political affiliation (she ran for judicial office in Ohio as a Democrat) in violation of her First Amendment rights (12/01/25). She seeks reinstatement, back pay and compensatory damages. Nemer filed a complaint with the Equal Employment Opportunity office alleging discrimination, and by law, the EEO office was obligated to investigate whether Nemer had been discriminated against. Instead, at the direction of DoJ, the EEO office dismissed her complaint.

Nemer is represented by the newly formed Washington Litigation Group. *See [Washington Litigation Group](#)* press release.

The complaint notes that “the government has concluded that Title VII’s prohibition of discrimination in the federal workforce conflicts with the President’s inherent Article II authority to oversee the executive branch. This argument boils down to the remarkable legal theory that the President has a *constitutional right to discriminate against federal workers*, in violation of the law. That is wrong. Full stop.” It continues, “It bears emphasis: The government’s legal theory reflects an unprecedented assault by the current Administration against the civil service laws that protect millions of federal employees. If the government prevails in transforming the law, it will eviscerate the professional, non-partisan civil service as we know it.”

### **Department of Labor**

The AFL-CIO and various other unions, represented by [Democracy Forward](#), [sued](#) the DoL and DOGE to halt access by DOGE-affiliated personnel to DoL systems and information (02/05/25). The judge hearing the case (District Court Judge John D. Bates), while noting that the court harbors concerns about the plaintiffs’ conduct, [declined](#) to issue a restraining order due to lack of standing (02/07/25).

Plaintiffs filed an [amended complaint](#) to address the standing issue and expanded the scope of requested relief to include HHS and the CFPB (02/11/25).

Judge Bates [declined](#) to issue the restraining order (02/14/25).

**End of Y1, Week Twenty-Three**, Judge Bates [declined](#) to grant a preliminary injunction, having found that the plaintiffs had failed to make their case for showing irreparable harm. The Court left the door open, wide in fact, for plaintiffs to pursue the case on the merits, stating its “determination rings no death knell to plaintiffs’ ultimate claims. As explained, the Court retains remedial options if plaintiffs prevail on the merits, and plaintiffs remain free to argue that the Privacy Act’s damages remedy will not amount to ‘adequate . . . relief’ for the privacy harms their members have suffered or will suffer.”

The Court concludes “put simply, the Court by no means green-lights DOGE Affiliates’ access to Americans’ most sensitive information. The Court simply cannot step in to enjoin such access at this juncture.” That said, “the Court’s concerns are as grave as ever, and it stands ready to remedy plaintiffs’ harm should they ultimately succeed on the merits. At this time, however, the extraordinary remedy of a preliminary injunction is not warranted.”

## Department of State/USAID

The American Foreign Service Association (AFSA) and the AFGE, represented by [Democracy Forward](#) and [Public Citizen Litigation Group](#), filed a [lawsuit](#) challenging the shutdown of USAID (02/06/25). The suit names Trump, Treasury, State, Rubio and Bessent as defendants. The complaint cites a global humanitarian crisis, loss of thousands of American jobs and threats to our national security triggered by the shutdown. An [affidavit](#) filed in the case by a USAID Foreign Service Officer serving in the DRC gives a sense of the catastrophic consequences of the administration's actions.

At the end of **Y1, Week Five**, a federal judge (District Court Judge Carl J. Nichols) [denied](#) the plaintiffs' motion for a preliminary injunction and dissolved the temporary restraining order (02/21/25). The ruling, which was based on a finding of lack of jurisdiction, characterized the relief sought as more properly decided by civil service review boards such as the Foreign Service Grievance Board or the MSPB. The ruling [clears the way](#) for 2,014 USAID staff to be placed on paid leave (611 others were deemed essential and remained in place).

Five former USAID Administrators (under both Republican and Democratic administrations), J. Brian Atwood, Peter McPherson, Andrew Natsios, Gayle Smith and Samantha Power, [reportedly](#) have spoken out in a joint statement in support of their former agency. "While we don't agree on all issues, we wholeheartedly agree that USAID and America's foreign assistance programs are vital to our interests, that the career men and women of USAID have served each of us well, and that it is the duty of the Administration and Congress to swiftly protect the Agency's statutory role. Failure to maintain the global engagement that foreign aid enables, to honor the men and women of our civilian service as we do those in the military or weaken and even destroy the Agency is to the benefit of neither political party and the detriment of all Americans."

Rep. Sara Jacobs announced she will introduce legislation in the House to push back against Musk's shuttering of USAID.

**Y1, Week Three**, late Friday, a federal judge temporarily blocked USAID from putting 2,200 workers on paid leave following the filing of the action by the AFSA and the AFGE.

**Y1, Week Four**, a federal judge ordered the Trump administration to temporarily lift its foreign aid funding freeze on existing programs, the result of a [stop-work order](#) issued by Secretary of State Rubio on January 24, and set a five-day deadline for the administration to prove it is complying with his directive that the administration notify every organization with an existing foreign-aid contract with the federal government of the temporary stay. The freeze had shut down US humanitarian aid and development work around the world. The judge cited the financial devastation that the near-overnight cutoff of payments has caused suppliers and nonprofit organizations that carry out much of U.S. aid overseas. The order [extends](#) the court's temporary restraining order issued last week until February 21 (02/13/25).

In a separate action [brought](#) by the Global Health Council, the Small Business Association for International Companies, HIAS, Management Sciences for Health, Chemonics International, DIA Global, Democracy and the American Bar Association against the State Department and Trump, a federal judge (District Court Judge Amir H. Ali) issued an [order](#) (02/13/25) enjoining the State Department and USAID 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 was in existence as of January 19, 2025; and
- 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 was in existence as of January 19, 2025.

**Y1, Week Six**, Judge Ali ordered the State Department and USAID to comply with his February 13 temporary restraining order (by paying all invoices and drawdown requests owed before February 13), and to do so within 36 hours (February 26), after finding that there were no signs the Trump administration had taken steps to comply with his February 13 order (02/25/25). The judge clearly was impatient with DoJ counsel sidestepping his questions, “I don’t know why I can’t get a straight answer from you,” he reportedly bemoaned. The judge does have the power to order officials to appear before him and to cite them for contempt.

Just before the deadline imposed by Judge Ali, Supreme Court Chief Justice John G. Roberts Jr. granted the Trump administration’s [request](#) for an administrative stay of temporary restraining order mandating compliance by February 26. The plaintiffs have until Friday to respond to the administration’s assertions.

CBS reports that the dismantling of USAID continues with 4,200 USAID employees placed on administrative leave at the end of **Y1, Week Five** after Judge Nichols’ [ruling](#) denying a request for a preliminary injunction. Judge Ali’s order represents the second time a federal judge has found that the Trump administration did not follow a court order, the first being Judge McConnell’s [order](#) regarding frozen grants and loans.

**Y1, Week Seven**, the day after Trump’s address to Congress, the Supreme Court [vacated](#) the Roberts order on the administrative stay, thereby restoring one of the lower court’s two temporary restraining orders and in effect blocking government efforts to pause close to \$2 billion of foreign assistance (03/05/25). (See the brief [submitted](#) by counsel to plaintiffs reciting the reasons why the administration’s legal reason was wrong.) Recall that Judge Amir Ali had issued two temporary restraining orders, which remained in effect and the second directing the government to pay committed foreign assistance funds by February 26. It was this latter order that was the subject of the motions before the Supreme Court. The Supreme Court directed the lower court to clarify what obligations the administration must fulfil to ensure compliance with its temporary restraining order. Chief Justice Roberts and Justice Coney Barrett joined to form the majority in this 5-4 ruling. Justice Samuel Alito issued a dissenting opinion, joined by Justices Thomas, Gorsuch and Kavanaugh.

In his analysis of the Supreme Court action, Professor Vladeck (“[The Supreme Court Foreign-Aid Ruling Is a Bad Sign for Trump](#)”) cites four interesting takeaways from the majority: the Supreme Court denied the administration’s application rather than dismissing it as moot, in other words the Supreme Court ordered the government to pay now; the direction for clarification appears to be an open invitation to Judge Ali to issue a more specific order as to what the government must do; the timing suggests that the Supreme Court wanted to wait until after Trump’s address to Congress, perhaps he notes to avoid Trump attacking the justices while several of them were in the audience; and it appears that on these non-cultural legal issues there is a 5-4 realignment on the Court.

As for Justice Alito’s dissent, Vladeck notes that the dissent attributes the obligation to make the \$2 billion payments to Judge Ali’s ruling (and “not because the law requires it”), when in fact it is the law *that requires the payments* – Congress had mandated the spending, and the contractual obligations had already been fulfilled. Justice Alito also raises a sovereign immunity argument, but in [Bowen v. Massachusetts](#) the Supreme Court ruled that it could adjudicate whether Administrative Procedure Act relief applies to government obligations to pay expenditures to which recipients are legally entitled. Then, Justice Alito appears to be arguing that the harm suffered by the plaintiffs flowed not from the administration’s refusal to pay but the Appellate Court’s refusal to take up the case. Finally, Justice Alito closes by characterizing the majority ruling as imposing “a \$2 billion penalty on American taxpayers.” No, the payments were authorized by Congress.

Following the Supreme Court ruling, Judge Ali [ruled from the bench](#) that the government must pay outstanding balances to the plaintiffs by March 10; but did not resolve the payments for foreign aid recipients other than the plaintiffs, which total close to \$2 billion (03/06/25). Judge Ali then [granted in part and denied in part](#) the motion for a preliminary injunction (03/10/25). Judge Ali ordered the government to pay nearly \$2 billion in foreign assistance for work performed before February 3, but did not reject the State Department’s review and termination of thousands of foreign aid contracts for work after February 3. The government [appealed](#) Judge Ali’s March 10 order to the D.C. Circuit (04/01/25).

Separately, **Y1, Week Four**, in a [suit](#) filed against DOGE by 26 employees and professional services contractors working for USAID (02/13/25), Judge Theodore T. Chuang [granted](#) plaintiffs’ motion for a preliminary injunction (03/18/25), [finding](#) that the closing of USAID on an accelerated basis by DOGE “likely violated the Constitution.” The Judge ordered DOGE, among other things, to reinstate access to email and other electronic systems, to take no further action in respect of shutting down USAID and to take steps to allow USAID to reoccupy its premises should the plaintiffs succeed on the merits. It is noteworthy that the Judge added at the end of his order that violations of his order would subject defendants to all applicable penalties, including contempt of court.

**Y1, Week Ten**, a three-judge panel of the Fourth Circuit Court of Appeals [granted](#) the defendants’ motion to stay the preliminary injunction pending appeal (03/28/25), meaning that Musk and DOGE can continue to dismantle USAID while the

government pursues its appeal of the initial ruling. The Fourth Circuit took issue with the District Court's finding that Musk was the driver behind the decisions to shutter USAID and, in the absence of Senate confirmation, DOGE's actions were unconstitutional. In a concurring (in part) opinion, Circuit Judge Roger Gregory set out his view that the lawsuit was too narrow, and should have included a broader scope of defendants, such as the Secretary of State, as the requisite basis for blocking the funding cuts.

The broader constitutional questions remain to be addressed. The final round of layoffs will see the workforce reduced from around 10,000 to 15. The State Department reportedly has notified Congress that USAID will be dissolved, and some functions will be transferred to the State Department and *POLITICO* provided a link to a memo from a DOGE staffer and deputy USAID administrator announcing the layoffs.

**Y1, Week Thirty**, the D.C. Circuit [ruled](#) for the government in its appeal of the injunction ordered by the District Court in favor of Global Health Council and its co-plaintiffs (08/13/25). That injunction had required the government to resume payment of billions in foreign aid. The majority ruled that the District Court erred in granting the injunction because the plaintiffs lack a cause of action to press their claims. They may not bring a “freestanding” constitutional claim if the underlying alleged violation and claimed authority are statutory (under the Impoundment Control Act). The Court also found there was no claim under the Administrative Procedures Act because review under the Act is precluded by the Impoundment Control Act. Instead, only the Comptroller General may bring suit as authorized by the Impoundment Control Act.

What this then means is that administration is not required to resume paying the billions of dollars in foreign aid the payment of which had been ordered by the District Court. That the Court ruled that the refusal of the President to spend money appropriated by Congress based on policy differences is a statutory violation and not a constitutional one is surprising.

The dissenting judge, Florence Pan called the ruling that the plaintiffs have no constitutional claims “as startling as it is erroneous.” The case now goes back to the District Court for further proceedings in light of the Circuit Court ruling. “The majority opinion” she concludes “misconstrues the separation-of-powers claim brought by the grantees, misapplies precedent, and allows Executive Branch officials to evade judicial review of constitutionally impermissible actions.”

The Comptroller General leads the GAO, which sits within the legislative branch and monitors the way the federal government spends congressional appropriations. Comptrollers General are subject to Senate confirmation. They serve for 15-year terms and cannot be reappointed. The current Comptroller General is Gene Dodaro, who was nominated by Barack Obama in 2010, and his term expires later this year.

### **Department of State – other actions**

**Y1, Week Thirteen**, District Judge Julia E. Kobick [issued](#) a preliminary injunction (04/18/25) enjoining the State Department from enforcing its [passport policy](#) on



transgender citizens as to six of the seven named plaintiffs (*see* [complaint](#) (02/07/25)), who are represented by the ACLU and Covington & Burling.

### **Department of Transportation**

**Y1, Week Twenty-Two**, District Judge John J. McConnell [issued](#) a preliminary injunction (06/19/25) in favor of 20 states that had [sued](#) the DoT to challenge the withholding of federal transportation funding to coerce compliance with the administration’s deportation agenda (05/13/25). The Court found that the enforcement condition is unconstitutional and/or unlawful because it violates the Administrative Procedures Act; is *ultra vires*; and to the extent that it relies on congressional authority, exceeds Congress’s powers under the Spending Clause.

The 20 state attorneys general had sued to halt conditioning the receipt of federal transportation funds on cooperation with federal officials in the enforcement of federal immigration law. Under the preliminary injunction, DOT is prohibited from enforcing the enforcement condition and from withholding federal funds under the enforcement condition. Joyce Vance [highlights](#) in her Civil Discourse Substack the significance of this ruling in that if the government had prevailed in this case, other federal agencies might well have imposed a similar enforcement condition on the receipt of other Congressionally appropriated funds.

**Y1, Week Forty**, the American Federation of State, County and Municipal Employees (AFSCME) and the American Federation of Teachers (AFT), as well as two individual plaintiffs [filed](#) a petition for review in D.C. Circuit of an interim final rule issued by the Department of Transportation’s Federal Motor Carrier Safety Commission that seeks to bar asylum seekers, refugees and Dreamers who have work authorizations from holding commercial driver’s licenses. Plaintiffs are represented by the Public Citizens Litigation Group. If promulgated, the rule would remove potentially 194,000 current commercial driver’s licenses.

**Y1, Week Forty-Three**, the D.C. Circuit [granted](#) (2:1) an administrative stay temporarily enjoining promulgation of the proposed interim final order (11/10/25). *See* [PBS](#) coverage.

### **Department of Treasury**

Joseph Menn, Jeff Stein and Ellen Nakashima, writing in the *Washington Post*, [report](#) that Treasury was warned by a federal contractor that runs a threat intelligence center for Treasury’s Bureau of Fiscal Services that DOGE’s access to a sensitive payment network (even on a “read-only” basis) represented an “unprecedented insider threat risk” and should be suspended “immediately.” The contractor also recommended that a comprehensive review of the system be undertaken to identify any changes approved by DOGE affiliates. The reporting notes that the payment system, among other things, ensures that Pentagon contractors, software vendors and US intelligence assets overseas are paid.

The key concern is that DOGE-affiliated engineers were able to access systems containing sensitive information, including personally identifiable information (PII), that should only have been accessible by vetted employees with proper security clearances and training. Access to the information could be used to improperly target

federal employees, could facilitate shutting down payments and could expose the systems to cyberattack. This issue is not confined to the Treasury Department as access was granted across a number of federal agencies, and those who tried to resist granting access based on existing rules and protocols were placed on administrative leave or fired.

A federal judge (U.S. District Judge Colleen Kollar-Kotelly) [ruled](#) (2/6/25) that only two Musk-affiliated staffers can access the Treasury Department's payment system on a "read only" basis, after the Alliance for Retired Americans, the AFGE and Service Employees International Union, AFL-CIO [sued](#) the Treasury Secretary amid reports DOGE accessed sensitive records. (One of the employees given access has reportedly since [resigned](#) over racist tweets uncovered by the *Wall Street Journal*.)

A second federal judge (U.S. District Judge Paul Engelmayer), granted [a temporary restraining order](#) (02/08/28) in favor of a group of 19 states with Democratic attorneys general, led by New York State, against Trump, the Treasury Department and the Treasury Secretary in respect of the grant of access by "special government employees" (*i.e.*, Musk) to payment systems of the Bureau of Fiscal Systems (BFS). Specifically, the defendants are:

- restrained from granting access to any Treasury Department payment record, payment systems, or any other data systems maintained by the Treasury Department containing PII and/or confidential financial information of payees, other than to civil servants with a need for access to perform their job duties within the Bureau of Fiscal Services who have passed all background checks and security clearances and taken all information security training called for in federal statutes and Treasury Department regulations;
- restrained from granting access to all political appointees, special government employees, and government employees detailed from an agency outside the Treasury Department, to any Treasury Department payment record, payment systems or any other data systems maintained by the Treasury Department containing PII and/or confidential financial information of payees; and
- ordered to direct any person prohibited above from having access to such information, records and systems but who has had access to such information, records and systems since January 20, 2025, to immediately destroy copies of material downloaded from the Treasury Department's records and systems.

The Federal Court of Appeals for the First Circuit [declined](#) to issue an administrative stay to block the February 8 temporary restraining order (02/11/25).

The Associated Press [reports](#) that the Office of the Inspector General at the Treasury Department plans to undertake an audit of the security controls for the Treasury payment systems. The announcement of the audit coincides with calls by Senators Warren and Wyden for visibility into the activities of DOGE in respect of the payment systems, though the sequence suggests that the audit was initiated before Democrats pushed for it. The audit will also review transactions over the past two years to prove or disprove allegations of massive fraud levelled by Musk. The Associated Press also notes that Treasury has provided inconsistent information about DOGE's access to its

payment systems, saying first that access was “read only,” then acknowledging that a member of the DOGE team briefly had the ability to edit code, then claimed edit rights were granted by accident.

At the end of **Y1, Week Five**, the temporary restraining order granted by Judge Engelmayer was superseded by a [permanent injunction](#) (essentially tracking the temporary restraining order) issued by another federal judge (District Judge Jeannette A. Vargas) (02/21/25). Among other findings, Judge Vargas noted that “Plaintiffs will more likely than not succeed in establishing that the agency’s processes for permitting the Treasury DOGE Team access to critical BFS payment systems, with full knowledge of the serious risks that access entailed, was arbitrary and capricious. While it appears that the career staff at BFS did their best to develop what mitigation strategies they could, the inexplicable urgency and time constraints under which they operated all but ensured that the launch of the Treasury DOGE Team was chaotic and haphazard.”

Judge Vargas also ordered the Treasury Department to report by March 24 to the Court on training, vetting and security clearances and mitigation procedures, as well as both the legal authority under which DOGE team members were employed by or detailed to Treasury and the chain of reporting between DOGE team members, DOGE and Treasury.

**Y1, Week Seven**, in the Alliance for Retired Americans [case](#), District Court Judge Colleen Kollar-Kotelly [ruled](#) that the plaintiffs had “not cleared the ‘high standard’ of showing a likelihood of an irreparable injury that is ‘beyond remediation’ for purposes of her Circuit, which is a prerequisite for the issuance of a preliminary injunction and denied their motion. However, the Judge also ruled that “[i]f Plaintiffs could show that Defendants imminently planned to make their private information public or to share that information with individuals outside the federal government with no obligation to maintain its confidentiality, the Court would not hesitate to find a likelihood of irreparable harm.”

The Judge did acknowledge that Judge Vargas had issued a temporary restraining order (an inconsistent ruling) in the case brought by the [Democratic attorneys general](#), and also noted that District Court Judges in two other cases (Judge Rossie D. Alston in EDVA and by Judge Debroah L. Boardman the District of Maryland) had denied motions along the same lines as she had – Judge Alston in [favor](#) of all defendants and Judge Boardman in [favor](#) of the Treasury Secretary but not the other defendants (OPM and the Department of Education).

The [first](#) of those two cases had been brought by the Electronic Privacy Information Center (02/10/25), supported by The Kaplan Law Firm, EPIC and Democracy Forward Foundation, and the [second case was brought](#) by the American Federation of Teachers, International Association of Machinists and Aerospace Workers, National Active and Retired Federal Employees Association, National Federation of Federal Employees and various individual federal employees (02/10/25), supported by Protect Democracy Project, Democracy and Rule of Law Clinic and Munger, Tolles & Olson.

In the second case before Judge Boardman, plaintiffs [moved](#) for a temporary restraining order enjoining Defendants from providing DOGE access to their records systems and ordering any records now sitting outside government information systems be retrieved or destroyed (02/12/25). The court [granted](#) a temporary restraining order enjoining the Department of Education and OPM from disclosing sensitive information to any DOGE affiliates. Plaintiffs [moved for a preliminary injunction](#) to prevent defendants from disclosing personally identifiable information to DOGE or its affiliates (03/08/25).

**Y1, Week Ten,** Judge Boardman [granted the Plaintiffs' motion](#) for a preliminary injunction [order](#) (03/24/25).

## **DOGE**

Citizens for Responsibility and Ethics in Washington (CREW) [sued](#) DOGE (US DOGE Services), OMB and the National Archive after it failed to process CREW's request under the Freedom of Information Act (FOIA) on the grounds that DOGE is not an "agency" subject to FOIA. District Court Judge Christopher R. Cooper [granted](#) the motion of a preliminary injunction in part and denied it in part. The court [ordered](#) DOGE to process the FOIA request on an expedited basis but stopped short of ordering the production of either DOGE or OMB requests by March 10 (03/10/25). The parties are ordered to establish a schedule by March 27.

**Y1, Week Nineteen,** DOGE is fading, and Musk is out. Robert Hubbell [captured](#) the essence very well. DOGE was a colossal failure.

- First, DOGE set out to cut \$2 trillion from the federal budget and can point to "savings" of only \$170 billion. Those "savings" are suspect (*see* Financial Times [investigation](#) concluding that only a sliver of those "savings" can be verified), and equally important is that the "savings" fail to account, for example, for the costs imposed as a result of DOGE actions. Hubbell cites the Budget Lab at Yale [estimating](#) that cuts to the IRS will result in reduced tax collections over the next decade of \$350 billion (net).
- Second, in close to 100 lawsuits, federal courts have found that plaintiffs are likely to succeed on the merits of their claims that DOGE actions were illegal or unconstitutional.
- Third, DOGE cuts have caught the attention of people across the country, witness for example the reactions in town halls across the country that have prompted the GOP leadership to suggest members stop convening them.
- Fourth, as many had predicted, Trump and Musk are headed for divorce. Musk is already [criticizing](#) the One Big Beautiful Bill for increasing the budget deficit (with the national debt estimated to rise by \$3.3 trillion) and [abruptly](#) ending energy tax credits under the IRA. (*See* [New York Times](#) coverage.)
- Hubbell makes the interesting observation that on Musk's last official day as a special government employee, an anonymously-sourced article [ran](#) on Page One of the *New York Times* citing heavy drug use by Musk. Hubbell predicts that Musk will likely receive the Leonard Leo treatment as he searches for others to blame.

## Elections

In response to the [Preserving And Protecting The Integrity Of American Elections](#) EO,

- the League of United Latin American Citizens, the Secure Families Initiative and the Arizona Students' Association [sued](#) seeking to have provisions of the EO unconstitutional. Plaintiffs are represented by State Democracy Defenders Fund and Campaign Legal Center;
- a related case was [brought](#) by the League of Women Voters, Hispanic Federation, the NAACP, the Asian Pacific American Advocates and the Asian Pacific Islander American Vote;
- a third case was [brought](#) by the Democratic National Committee, the Democratic Congressional Campaign Committee, the Democratic Senatorial Campaign Committee, the Democratic Governors Association, Senate Minority Leader Senator Chuck Schumer and House Minority Leader Rep. Hakeem Jeffries.

These three cases were [consolidated](#). *See generally*, [Court Listener docket](#).

**Y1, Week Fourteen**, District Judge Colleen Kollar-Kotelly, ruling in respect of three consolidated cases, [granted](#) the motion for summary judgment in full in respect of a number of plaintiffs and in part in respect of the balance of the plaintiffs (04/24/25). *See also* [Memorandum Opinion](#). Judge Kollar-Kotelly ultimately ruled on various sections of the EO:

- Section 2(a) ordered the Election Assistance Commission (EAC) – a bipartisan, independent regulatory commission—to amend the standardized national voter registration form to require documentary proof of U.S. citizenship.
- Section 2(b) ordered DHS and the Department of State to open certain databases to the United States DOGE Service and the States to search for non-citizens who have registered to vote.
- Section 2(d) ordered federal voter registration agencies to “assess” the citizenship of individuals who receive public assistance before providing them a voter registration form.
- Section 7(a) ordered the Attorney General to “enforce” two statutes “against States” that do not adopt the President’s view that mail-in ballots must be received by election day to be counted.
- Section 7(b) ordered the EAC to withhold certain federal grants from States that do not comply.

Specifically, after noting that “no statutory delegation of authority to the Executive Branch permits the President to short-circuit Congress’s deliberative process by executive order,” in effect, blocked Trump’s effort to implement the SAVE Act by end-running Congress and acting via EO. The Court granted the non-partisan plaintiffs relief in respect of all five prongs and granted the partisan plaintiffs relief in respect of Sections 2(a) and 2(d) and denied the motion of the partisan plaintiffs in respect of Sections 2(b), 7(a) and 7(b). *See generally* Joyce Vance’s Substack [post](#) (04/24/25).



As for Sections 2(b), 7(a) and 7(b), Judge Kollar-Kotelly found the challenges to those provisions to be premature or should be brought by states. As Democracy Docket notes, Democratic attorneys general in 19 states already [have challenged](#) mail voting provisions in a separate lawsuit against the EO.

**Y1, Week Sixteen**, per a Joint Scheduling Proposal [filed](#) 05/05/25, the DoJ appears to not intending to appeal Judge Kollar-Kotelly's order and instead will allow the case to go to summary judgment.

**Y1, Week Twenty-Seven**, the plaintiffs under the three cases consolidated before Judge Kollar-Kotelly [filed](#) a motion to compel the defendants to provide responses to their interrogatories (written questions submitted as part of the discovery process). As noted in the [Democracy Docket](#) summary of the motion, the administration is defying a court order by refusing to say how federal agencies may be implementing the anti-voting EO. Among the order's directives that lawyers for the administration have failed to provide answers about: How is DHS allowing its databases to be used to purge voters? How will DoJ punish states for continuing to offer a grace period for mail ballots that arrive after Election Day? And how will the EAC withhold funds from states that choose to not comply with aspects of the EO?

**Y1, Week Thirty-Three**, Lawyers Defending American Democracy [filed](#) an *amicus* brief in the consolidated cases.

**Y1, Week Forty-One**, in a [significant victory](#) for overseas American voters (both civilian and military), Judge Kollar-Kotelly granted plaintiffs' motions for partial summary judgment and issued a permanent injunction barring implementation of [Section 2\(a\) of the challenged EO](#), including taking any action to modify the content of the standard federal "mail voter registration form" to require documentary proof of citizenship. See [Secure Families Initiative](#) press release, [Sen. Schumer](#) post ("BIG COURT WIN") and [Democracy Docket](#) coverage (10/31/25). The administration may appeal, but this is summary judgment on the merits.

**Y2, Week Two**, Judge Kollar-Kotelly in a multi-pronged ruling (01/30/26), among other things, [declared](#) that Sections 2(d) (citizenship assessment prior to providing federal voter registration forms to enrollees in public assistance programs) and 3(d) (updating the Federal Post Card Application to require proof of citizenship and proof of eligibility to vote in the state in which a voter is attempting to vote) of the [EO](#) could not be lawfully implemented. As to Sections 2(b) and 3(a) (sharing of data by federal agencies) the government must comply with the Privacy Act.

In her ruling, Judge Kollar-Kotelly writes, "The Framers of our Constitution recognized that power over election rules could be abused, either to destroy the national government or to disempower the people from acting as a check on their elected representatives." She continued, "The Framers ultimately struck a balance, "submitt[ing] the regulation of elections for the federal government, in the first instance," to the States, while "reserv[ing] to [Congress] a right to interpose" regulations of its own when the need arose. The President is conspicuously absent from this legal and historical context. In fact, the Framers do not appear to have given any serious consideration to granting the President the power to regulate federal elections."



The government did prevail on the 7(a) claim (ballot receipt deadline), with the Court writing that the claims are not yet ripe for judicial review (absence of “imminent” or “certainly impending” injury), on the ground that the EO directs the Attorney General to “enforce” deadlines against the states and the Court assumes that the Attorney General will heed the “requirement of lawful implementation.” Moreover, the Court writes that any injury on this point (voter confusion, for example) is not within the Court’s power to remedy.

The Court notes that the Supreme Court is expected to rule on the question of whether 2 U.S. Code § 7, which provides that “[t]he Tuesday next after the 1st Monday in November, in every even numbered year, is established as the day for the election” of Members of Congress, and 3 U.S. Code § 1, which provides that “[t]he electors of President and Vice President shall be appointed, in each State, on election day, in accordance with the laws of the State enacted prior to election day,” pre-empt state law allowing ballots received after Election Day to be counted (*Watson v. Republican National Committee*). The decision in that case would supersede any ruling of this Court. We stay tuned.

### **Energy Emergency**

Senators Tim Kaine and Martin Heinrich tabled [legislation](#) ([S. J. Res. 10](#)) under the NEA ([50 U.S. Code § 1622](#)) challenging Trump’s declaration of an [energy emergency](#). Senate Republicans [blocked](#) the legislation (02/26/25). The proposed resolution was under the Congressional Review Act, which allows a simple majority in both houses to overturn federal rulemaking. As it was privileged, the Senate had to vote on the resolution.

### **Environmental Protection Agency**

The Woonasquattuck River Watershed Council, the Eastern Rhode Island Conservation District, the Green Infrastructure Center and the National Council Of Nonprofits [sued](#) a host of federal agencies seeking to unfreeze funds that had been appropriated under the Infrastructure Investment and Jobs Act (IIJA) and the Inflation Reduction Act (IRA) (3/13/25). Plaintiffs [moved](#) for a preliminary injunction (03/17/25).

**Y1, Week Thirteen**, District Judge Mary S. McElroy granted the preliminary injunction and ordered the frozen funds to be disbursed (04/15/25). While conceding that the President is entitled to enact his agenda, the federal “agencies do not have unlimited authority to further a President’s agenda, nor do they have unfettered power to hamstring in perpetuity two statutes passed by Congress during the previous administration.” The order applies not just to the grants awarded to the plaintiffs, but rather to all IIJA and IRA grants nationwide that were frozen.

**Y1, Week Thirty**, the Environmental Defense Fund and the Union of Concerned Scientists [sued](#) the EPA, the Department of Energy and the deceptively named Climate Working Group. The suit alleges that EPA and DoE hatched a secret plan by creating and convening a group of five climate change sceptics to prepare a report that would provide “balance” against the consensus views of climate scientists and “cut against the prevailing narrative that climate change is an existential threat.” The Climate

Working Group worked in secret “to produce a report that would provide justification for their predetermined goal of rescinding the “endangerment finding.” Plaintiffs base their challenge on the Federal Advisory Committee Act (FACA), which requires transparency in the establishment and operation of any federal advisory committee, including by mandating that any such group’s formation be promptly disclosed and that its meetings, emails, and other records be open to the public.

### **Federal Emergency Management Agency**

Firings at FEMA may well affect a majority of its staff. Following the firing of 200 probationary employees at the end of **Y1, Week Four**, the administration [reportedly](#) is on track to fire a significant number of additional employees who have worked on climate change, environmental justice, equity or DEIA. Former FEMA Chief of Staff Michael Coen warned that “[t]he next time there’s a major catastrophic event that requires extensive manpower, FEMA’s going to be at a disadvantage.”

FEMA is already short-staffed and reportedly was so overwhelmed in October responding to severe hurricane damage in six states that it was forced to seek assistance from other federal government agencies. Given FEMA’s emergency response mission that has been overwhelmingly affected by the significant increase in the frequency and severity of extreme weather events driven by climate change and the devastation that often blights at-risk communities, it is not surprising that singling out employees that had any involvement with climate change, environmental justice or DEIA could cover much of the agency.

### **Federal Bureau of Investigation**

**Y1, Week Three**, a group of FBI agents [sued](#) the DoJ in a class action to enjoin the publication of the names of agents under investigation, following the demand that agents or their supervisors fill out questionnaires detailing their involvement in either the January 6<sup>th</sup> investigation or the classified documents case against Trump (02/04/25). They are unnamed to protect their identity. The complaint provides in part that, “Plaintiffs assert that the purpose for this list is to identify agents to be terminated or to suffer other adverse employment action. Plaintiffs reasonably fear that all or parts of this list might be published by allies of President Trump, thus placing themselves and their families in immediate danger of retribution by the now pardoned and at-large Jan. 6 convicted felons.”

A [letter](#) to the acting Deputy Attorney General from three attorneys in the national security space threatens legal action to stop the purges.

A second [lawsuit](#) was brought by the FBI Agents Association and various unnamed agents, represented by Mark Zaid and Norm Eisen acting through State Democracy Defenders Fund, against the DoJ to block the public release of personal information about the individual plaintiffs and persons similarly situated, which they fear would lead to opprobrium and potential vigilante action by those who they were investigating (02/04/25).

At the end of **Y1, Week Three**, hours before attorneys were to appear in court on the class action, the DoJ agreed, for now, to not release the personal information of agents. Let’s be clear what was at stake here – the release of the names of agents who worked,

for example, on January 6<sup>th</sup> investigations would be at risk of attacks by the defendants in those cases, all of whom have been pardoned or had their sentences commuted, or their allies, or the legions of internet trolls who relish in doxx and swatting attacks for the sport of it.

### **Federal Election Commission**

At the end of **Y1, Week Three**, Trump attempted to remove Ellen Weintraub, Chair of the Federal Election Commission (FEC). Weintraub pushed back. Her term expired, but she is legally allowed to continue to serve until a replacement is nominated by the president and confirmed by the Senate. Trevor Potter, Republican former chair of the FEC and the president of the Campaign Law Center, said in a [statement](#) that, in attempting to remove Weintraub, Trump violated the law, the separation of powers doctrine and Supreme Court precedent. “Congress,” he said, “explicitly, and intentionally, created the FEC to be an independent, bipartisan federal agency whose commissioners are confirmed by Congress to serve the vital role of protecting the democratic rights of American voters.” *See generally* [Brennan Center summary](#).

### **FEMA**

**Y1, Week Twenty-Six**, a group of twenty states, led by Massachusetts and Washington, [sued](#) FEMA for shutting down the Building Resilient Infrastructure and Communities (BRIC) program, the termination of which they allege is unlawful (07/17/25). The BRIC program provides financial and technical assistance to state, local, tribal, and territorial governments to implement new measures to protect communities from natural disasters. BRIC’s grants cover up to 75% of a project’s costs, and can rise to 90% for small rural communities, making them a critical lifeline. BRIC funding supports the construction of evacuation shelters and flood walls, protections for water and power infrastructure, and improvements to roads and bridges. Over the past four years, FEMA has selected nearly 2,000 projects from across the country to receive roughly \$4.5 billion in funding. Due to the unique threats they face, coastal communities have received the largest allocations over the past four years. *See* [MA AG press release](#).

### **Federal Mediation and Conciliation Service**

A group of unions [sued](#) the FMCS and OMB challenging efforts to shutter the FMCS under the [Federal Bureaucracy](#) EO (04/14/25). Plaintiffs then [filed](#) a motion for a temporary injunction (04/16/25).

### **Federal Trade Commission**

**Y1, Week Twenty-Three**, Media Matters [sued](#) the FTC claiming that its investigation of Media Matters was intended to harass Media Matters in retaliation for its journalism. The complaint cites First and Fourth Amendment claims. Media Matters is represented by Covington & Burling and Susman Godfrey. *See* [reporting](#) on the civil investigative demand.

## Federal Workforce

**Y1, Week Fifteen**, a coalition of nationwide labor organizations, nonprofit groups, and cities and counties in California, Illinois, Maryland, Texas and Washington [challenged](#) the administration's reorganization of the federal government. The plaintiffs are represented by Democracy Forward, Altschuler Berzon, Protect Democracy, the Public Rights Project and State Democracy Defenders Fund (04/28/25). The case seeks to enjoin implementation of the [DOGE Workforce Optimization Initiative](#) EO for violating the separation of powers principles. In short, as counsel noted, the President does not have the authority to dismantle the federal government. See [Court Listener](#) docket.

**Y1, Week Sixteen**, District Judge Susan Illston [granted](#) the plaintiffs' motion for a temporary restraining order, perhaps the most sweeping of the administration setbacks as it covered more than a dozen federal agencies (05/09/25). The Court stated that the White House could not order the restructuring of federal agencies without Congressional authorization.

End of **Y1, Week Seventeen**, the administration [filed](#) an appeal with the Supreme Court requesting an administrative stay, which it then withdrew. The administration had sought emergency relief from the Ninth Circuit, but instead of waiting for the case to be heard, it went directly to the Supreme Court. Meanwhile, at the end of **Y1, Week Nineteen**, the Ninth Circuit (2-1) [denied](#) the emergency relief sought by the government, meaning the lower court's nationwide injunction remains in effect. See [Bloomberg Law](#) coverage. **Y1, Week Twenty**, the government [appealed](#) to the Supreme Court (06/02/25).

**Y1, Week Twenty-One**, during a hearing before her, Judge Illston said her May 9 ruling applied to a planned overhaul announced by the State Department that was due to be implemented July 1, effectively blocking an agency-wide reorganization that contemplated the lay-off of approximately 2,000 employees (06/13/25). The Court's ruling rejected the government's argument that the State Department was a "special case" that merited different treatment from the over 12 agencies covered by the May 9 ruling. See [Government Executive](#) coverage. In total, the State Department [was planning](#) to fire 3,400 employees and shutter over 300 offices and bureaus.

**Y1, Week Twenty-Five**, the Supreme Court in another unsigned order (with Justice Sotomayor concurring and Justice Jackson dissenting) [granted](#) the government's application for a stay entered into by the District Court, pending the disposition of the appeal in the Ninth Circuit and disposition of a petition for a writ of certiorari (an appeal on the merits to the Supreme Court), if one is sought. The Supreme Court stated it was expressing no view on the legality of the RIFs and reorganization plan for the federal government embedded in Trump's EO and [OPM Memorandum](#). The government's appeal represented another instance of attacking universal injunctions (the first being the appeal on birthright citizenship).

Justice Jackson, in her dissent, stated:

"In my view, this decision is not only truly unfortunate but also hubristic and senseless. Lower court judges have their fingers on the pulse of what is happening on the ground and

are indisputably best positioned to determine the relevant facts—including those that underlie fair assessments of the merits, harms, and equities. I see no basis to conclude that the District Court erred—let alone clearly so—in finding that the President is attempting to fundamentally restructure the Federal Government. Therefore, I would not disrupt the lower courts’ preservation of the status quo.”

Bottom line: the Supreme Court has cleared the way for the government to resume its plans for mass firings. We are talking about RIFs of hundreds of thousands of federal employees and the related impact on services. See [NPR](#) coverage and [Democracy Forward](#) statement.

But the story is not over. End of **Y1, Week Twenty-Six**, Judge Illston shows no sign of backing off and, as various commentators have noted (*see, e.g.*, “[District judge presses forward with mass-firings challenge following SCOTUS’s order](#)”), has shown how to navigate in the narrow lane set by the Supreme Court. In her ruling on Friday (07/18/25), Judge Illston [ordered](#) the federal agency defendants to submit to her *in camera* (in private) and to plaintiffs’ counsel, in both cases by 07/23/25, the “Agency RIF and Reorganization Plans” (ARRPs). In its ruling, the Supreme Court had expressly stated that it “expressed no view on the legality of any ARRP.” The issue before the lower court was the invocation by the administration of a “deliberative process privilege” in respect of both the submitted ARRPs and the approved ARRPs.

### **Independent Federal Agencies**

As predicted (*see* [Taking Trump at his Word](#)), Trump is moving to end the independence of federal commissions and boards, such as the FTC, the FCC, the SEC, the EEOC, the Consumer Product Safety Commission and the Federal Energy Regulatory Commission and the NLRB (*see* the [Ensuring Accountability of all Agencies](#) EO and related [FAQ](#)), in effect overturning a structure imposed by Congress dating back to the 1880s and severely testing the bounds of the separation of powers. The heads of all of these agencies are Senate-confirmed and, in contrast to Cabinet Secretaries and heads of their subagencies, who serve at the pleasure of the President, enjoy regulatory and budgetary independent from the President in effect through the “for cause” protections in respect of removal granted by statute (terms are set by statute and removal is limited to cause based on misconduct).

This EO, referring to the independent agencies as “so-called independent agencies” and Trump’s intention of ensuring “Presidential supervision and control of the entire executive branch,” requires them to submit all proposed regulations to the White House for review. We saw a precursor to this assault in the firings by Trump (cited above and below), in violation of the law, of IGs, career prosecutors and members of the NLRB and EEOC. *See generally* reporting by the *New York Times*’ Charlie Savage, available [here](#) and [here](#). The EO does not extend to the Federal Reserve Board.

The EO also declares that the President and the Attorney General, subject to the supervision and control of the President, are to provide authoritative interpretations of law for the entire executive branch. No federal government employee in their official capacity may advance an interpretation of the law that contravenes the opinion of the President or the Attorney General, whether in regulations, guidance or positions advanced in litigation.

As Danielle Kurtzleben of NPR [notes](#), White House review of regulations promulgated by federal agencies dates back to Clinton days and the constraint on presidential power to fire heads of independent agencies dates back to the 1935 Supreme Court decision in *Humphrey's Executor v. United States* (adjudicating against President Franklin Roosevelt in the firing of an FTC Commissioner), but the Clinton EO exempted independent regulatory agencies.

To be clear, this is Trump's power grab over agencies that historically have been nonpartisan – his pushing the bounds of presidential power to test the so-called theory of the unitary executive. This means reaching into regulation of the financial world (the SEC), labor (NLRB) and the business world (with antitrust power, including review of mergers, at the FTC). The stability that the financial and business worlds in particular so crave is about to disintegrate.

A February 12 letter from Sarah Harris, acting Solicitor General, to Congress stating that the DoJ views the for-cause removal protections set on in *Humphrey's Executor* as unconstitutional and the emergency application to the Supreme Court to vacate the temporary restraining order blocking the removal of the head of the Office of Special Counsel should be seen in the context of this maximalist assertion of presidential power.

To date, Trump has fired 11 Democratic members of independent agencies – two at the [EEOC](#), [Wilcox](#) at the NLRB, two at the [Privacy and Civil Liberties Oversight Board](#), one at the FEC, the [Special Counsel](#), [Harris](#), one at the Federal Labor Relations Authority (who has been reinstated) and two at the [FTC](#). See “[How Trump's firings could upend a 90-year-old Supreme Court ruling limiting his power](#).” Concerns about the potential reversal of *Humphrey's Executor* and its extension to the Federal Reserve prompted a group of law professors expert in financial regulation to file an [amicus brief](#) in which they warned that “The functioning of the Federal Reserve is essential to the stability of the American economy. Concerns (warranted or unwarranted) that its operations could be disrupted could foster financial and political instability and cause lasting harm.”

**Y1, Week Fifty-One**, in an unprecedented attack on the Federal Reserve and as part of Trump's pressure campaign to get the Fed to reduce interest rates ahead of the midterms, the U.S. Attorney for D.C. Jeannine Pirro has opened a criminal investigation into Fed Chairman Jerome Powell. The investigation relates to [renovations](#) to the Marriner S. Eccles Building and another Fed building on Constitution Avenue, both of which were constructed in the 1930s, and statements



Powell made to the Senate Banking Committee last June about the scope of the renovations.<sup>12</sup>

In an equally unprecedented move, Powell issued a statement acknowledging the investigation and calling out what this really is all about – an assault on the independence of the Fed in setting interest rates. The statement reads in part:

This new threat is not about my testimony last June or about the renovation of the Federal Reserve buildings. It is not about Congress's oversight role; the Fed through testimony and other public disclosures made every effort to keep Congress informed about the renovation project. Those are pretexts. The threat of criminal charges is a consequence of the Federal Reserve setting interest rates based on our best assessment of what will serve the public, rather than following the preferences of the President.

This is about whether the Fed will be able to continue to set interest rates based on evidence and economic conditions—or whether instead monetary policy will be directed by political pressure or intimidation.

I have served at the Federal Reserve under four administrations, Republicans and Democrats alike. In every case, I have carried out my duties without political fear or favor, focused solely on our mandate of price stability and maximum employment. Public service sometimes requires standing firm in the face of threats. I will continue to do the job the Senate confirmed me to do, with integrity and a commitment to serving the American people.

Note that there is no grand jury indictment of Powell as of yet, and that the equally politically motivated indictments of Jim Comey and Letitia James have not fared well from the government's perspective. The threatened indictment of Sen. Adam Schiff has not yet resulted in an actual indictment. The case against Lisa Cook is before the Supreme Court and will hear oral argument next week.

As the *Atlantic* [pointed out](#), “It’s hard to ignore the irony here: The administration that demolished the White House’s East Wing without [congressional approval](#) is now cracking down on construction oversight.” “Powell’s prerecorded video statement distils our current moment in less than two minutes. The Fed’s freedom from partisanship is at the core of its mission; it was created in service of the country’s long-term interests. Now under siege by a sitting president, it has become an unlikely site of resistance.”

Axios reports that the Treasury Secretary criticized the investigation, calling it a “mess” and “could be bad for financial markets.” The announcement of the criminal investigation did cause 10-year T-bill yields [to rise](#) – a more sustained rise could have significant negative impacts on the economy and affordability. Axios [reports](#) that insiders believe Federal Housing Finance Agency Director Bill Pulte is behind the investigation and that Trump may have been unaware before the announcement. Axios quotes one administration insider as saying Pirro “went rogue.” Echoes of Henry II.

Former Fed Chairs, former Treasury officials and a few other economists [issued](#) a joint statement decrying the investigation and referring to the investigation pointed out that

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<sup>12</sup> See FAQ published last summer by the Fed following Powell’s Senate Banking Committee testimony, available [here](#).

“This is how monetary policy is made in emerging markets with weak institutions, with highly negative consequences for inflation and the functioning of their economies more broadly. It has no place in the United States whose greatest strength is the rule of law, which is at the foundation of our economic success.”

The New York Times [quotes](#):

- Sen. Tillis (who chairs the Senate Banking Committee and vowed to oppose any new Fed Chair nomination): “If there were any remaining doubt whether advisers within the Trump administration are actively pushing to end the independence of the Federal Reserve, there should now be none. It is now the independence and credibility of the Department of Justice that are in question.”
- Sen. Warren of Massachusetts: “As Donald Trump prepares to nominate a new Fed chair, he wants to push Jerome Powell off the Fed Board for good and install another sock puppet to complete his corrupt takeover of America’s central bank.”

See also the [Hill](#) coverage.

The Leadership Now Project, of which I am a member, [issued](#) a statement condemning the investigation, which reads in part:

“the application of criminal law to achieve political ends threatens to politicize both the administration of justice and the setting of monetary policy in the national interest. It sends a chilling message to current and future government officials that their role is not to serve the American people but rather to further specific political ends. Protecting the Fed’s independence is essential to preserving the stability of the U.S. economy and the credibility of the United States’ global financial leadership.

The *Wall Street Journal* coverage is available [here](#) and *Reuters* coverage is available [here](#).

### **Inspectors General**

IGs at the Departments of Defense, Veterans Affairs, Health and Human Services, State, Agriculture, Education, and Labor, and at the Small Business Administration [sued](#) their respective agencies and Trump for unjustified termination, in violation of federal law enacted to protect IGs from precisely the interference they suffered in the discharge of their non-partisan oversight duties (02/12/25). Two of the plaintiffs had been hired during Trump’s first term. The IGs are represented by counsel at WilmerHale, the team being led by former Solicitor General Seth Waxman). Plaintiffs [moved](#) for a temporary restraining order and preliminary injunction (02/14/25).

The case did not go well for the plaintiffs initially, with Judge Ana C. Reyes in the [words](#) of the *New York Times* “excoriating” Waxman for he handled plaintiffs’ emergency requests, including waiting 21 days to seek the temporary restraining order. Judge Reyes ordered the case to proceed on a slower timeline.

### **Internal Revenue Service**

A group of taxpayer advocates and two unions [sued](#) the IRS, the Treasury Department and DOGE seeking a temporary restraining order to block access, inspection and disclosure of tax return information and other personal information in IRS systems to DOGE (02/17/25). The suit, which cites both the Administrative Procedure Act and

the Privacy Act, is supported by Democracy Forward Foundation. According to Democracy Docket, this suit is the tenth case filed to prevent DOGE from accessing confidential information in federal government agencies. The complaint notes that DOGE will have access to Musk's business competitors and that "no other business owner on the planet has access to this kind of information on his competitors."

Meanwhile, it appears that the IRS is trying to hold the line against demands from ICE that the IRS share taxpayer information with ICE. (See "[DHS asks IRS for addresses of people believed to be in U.S. illegally](#).") It is shameful that there is so little appreciation that undocumented migrants pay billions of taxes every year and so few connect the dots when the issue of ICE access to tax records is reported. See the discussion above and the cross-reference to a previous briefing note of mine on the significant financial benefits that undocumented migrants provide to the US economy.

**End of Y1, Week Seven**, two Chicago-area immigration advocacy groups (Centro de Trabajadores Unidos and the Immigrant Solidarity DuPage) [sued](#) the Treasury Secretary and the acting Commissioner of the IRS to enjoin defendants from providing Individual Taxpayer Identification Numbers (used by those who are unable to obtain Social Security Numbers), tax returns and other taxpayer information to DHS, ICE and the President (03/07/25). The plaintiffs cite [26 U.S. Code § 6103](#), which bars disclosure of taxpayer information to any third party except in [very limited circumstances](#). (See also [Background on disclosure of tax returns](#).) Recall that it was Section 6103 that Trump [invoked](#) to shield his tax returns from scrutiny, including by Congressional committees. On March 20, Judge Dabney Friedrich [denied](#) the plaintiffs' motion for a temporary restraining order.

**End of Y1, Week Twelve**, acting IRS Commissioner Melanie Krause resigned after the IRS and DHS agreed to share taxpayer data with immigration authorities. Heather Cox Richardson cites a report by Makena Kelly of *Wired* that DOGE staffers have been working with representatives from Palantir and career engineers from the IRS to build a system that will be able to access all IRS records, including names, addresses, job data, and Social Security numbers, that can then be compared with data from other agencies.

**Y1, Week Twenty-Nine**, Trump removed Billy Long as IRS Commissioner after only two months on the job. His removal means that the IRS will have its seventh commission of this calendar year (six since Inauguration Day); Treasury Secretary Bessent is acting on an interim basis as head of the IRS. Long is a former Republican member of Congress from Missouri who previously worked as an auctioneer and a real estate broker. During his confirmation hearing, Long was [questioned](#) over his promotion of a pandemic-era tax credit that was riddled with fraudulent claims. See also [Washington Post](#) coverage on clashes between the IRS and DHS over the use of tax data to locate undocumented migrants.

## Media

The Associated Press [sued](#) the White House, seeking a temporary restraining order, for being excluded from the White House press pool for declining to refer to the Gulf of Mexico as the Gulf of America (02/21/25) and also [filed](#) a motion for a preliminary

injunction (02/21/25). The motion for a temporary restraining order was [denied](#), but the Court has ordered expedited briefings on the separate request for the preliminary injunction (02/24/25).

**Y1, Week Twelve**, in a victory for the First Amendment and press freedoms, Judge Trevor N. McFadden [ruled](#) in favor of the Associated Press in its motion for a temporary restraining order. “Under the First Amendment, if the Government opens its doors to some journalists – be it to the Oval Office, the East Room, or elsewhere – it cannot then shut those doors to other journalists because of their viewpoints,” Judge McFadden wrote. “The Constitution requires no less.” In their coverage, the Associated Press [quoted](#) Katie Fallow, deputy litigation director at Columbia University’s Knight First Amendment Institute. “This is an important decision. The First Amendment means the White House can’t ban news outlets from covering the president simply because they don’t parrot his preferred language.” It also quoted pre-eminent First Amendment counsel Floyd Abrams, “What a splendid and well-deserved First Amendment triumph. Thomas Jefferson and James Madison would be pleased and relieved.”

**Y1, Week Twenty**, on appeal by the government, the D.C. Circuit Court (2-1) [granted](#) a stay pending appeal, meaning that the government can continue to bar the Associated Press except from the East Room of the White House, which the Court treats as a public space.

### **Musk/DOGE**

The *Washington Post* [reported](#) (updated 02/04/25) that concerns about DOGE actions have been raised across government departments. Moves to shutter agencies, force out federal employees and gain access to sensitive payment systems appear to violate federal law. Legal objections reportedly have been raised at the Treasury Department, the Education Department, USAID, the General Services Administration, OPM, the EEOC and the White House budget office, among others. The *Washington Post* quotes Blake Emerson, a professor of constitutional law at the UCLA School of Law, who warns that “there is a kind of shadow executive branch that is existing and operating and exercising power outside of the channels the Constitution and the statutes that Congress authorized.”

Senator Adam Schiff has posed a series of [questions](#) to the White House Chief of Staff (02/10/25) regarding compliance by Musk with federal conflicts of interest, ethics and reporting requirements in light of “his activities within the Executive Office of the President and his access to sensitive government information while he retains significant financial interests in multiple private companies that benefit from federal government contracts.” The Guardian [reports](#) that Musk had been under investigations by a number of federal agencies, including USAID, the Food and Drug Administration, the Agriculture Department and the National Highway Safety Administration. *See generally, [New York Times Analysis](#).*

DOGE is now investigating the agencies whose IGs only a short while ago were investigating him.

**Y1, Week Four**, 14 attorneys general acting for their respective states, led by New Mexico, [sued](#) Musk (02/14/25), Trump and DOGE seeking injunctive and declaratory relief to curb the activities of DOGE. Specifically, the plaintiffs argue, based on the Appointments Clause of the Constitution, that as Musk does not occupy “an office of the United States” and has not had his nomination of any office confirmed by the Senate, his officer-led actions are unconstitutional. The complaint notes “Mr. Musk’s seemingly limitless and unchecked power to strip the government of its workforce and eliminate entire departments with the stroke of a pen or click of a mouse would have been shocking to those who won this country’s independence. There is no office of the United States, other than the President, with the full power of the executive branch, and the sweeping authority now vested in a single unelected and unconfirmed individual is antithetical to the nation’s entire constitutional structure.”

Plaintiffs seek injunctive relief to halt the access to government data by DOGE and to halt activities of DOGE and seek declaratory relief to declare the officer-level acts of Musk and DOGE *ultra vires* and with no legal effect. The case has been assigned to Judge Tanya S. Chutkan, who presided over the Jack Smith January 6<sup>th</sup> election interference case.

A [similar case](#), on similar grounds and seeking the same type of relief, was brought the day before (02/13/25) by 26 anonymous current or former employees and contractors of USAID against Musk and DOGE. The case was supported by State Democracy Defenders Fund.

**Y1, Week Five**, in the case brought by the 14 attorneys general, Judge Chutkan [denied](#) the motion for a temporary restraining order on the ground that plaintiffs had not carried their burden of showing they will suffer imminent, irreparable harm (02/17/25). The Judge did note that Plaintiffs “raise a colorable Appointments Clause claim with serious implications. “Accepting Plaintiffs allegations as true, Defendants’ actions are thus precisely the ‘Executive abuses’ that the Appointments Clause seeks to prevent.” “Plaintiffs legitimately call into question what appears to be the unchecked authority of an unelected official and an entity that was not created by Congress and over which it has no oversight.”

The White House concurrently filed a declaration that Musk is an employee of the White House Office, and not of DOGE. The declaration continues “Mr. Musk has no actual or formal authority to make government decisions himself”! Hard to square that with Musk’s [statements](#), including that “all of our actions are maximally transparent.” Trump obviously is trying to backtrack given the likelihood that plaintiffs will prevail on the merits by reason of the fact that Musk’s authority and actions over the past five weeks fly in the face of the Appointments Clause.

**Y1, Week Six**, a federal judge (District Court Judge Deborah L. Boardman) [granted](#) a temporary restraining order enjoining the OPM, the Treasury Department and the Department of Education from disclosing records with sensitive personal information to DOGE-affiliated personnel (02/24/25). The [suit](#) was brought by unions and membership organizations representing current and former federal employees and federal student aid recipients and six military veterans who have received federal benefits or student loans.

The Associated Press reports that 21 senior civil service employees (engineers, data scientists, designers and product managers) who worked for the US Digital Service (USDS) and were being integrated into DOGE (representing one-third of the remaining staff at USDS) resigned, saying that they were not prepared to use their technical expertise and skills to “compromise core government systems, jeopardize Americans’ sensitive data or dismantle critical public services.”

### **National Labor Relations Board**

Gwynne Wilcox, who was fired by Trump from the NLRB, [sued](#) Trump and the chair of the NLRB over her dismissal, seeking reinstatement and a declaration that her removal was unlawful. This is the first case brought to challenge Trump’s firing of members of independent boards at federal agencies. Wilcox was represented Gupta Wessler LLP.

At the end of **Y1, Week Seven**, District Court Judge Beryl A. Howell granted summary judgment in favor of Wilcox, [ruling](#) that Trump lacks the authority to remove NLRB members at will and [ordering](#) that Wilcox be reinstated to serve out her five-year term that ends in August 2028 (03/06/25). In her ruling, Judge Howell cited Humphrey’s Executor and in effect rejected the unitary executive theory, noting that

“A President who touts an image of himself as a ‘king’ or a ‘dictator,’ perhaps as his vision of effective leadership, fundamentally misapprehends the role under Article II of the U.S. Constitution. In our constitutional order, the President is tasked to be a conscientious custodian of the law, albeit an energetic one, to take care of effectuating his enumerated duties, including the laws enacted by the Congress and as interpreted by the Judiciary. ... Luckily, the Framers, anticipating such a power grab, vested in Article III, not Article II, the power to interpret the law, including resolving conflicts about congressional checks on presidential authority. The President’s interpretation of the scope of his constitutional power— or, more aptly, his aspiration—is flat wrong.”

The Trump administration appealed.

**End of Y1, Week Ten**, the D.C. Circuit, in a 2-1 decision in a case consolidated with Cathy Harris’ challenge to her dismissal from the MSPB, [found](#) in favor of the government (03/28/25). Wilcox and Harris filed their own motion for an administrative stay in anticipation of their appeal for a rehearing en banc (by the full D.C. Circuit). Harris [filed](#) her petition for a rehearing and initial merits hearing *en banc* on 3/31/25. While this same court had allowed the administration to remove Special Counsel Hampton Dellinger, this was the first appellate ruling since January 20 allowing firings at federal agencies led by multiple-member boards.

In her dissent, Appellate Judge Patricia Millet wrote, “The two opinions voting to grant a stay [in favor of the government] rewrite controlling Supreme Court precedent and ignore binding rulings of this court, all in favor of putting this court in direct conflict with at least two other circuits. The stay decision also marks the first time in history that a court of appeals, or the Supreme Court, has licensed the termination of members of multimember adjudicatory boards statutorily protected by the very type of removal restriction the Supreme Court has twice unanimously upheld.”



End of **Y1, Week Twelve**, the full D.C. Circuit *en banc* (7-4) [reinstated](#) the decisions of the lower court in favor of both Harris and Wilcox (04/07/25).

**Y1, Week Eighteen**, the Supreme Court [granted](#) the government's motion for a stay of lower court injunctions in the Harris and Wilcox cases, allowing the firings to proceed. As Heather Cox Richardson [noted](#), this decision was handed down on the so-called "shadow docket"—the emergency docket in which the Supreme Court makes decisions without arguments or briefs and which previously was not used for major rulings. The order suggests that the Court will overturn *Humphrey's Executor*, except as its protections apply to the removal of members of the Federal Reserve's Board of Governors. Justice Kagan, joined by Justices Sotomayor and Jackson, dissented, citing the 90-year precedent established in *Humphrey's Executor*. An increasing number of legal commentators believe that the Supreme Court will overturn *Humphrey's Executor* (see coverage by Ruth Marcus in The New Yorker, "[The Supreme Court Undercuts Another Check on Executive Power](#)").

**Y1, Week Forty-Six**, the D.C. Circuit (2-1) [reversed](#) the rulings of the District Court (in the challenges brought by Harris and Wilcox challenging their firings) upholding the ability of Congress to impose limits on the President's ability to remove members of the MSPB and the NLRB finding that these agencies wield substantial executive powers, in contrast to the quasi-legislative or quasi-judicial powers protected under *Humphrey's Executor* (12/05/25). In her dissent, Judge Florence Pan wrote that "while the government claims to uphold the separation of powers, its theory instead concentrates excessive power in the President and thus paves the way to autocracy."

On Monday, the Supreme Court is scheduled to hear oral arguments in the challenge brought by member of the FTC Rebecca Slaughter to her firing the outcome of which will depend on whether the Court chooses to overturn *Humphrey's Executor*.

### **National Endowment for Democracy**

**Y1, Week Seven**, the [National Endowment for Democracy sued](#) the State Department, OMB, the Treasury Department and the Department of Health and Human Services, and their Secretaries, for unlawfully withholding congressionally appropriated funding. Claims are based on the Administrative Procedures Act, the Presentment Clause, the Appropriations Clause, the Spending Clause and the Take Care Clause of the Constitution. Plaintiffs are represented by Munger, Tolles.

### **National Public Radio (NPR)**

**Y1, Week Nineteen**, NPR, together with three member states in Colorado, [sued](#), seeking injunctive relief and a declaratory judgment to block implementation of the [Ending Taxpayer Subsidization of Biased Media](#) EO (05/27/29), the title of which incidentally, as Joyce Vance [points out](#), is classic Trump. That EO (published May 1) directs federal agencies and the Corporation for Public Broadcasting to cut funding to NPR and the Public Broadcast System. NPR is represented by Gibson, Dunn & Crutcher. The background set out in the Complaint, as Vance notes, is important:

- in 1967, Congress determined that broad access to free, high-quality, independent public radio and television programming produced and aired by private entities for the benefit of all Americans was a public good and enacted the Public Broadcasting Act of 1967;

- the Act created the infrastructure for a public radio and television system that, today, reaches close to 99% percent of the U.S. population over the airwaves and, in doing so, serves the same fundamental purpose, to foster an engaged and informed citizenry, as the First Amendment;
- Congress appropriated federal funding to support independent public broadcasting, funding that it has continued to appropriate, year after year, with bipartisan support;
- to achieve Congress’s “cardinal objective” that public broadcasting be shielded from “extraneous interference and control,” the Act creates an “elaborate structure . . . to insulate [broadcasters] from government interference”; and
- the Act expressly prohibits “any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over public telecommunications, or over the Corporation or any of its grantees or contractors, or over the charter or bylaws of the Corporation, or over the curriculum, program of instruction, or personnel of any . . . public telecommunications entity.”

The Trumpian title of the EO used to attack NPR and PBS obscures what is really at issue – namely another assault by Trump on the First Amendment. Vance captured it well – the EO is nothing short of an attack on trust, worthy of *1984*. She writes,

“This is how dictators disguise themselves in the clothing of democracy. Sure, there’s a First Amendment still in place. But the president tries to get around it by threatening to pull essential funding and claiming he’s protecting taxpayers, not restricting speech. The executive order is intended to create an environment of fear where public media “voluntarily” avoids drawing even close to the line of anything that might offend. Censorship, accomplished with the stroke of a pen. Just like the administration has tried to bring universities and law firms, protectors of the First Amendment, in line with its views, they’re doing it again here to NPR and PBS.”

The Complaint cites:

- lack of Constitutional and statutory authority;
- violation of the First Amendment (retaliation);
- violation of the First Amendment (viewpoint-based discrimination);
- violation of the First Amendment (freedom of association); and
- violation of the Due Process Clause.

It is hard to see how this assault on the First Amendment survives.

## National Science Foundation

**Y1, Week Sixteen**, the Association of American Universities, the American Council on Education and the Association of Public and Land grant Universities as well as thirteen research universities [sued](#) the National Science Foundation (NSF) challenging NSF’s May 2 [decision](#) to slash “indirect cost rates” (F&A costs) for government-funded research (05/05/25). The policy at issue is similar to the policies challenged in cases brought against NIH and the Department of Energy, which already have been enjoined. See [order](#) granting a temporary restraining order against the Department of Energy and the [order](#) against NIH.

**Y1, Week Twenty-Eight**, in a [lawsuit](#) brought by 16 states against NSF (05/28/25), District Judge John P. Cronan [denied](#) plaintiffs’ motion for a preliminary injunction

(08/01/25). Plaintiffs had challenged termination of projects that seek to increase STEM participation by women, minorities and people with disabilities, that study misinformation and that address environmental justice and the slashing of support for research, by capping at 15% of modified total direct costs for grants and cooperative agreements awarded to institutions of higher learning. According data [cited](#) by the *New York Times*, close to 1,700 research grants of approximately \$1.4 billion had been cancelled by NSF by May. The ruling was based in part on jurisdictional grounds (as a suit seeking monetary damages from the government, the case should have been brought before the Court of Federal Claims) and in part on likelihood of success on the merits.

### **Office of the Special Counsel**

The Office of the Special Counsel (OSC) protects federal employees and applicants from prohibited personnel practices, particularly reprisal for whistleblowing. The OSC also provides a secure channel for federal employees to blow the whistle by disclosing wrongdoing. It civilly enforces the Hatch Act, which places restrictions on partisan political activity by government employees. And it acts as an aide to Congress by providing reports meant to inform legislative and oversight agendas. Trump ordered the firing of the special counsel to that office, Hampton Dellinger. Dellinger [sued](#) for reinstatement (2/10/25) and a federal judge (U.S. District Judge Amy Berman Jackson) ordered his temporary reinstatement (2/11/25). (Note that this Special Counsel should not be confused with special counsel such a Jack Smith appointed by the Attorney General.)

Following a ruling by the DC Circuit upholding Judge Berman Jackson's ruling (dismissing the appeal, dismissing the motion for a stay and denying mandamus) (02/15/25), the Trump administration [made an application](#) to the Supreme Court to vacate Judge Berman's temporary restraining order and for an administrative stay of the District Court's order (02/16/25). At the end **Y1, Week Five**, the Supreme Court (7-2) in effect allowed Judge Berman Jackson's rulings [to stand](#) on the ground that a temporary restraining order was not subject to appeal at this stage (02/21/25). Judge Berman Jackson (02/26/25) [extended](#) the temporary restraining order until March 1.

End of **Y1, Week Five**, the Office of Special Counsel [ruled](#) that DOGE had violated protocol in firing six employees in violation of federal law governing probationary terminations and reductions in force and [requested](#) the MSPB to enjoin probationary terminations of the six employees (02/21/25). The rulings were released **Y1, Week Six** (02/24/25). The initial complaint is available [here](#) and the amended complaint, adding 14 agencies, is available [here](#). The plaintiffs are represented by Democracy Forward and Alden Law Group.

Four days later, the MSPB [ruled](#) that the six employees must be rehired, at least through April 10 (02/25/25). The 45-day stay ordered by the MSPB allows the Office of Special Counsel to continue its investigation of the firings, which has indicated it is exploring ways to broaden the group of similarly fired federal employees entitled to

relief. The six employees are at the departments of Agriculture, Education, Energy, Housing & Urban Development, Veterans Affairs and OPM.

End of **Y1, Week Six**, Judge Jackson, citing *Humphrey's Executor*, [found](#) (03/01/25) that “it would be antithetical to the very existence of the [OSC] and position to vindicate the President’s Article II power as it was described in *Humphrey's Executor*: a constitutional license to bully officials in the executive branch into doing his will” and ruled in favor of the Special Counsel, Hampton Dellinger. The Court found that the statute establishing the OSC is not unconstitutional and “that elimination of the restrictions on plaintiff’s removal would be fatal to the defining and essential feature of the [OSC] as it was conceived by Congress and signed into law by the President: its independence. The Court concludes that they must stand.” This was a decision on both the motion for a permanent injunction and on the merits. Treasury Secretary Bessent et al. have appealed to the D.C. Circuit.

The seesaw continued – **Y1, Week Seven**, the D.C. Circuit [granted](#) the administration’s motion to lift Judge Jackson’s ruling, without offering any explanation. So, for the moment Dellinger again was removed, pending the appellate court’s determination as to whether Trump has the authority to fire him without cause. On March 6, Dellinger ended his legal challenge to remain in his job, [citing](#) that his “odds of ultimately prevailing before the Supreme Court are long.” Those odds may have been lengthened because he was the sole head of the OSC, and courts have been more willing to protect heads of multi-member agencies than sole heads. After Dellinger dropped his case, the Supreme Court [denied](#) the administration’s order to vacate the lower court as moot.

### **Office of Management and Budget**

A federal judge (U.S. District Judge Loren L. AliKhan) temporarily blocked the OMB funding freeze, until February 3 at 5:00 pm. No purported federal authority was cited by OMB as a basis for the pause, and it is unclear how the pause squares with the [Congressional Budget and Impoundment Control Act](#) (Impoundment Control Act). An OMB [FAQ](#) claims that the temporary pause is not an impoundment under the ICA. Professor Vladeck had this to say about the pause, “In essence, the Trump administration is claiming the unilateral power to at least temporarily “impound” tens of billions of dollars of appropriated funds—in direct conflict with Congress’s constitutional power of the purse, and in even more flagrant violation of the Impoundment Control Act.”

Vladeck goes on to say that the administration is likely to challenge the constitutionality of the Impoundment Control Act, and Media Matters [notes](#) that the architect of Project 2025, Russell Vought, “whose fingerprints are all over Trump’s new federal funding (“ “has long argued in support of the president’s power to impound – that is, refuse to spend – funds allocated by Congress.”

Judge AliKhan’s order meant that federal agencies, states and other organizations that receive federal government funding would continue to receive funds beyond the January 28 deadline set by OMB. The [lawsuit](#) was brought against OMB by a group of nonprofit organizations under the National Council of Nonprofits, the American

Public Health Association, Main Street Alliance and SAGE, and supported by Democracy Forward. On February 3, Judge AliKhan issued a [temporary restraining order](#) consistent with her initial order.

On February 25, based on briefs submitted by both sides, oral argument and an *amicus* brief submitted by the American Center for Law and Justice, Judge AliKhan issued a [preliminary injunction](#) in plaintiffs' favor. The judge found that, [i]n the simplest terms, the freeze was ill-conceived from the beginning. ... The breadth of that [freeze] is almost unfathomable."

Another federal judge (Chief Judge John J. McConnell, Jr.) granted a [temporary restraining order](#) (1/31/25) in a separate case challenging the pause in federal funding (grants and other programs) ordered by OMB, [brought](#) by Democratic attorneys general of 22 states and the District of Columbia. In dispensing with defendants' claim of mootness on the ground that the OMB rescinded its "freeze" directive, the judge noted that "the evidence shows that the alleged rescission of the OMB directive was in name-only and may have been issued simply to defeat the jurisdiction of the courts. The substantive effect of the directive carries on." In granting the temporary restraining order, the court found a substantial likelihood that the plaintiffs would prevail on the merits and that the OMB directive will be found that have violated the Constitution and federal statutes.

Following presentation of evidence by the attorneys general plaintiffs that the Trump administration was ignoring the temporary restraining order issued by Judge McConnell, by continuing to improperly freeze federal funds and refusing to resume disbursement of appropriated federal funds, the judge issued a separate [order](#) (2/10/25). That order directed the Trump administration to comply with his temporary restraining order to unfreeze federal grants. The judge, citing the Constitution, federal statutes, Supreme Court precedent and his initial temporary restraining order, specifically ordered the Trump administration to:

- immediately restore frozen funding during the pendency of the temporary restraining order until the Court hears and decides the preliminary injunction request;
- immediately end any federal funding pause during the pendency of the temporary restraining order;
- immediately take every step necessary to effectuate the temporary restraining order, including clearing any administrative, operational or technical hurdles to implementation;
- comply with the plain text of the temporary restraining order not to pause any funds based on pronouncements pausing funding incorporated into the OMB directive;
- immediately restore withheld funds, including those federal funds appropriated in the Inflation Reduction Act and the Infrastructure Improvement and Jobs Act; and
- resume the funding of institutes and other agencies (for example the National Institute for Health) otherwise covered by the temporary restraining order.

To be clear, Judge McConnell in effect found the Trump administration to have violated his earlier temporary restraining order. In his order, he made reference to caselaw holding that defendants “who make private determinations of the law and refuse to obey an order generally risk criminal contempt even if the order is ultimately ruled incorrect.” It does not get clearer than that.

Judge McConnell [granted](#) the plaintiffs’ motion for a preliminary injunction in which defendants were enjoined from impeding the disbursement of appropriated federal funds to the plaintiff states (03/06/25). Plaintiffs filed [a new second motion](#) to enforce the District Court’s March 6 preliminary injunction order entered as it pertains to the freezing of FEMA funds, claiming that the plaintiff states have continued to experience significant obstacles to accessing federal funds despite the District Court’s order (03/24/25). The First Circuit [denied](#) defendants’ motion for a stay pending appeal of the District Court’s preliminary injunction order (03/26/25), noting that defendants had not meet their burden of proof showing they are entitled to judicial intervention that is “not a matter of right.”

As [ProPublica](#) set out following this latest intervention by the federal courts, notwithstanding consistent orders to unblock funds, federal agencies are continuing to do so. The article notes that “agencies continue to suspend funding, despite multiple court orders blocking the federal freeze. Experts say the Trump administration’s actions set the stage for challenges to Congress’ authority – and the limits of the presidency.”

For more on the Impoundment Control Act, see “[The Trump Administration Cannot Use Award Terms and Conditions to Impound Funds](#)” in *Just Security*.

**Y1, Week Eleven**, Judge McConnell [ruled](#) that the Trump administration had violated his court order by continuing to withhold FEMA relief to at least 19 states, citing his perception that the administration appeared to be making a “covert” effort to punish states whose immigration policies are at odds with the administration’s and, in particular, states with sanctuary cities (04/04/25).

**Y1, Week Twenty-Seven**, in a consolidated case of actions brought by CREW and by Protect Democracy against OMB, District Judge Emmet G. Sullivan [granted](#) plaintiffs’ motion for summary judgement, in part (07/21/25). The plaintiffs challenged the removal by OMB of a federal government database that shows how funds appropriated by Congress are allocated among federal agencies. Judge Sullivan [issued](#) a final order in favor of the plaintiffs, which is appealable (07/25/25).

### **Office of Personnel Management – Data**

A group of federal employees together with multiple employee unions, including the AFGE and the Association of Administrative Law Judges, [sued](#) OPM and DOGE to block DOGE from accessing the private information of millions of Americans stored by OPM, and to delete any data that has been collected or removed from databases (2/11/25). The lawsuit also asks the court to block OPM from sharing further data with DOGE. Plaintiffs cite both the Privacy Act of 1974 and the Administrative Procedure



Act. Plaintiffs are represented by Lex Lumina, Electronic Frontier Foundation (EFF), State Democracy Defenders Fund and The Chandra Law Firm.

In its press release about the lawsuit, EFF notes because the federal government is America's largest employer, OPM's records are one of the largest, if not the largest, collection of employee data in the country. Data include PII such as names, social security numbers, and demographics, work experience, union activities, salaries, performance, and demotions; health information, including life insurance and health benefits; financial information, including death benefit designations and savings programs; and nondisclosure agreements. These records cover millions of federal workers and millions more Americans who applied for federal jobs.

EFF notes that DOGE's unchecked access puts the safety of all federal employees at risk of privacy violations to political pressure to blackmail to targeted attacks. EFF notes that, last year, Musk publicly [disclosed the names](#) of specific government employees whose jobs he claimed he would cut *before* he had access to the system. He has also targeted at least one [former employee](#) of Twitter.

**Y1, Week Twenty-One**, District Judge Denise L. Cote [granted](#) the plaintiffs' motion for a preliminary injunction (06/09/25). The Court found a likelihood of success on the merits of the plaintiffs' case based on breaches by OPM of two sections of the Privacy Act, including because DOGE agents did not have sufficient need for the access they were given and insufficient training (and hence no legal right of access), and on a finding that OPM disregarded its cybersecurity standards and protocols. Judicial review is available by reason of the Administrative Procedures Act. The ruling restricts DOGE access to OPM databases, which contains data on tens of millions of Americans. See [Federal News Network](#) coverage.

### **Office of Personnel Management – Exclusion from Collective Bargaining**

Six labor unions [sued](#) the administration over Trump's efforts to deny federal employees rights under the Federal Service-Labor Management Relations Statute to unionize and engage in collective bargaining (04/03/2025). See [Court Listener](#) docket.

**Y1, Week Twenty-Three**, District Judge James Donato [issued](#) a temporary restraining order (06/24/25) covering federal employees at OPM, the Department of State, USAID, DoD, Treasury, Veterans Affairs, DoJ, HHS, DHS, the Department of the Interior, the Department of Energy, USDA, EPA, the National Science Foundation, the International Trade Commission, the General Services Administration, SSA, the Department of Labor, HUD, the Department of Transportation and the Department of Education. The government filed a notice of appeal to the Ninth Circuit two days later (06/26/25) and [filed](#) an emergency motion to stay the preliminary injunction pending appeal (07/01/25).

**Y1, Week Twenty-Eight**, the Ninth Circuit [granted](#) the government's motion for a stay of the District Court's injunction pending appeal (08/01/25). As the *Washington Post* reporting [notes](#), "It is unclear what immediate effect the ruling will have." The Ninth Circuit noted that the agencies had been directed to refrain from ending any collective bargaining agreement until "litigation has concluded," but Trump is able to follow through at his discretion with his EO stripping away labor protections. The EO

was framed as important to protecting national security; plaintiffs argued the EO was retaliation against these unions for participating in lawsuits against the administration (pointing to White House statements that “certain federal unions have declared war on President Trump’s agenda” and that the president “will not tolerate mass obstruction that jeopardizes his ability to manage agencies with vital national security missions.” The Court sidestepped plaintiffs’ alternate argument that some of the federal agencies had no obvious connection to national security.

### **Office of Personnel Management – Reductions in Force**

**Y1, Week Six**, a [coalition](#) of unions, small businesses, veterans and conservation organizations [sued](#) OPM to block the mass termination of probationary federal employees. The motion for a temporary restraining order is supported by Altshuler Berzon LLP and State Democracy Defenders Fund (02/19/25). The complaint cites violations of federal law, including the Administrative Procedure Act. The complaint also seeks to block the five-accomplishments email request. It is widely reported that there are around 200,000 probationary federal employees, representing around 10% of the federal workforce. Plaintiffs [filed](#) an amended complaint (02/23/25) citing OPM requests for updates from government employees regarding their Y1, Weekly accomplishments.

A federal judge sitting in San Francisco (District Court Judge William H. Alsup) issued a [temporary restraining order](#) enjoining the firing of probationary employees, whom the Judge called “the lifeblood of our government,” that covers the Veterans Affairs Department, the National Park Service, the Small Business Administration, the Bureau of Land Management, the National Science Foundation and other agencies whose firings impact the civic groups that sued (02/28/25). The court found that the labor union plaintiffs did not have standing, hence the order did not cover all federal agencies, including the Defense Department that is set to fire 5,400 probationary employees. The Judge did ask defense counsel to communicate his general message across all government agencies, with the Defense Department front of mind.

The order was premised on the court’s finding that OPM does not have “any authority whatsoever under any statute in the history of the universe to hire or fire employees at another federal agency.” The Judge ordered OPM to rescind its January 20 [memorandum](#) (guidance on probationary periods) and February 14 [internal email](#) directing agencies to identify probationary employees who are not “mission-critical” and fire them. The Judge labelled these OPM directions as “illegal.”

This was the second setback for the administration on probationary firings, the first being the [MSPB](#) order to temporarily reinstate six fired probationary employees.

**Y1, Week Eight**, Judge Alsup, [describing](#) the mass firing of probationary employees as a “sham” manoeuvre by OPM to circumvent legal requirements for downsizing the federal workforce and describing the rationale for the firings as “performance-based” as a “gimmick,” in a [ruling from the bench](#), ordered the Agriculture Department, the Defense Department, the Energy Department, the Interior Department, the Treasury Department and the Department of Veterans Affairs to immediately offer tens of thousands of probationary employees who had been fired to rehire them (03/13/25).

The Judge also granted the requested preliminary injunction, extending the temporary restraining order that bars future firings of probationary employees. The ruling does not prevent the government from implementing reductions in force that comply with applicable law. The Trump administration promptly [appealed](#) the decision.

In Maryland, District Court Judge James K. Bredar [ordered](#) 18 federal agencies (Agriculture, Commerce, Education, Energy, Health and Human Services, Homeland Security, Housing and Urban Development, Interior, Labor, Transportation, Treasury, Veterans Affairs, CFPB, EPA, FDIC, GSA, SBA and USAID) to rehire probationary employees fired since January 20 (03/13/25). See the [Memorandum](#) issued by Judge Bredar. The case was [brought](#) by 19 States and the District of Columbia (03/06/25), alleging violations of the Administrative Procedures Act.

**Y1, Week Nine**, in a [court filing](#) (03/18/25) responding to the temporary restraining order issued by Judge Bredar, the Trump administration advised that 24,750 probationary employees had been reinstated.

On March 20, in the case before Judge Bredar, plaintiffs [filed](#) a motion requesting that the District Court stay all purported terminations of probationary employees, reinstate all terminated employees and grant a preliminary injunction barring any further reductions in force where relevant legal and administrative rules are ignored. On March 21, the Fourth Circuit [denied](#) the government's motion for an administrative stay or stay pending resolution of their appeal.

**Y1, Week Ten**, On March 26, plaintiffs' motion to extend the temporary restraining order issued by Judge Bredar was [granted](#), extending the order to April 1.

In the case before Judge Alsup, on March 24, Judge Alsup concluded that the District Court has subject-matter jurisdiction over the case and reversed an earlier ruling that had denied relief to the plaintiffs. On March 26, the Ninth Circuit [denied](#) the government's emergency motion to stay the preliminary injunction.

**Y1, Week Twelve**, the Supreme Court [granted](#) the government's motion to stay the preliminary injunction on the basis of standing. The Supreme Court did not reach the merits of whether the terminations were lawful.

**Y1, Week Thirteen**, Judge Alsup [granted](#) provisional relief in plaintiffs' favor, enjoining OPM from firing or directing other federal agencies to fire federal employees, and from using the OPM template termination notice. The order also directs all federal agencies that used the OPM template termination notice to provide recipients of the OPM template firing notice with a written statement that their termination "was not 'performance' or fitness-based but was made as part of government-wide mass termination.

**Y1, Week Thirty-Five**, Judge Alsup [ruled](#) that OPM lacked the authority to direct other agencies to terminate 25,000 probationary employees and violated the Administrative Procedures Act when it did so (09/12/25). The Court made permanent its preliminary injunction. The Court did not order reinstatement; rather the defendant agencies were ordered to update personnel records to state terminations were not performance or conduct based and to send corrective notices to all terminated

probationary employees stating that they were not terminated on the basis of personal performance.

Recall that the Court had granted preliminary relief, which had been stayed by the Supreme Court. After that stay, the Court found that it had jurisdiction over labor union plaintiffs' claims and issued more limited provisional relief. The parties had moved for summary judgment. The Court was not impressed with the government's responses – "The 'administrative record' submitted by the government is a sham. It does not facilitate judicial review: It frustrates it." "The 'administrative record' leaves the reader with the feeling that he is being led, blindfolded, along a carefully plotted path through a dense, unseen wood. Here and there, he may hear a rustle in the trees, feel the dark silhouette of a towering form, or intuit some other hint at the forest beyond, but never is he afforded an unfettered view of the landscape through which he passes."

### **Other Legal Actions**

Governor Josh Stein and various Pennsylvania state government departments [sued](#) various departments of the federal government alleging the Trump administration had failed to disburse more than \$2 billion in approved federal funding owed Pennsylvania in spite of a court order lifting the federal spending freeze.

### **Privacy and Civil Liberties Oversight Board**

Two Senate-confirmed members of the Privacy and Civil Liberties Oversight Board (two of the three Democrats on the Board) who were removed from the Board [sued](#) to enjoin their removal (02/24/25). The plaintiffs were represented by Arnold & Porter Kaye Scholer. The Board was established by [statute](#) following recommendations of the 9/11 Commission. District Judge Reggie B. Walton [granted](#) plaintiffs' motion for summary judgment, finding that the removals were illegal (05/21/25). The government [appealed](#) (5/27/25).

The Court wrote that the responsibility for overseeing the government's counter-terrorism policies

"is incompatible with at-will removal by the President, because such unfettered authority would make the Board and its members beholden to the very authority it is supposed to oversee on behalf of Congress and the American people. To hold otherwise would be to bless the President's obvious attempt to exercise power beyond that granted to him by the Constitution and shield the Executive Branch's counterterrorism actions from independent oversight, public scrutiny, and bipartisan congressional insight regarding those actions. And, when the President contravenes a statutory scheme designed by Congress to ensure that these interests are adequately protected, it is specifically the "province and duty" of the independent Judiciary to 'say what the law is.'"

### **Refugee Admissions Program**

A group of plaintiffs including HIAS, Church World Service and Lutheran Community Services Northwest, as well as individuals, [sued](#) Trump, Secretaries Rubio and Noem,

and acting Secretary of HHS Dorothy Fink, to block implementation of the [Refugee Admissions Program EO](#) (02/10/25).

The refugee resettlement program was established in 1980 under the Refugee Act to provide a “permanent and systematic procedure” for refugee admissions. The program provides a legal path for admission to the United States for persons displaced by persecution, war and natural disaster. It differs from asylum. The Refugee Act mandate is fulfilled through the US Refugee Assistance Program, which is jointly administered by the State Department (though the Bureau of Population, Refugees and Migration), Homeland Security (through Citizenship and Immigration Services), the Department of Health and Human Services (though the Office of Refugee Resettlement) and the United Nations (through the International Organization for Migration and the UN High Commissioner for Refugees).

**Y1, Week Six**, a federal judge (District Court Judge Jamal N. Whitehead) granted plaintiffs’ motion for a preliminary injunction. His [ruling](#) from the bench (02/25/25) was followed by an [order](#) (02/28/25), in which Judge Whitehead, citing [Youngstown](#), found that while Trump “enjoys considerable latitude to suspend refugee admissions, that discretion is not boundless.” Trump may not “effect a wholesale reversal of legislatively established policy” and he may not “nullify an entire statutory framework through executive decree. The Constitution’s separation of powers demands this limitation.”

### **Sanctuary Cities**

Two cases have been brought challenging Trump administration guidance and actions relating to sanctuary cities. One case, brought by [Chicago-based organizations](#), raises First Amendment and Administrative Procedure Act claims against DHS (01/25/25) and the second one, brought by [the City and County of San Francisco](#) on its own behalf and 14 other cities and counties challenged, based on the Tenth Amendment, Separation of Powers, the Spending Clause and Due Process Clause, Trump administration efforts to withhold funds from sanctuary cities (02/07/25). The suit names Trump, the Attorney General, the Secretary of Homeland Security and the acting Deputy Attorney General. The 16 cities and counties [filed](#) their motion for summary judgment (03/17/25) and District Judge William H. Orrick [granted](#) that motion (03/24/25).

**Y1, Week Twenty-Seven**, District Judge Lindsay C. Jenkin [dismissed](#) a complaint filed by the DoJ against Illinois, Cook County, Cook County Commissioners, the City of Chicago and Gov. J.B. Pritzker and other individuals over their sanctuary city policies. The Court ruled that the United States lacks standing to sue the individual defendants.

The Court dismissed the complaint against Illinois, Cook County and Chicago for failure to state a claim, on the grounds that federal pre-emption does not apply to the challenged policies (Count I), and that the sanctuary policies neither discriminate against (Count II) nor directly regulate (Count III) the federal government. The Court concluded that the defendants’ decision to not participate in enforcing civil immigration law is protected by the Tenth Amendment and is not pre-empted by the



INA – to hold that the policies constitute discrimination or impermissible regulation would provide an end-run around the Tenth Amendment.

See [New York Times](#) coverage.

**Y1, Week Thirty-One**, Judge Orrick [extended](#) his preliminary injunction, which added new plaintiffs.

**Y1, Week Thirty-Seven**, District Judge William E. Smith [plaintiffs](#)' motion for summary judgment against FEMA (09/24/25), in challenge to the imposition of several conditions in respect of the award of federal grants to states with sanctuary cities. Specifically, the conditions required state and local recipients to certify that they will assist in enforcing federal immigration law, failing which they risked losing all DHS-administered federal grants. Plaintiffs, 20 Blue states and the District of Columbia, [filed](#) their complaint in May seeking declaratory and injunctive relief on the grounds that the condition violated the Administrative Procedures Act and unconstitutional (05/13/25). See [Court Listener](#) docket.

### **Shutdown (October) and Coincident RIFs**

**Y1, Week Thirty-Eight**, District Judge Susan Illston [issued](#) a temporary restraining order enjoining over 4,000 RIFs announced during the shutdown (10/15/25). Again, the introductory paragraph left little doubt as to where the judge would come out on the motion for a temporary restraining order: “On October 10, 2025, federal agencies began laying off thousands of employees in the midst of a government shutdown. This is unprecedented in our country’s history. The President has publicly stated that the layoffs will be “a lot” and that they “will be Democrat oriented, because we figure, you know, they started this thing, so they should be Democrat-oriented.”

The underlying action [was brought](#) by a two labor unions (including the AFGE and AFSCME and their affiliates when OMB Director Russ Vought threatened to RIF employees under cover of the shutdown (09/30/25) and [updated](#) via an amended complaint (10/04/25) and [updated](#) again seeking emergency relief when the RIFs were announced (10/10/25). See [Court Listener](#) docket. The plaintiffs are supported by Democracy Forward Foundation, State Democracy Defenders Fund and Altshuler Berzon. See [Democracy Forward](#) press release. AFGFE and AFSCME together represent over 800,000 federal employees. The plaintiffs accused the Trump administration of “using federal employees as pawns to impose political pressure on the Administration's perceived opponents in Congress.”

The temporary order covers more than 30 federal agencies. See [NPR](#) coverage.

The initial plaintiffs [expanded](#) their lawsuit (10/21/25) – three additional unions – the National Federation of Federal Employees (NFFE), the SEIU and the National Association of Government Employees (NAGE) had already joined the lawsuit (10/17/25), and now the National Treasury Employees Union (NTEU), the International Federation of Professional and Technical Engineers (IFPTE) and AFT were added. See [AFCSME](#) press release. In her October 17 order, Judge Illston clarified that her temporary restraining order applied to all federal agency offices where the plaintiff unions have members or bargaining units.



**Y1, Week Forty-One**, finding that the plaintiffs are likely to prevail on the merits of their claims under the Administrative Procedures Act that the RIFs were illegal, Judge Illston [granted](#) the plaintiffs’ motion for a preliminary injunction (10/28/25). The order blocks any new shutdown-related RIFs and pauses the 60-day clock on the RIF notices sent since the beginning of the shutdown.

In October, the shutdown notwithstanding the military was paid. To do so, Trump used unspent funds that had been appropriated to DoD for FY 2025 for research and development. Bobby Kogan, in his Lawfare article ([“How Trump Violated the Law to Pay the Military”](#)), explains that this payment was illegal. He explains that the payment violates the Appropriations Clause of the Constitution, the [Anti-deficiency Act](#) and the [“purpose” statute](#) (31 U.S. Code § 1301), as well as appropriations law and authorization statutes.

These collectively stand for the proposition that the federal government cannot spend money on something unless Congress has provided money for that specific purpose. Under the Anti-deficiency Act, the federal government cannot spend money without an appropriation enacted by Congress into law and an apportionment of the appropriated funds by the OMB. Under the purpose statute, the federal government cannot spend the money it does have for any purpose not specifically allowed in the authorization law and the appropriation made for the budget account(s) that funds that authorized purpose. In short, when Trump used money authorized only for the purpose of supporting research and development to instead pay the troops, he used existing money for a purpose not allowed by that appropriation. He also spent money to pay the troops when he did not have an appropriation usable for that purpose.

One thought on accountability that I will return to: while today’s DoJ will be loath to prosecute anyone in the administration for violating the law, in this instance or others, charges for these violations would be subject to a five-year statute of limitations, and a future administration’s DoJ could elect to bring these cases. Yes, Trump could issue pardons, but how far down the ladder will those reach?

**Y1, Week Forty-Eight**, Judge Illston [issued](#) a preliminary injunction ordering the Department of State and Department of Education, as well as the General Services Administration and the Small Business Administration, to rescind RIF notices for federal employees in those departments and agencies who were terminated between the start and end of the shutdown (12/17/25). Plaintiffs had [filed](#) an amended complaint earlier this month (12/03/25).

Also earlier this month, Judge Illston [issued](#) a temporary restraining order blocking the State Department from terminating 200 employees, mostly Foreign Service Officers.

### **Small Federal Agencies**

The attorneys general in 21 states [sued](#) to halt reductions in funding and staffing at three federal agencies (the IMLS, MBDA, and FMCS) covered by the [Continuing the Reduction of the Federal Bureaucracy](#) EO (04/04/25). (See also [Memorandum in Support of Preliminary Injunction](#) (04/16/25).)

**Y1, Week Sixteen**, District Court Judge John J. McConnell [issued](#) a preliminary injunction (05/06/25).

### **States Fight Back on an Individual Basis as Well**

The State of Maine [sued](#) the Department of Agriculture (USDA) for freezing federal funds allocated to Maine to feed school children on the ground that Maine is allegedly violating Title IX of the Civil Rights Law of 1964 by permitting transgender girls and women to participate in girls' and women's school sports (04/07/25). The complaint cited Governor Mills' response to Trump after he targeted her and the State during a meeting of the National Governors Association on February 21. District Judge John A. Woodcock [issued](#) a temporary restraining order (04/11/25).

**Y1, Week Fifteen**, it was widely reported (*see, e.g., The Guardian*) that USDA had agreed to settle the claim and reverse its freeze of funding. The agreement provides that USDA and Brooke Rollins, the Secretary of Agriculture, "agree to refrain from freezing, termination, or otherwise interfering with the state of Maine's access to United States Department of Agriculture funds ... based on alleged violations of Title IX without first following all legally required procedures." The settlement does not affect [another ongoing lawsuit](#) filed by the administration against the Maine Department of Education over its policy for transgender athletes.

Local prosecutor in Idaho filed misdemeanor [charges](#) against six men involved in [forcibly removing](#) a woman from a town hall meeting in Coeur d'Alene hosted by local Republicans. The charges include battery and false imprisonment. The men were personnel of a private security firm and were not wearing uniforms or insignia. The firm has since been barred from operating in Coeur d'Alene for failing to comply with a city ordinance requiring uniforms. The woman ejected from the meeting, against whom charges were dropped after for removal, [reportedly](#) has brought a tort claim as a predicate for a civil lawsuit arising from the incident.

### **Social Security Administration**

The American Federation of State, County & Municipal Employees, the American Federation of Teachers and the Alliance for Retired Americans [sued](#) the SSA and DOGE to enjoin access by DOGE to personal information in the SSA system (02/21/25). The plaintiffs are represented by Democracy Forward Foundation. On March 20, District Judge Ellen Lipton Hollander [granted](#) a [temporary restraining order](#). On March 21, Judge Hollander [clarified](#) that the scope of her order. Defendants [filed](#) a notice of appeal on March 24.

**Y2, Week One**, in a court filing in this case (Notice of Corrections to the Record), DoJ [admitted](#) that two members of the DOGE team working at the SSA were secretly in touch with a political advocacy group seeking to overturn the election results in certain states and one signed an agreement that may have involved using Social Security data to match state voter rolls. The filing also revealed that a senior adviser to Musk and the DOGE team was copied on an email that included an encrypted and password-protected file believed by SSA to contain private information of around 1,000 people contained in Social Security systems. In addition, DOJ admitted that a DOGE team member was briefly granted access to private Social Security profiles

even after a court had issued a temporary restraining order prohibiting access and that the DOGE team members at SSA used links to share data through the third-party server “Cloudflare,” which “is not approved for storing SSA data and when used in this manner is outside SSA’s security protocols.”

## **Tariffs**

**Y1, Week Eleven**, Senator Tim Kaine introduced a non-binding resolution to end the emergency declaration that Trump signed in February as the basis for imposing tariffs on Canada. Kaine noted that while fentanyl trafficking is serious, the emergency arises by virtue of actions taken by China and Mexico, and not Canada. The resolution was adopted, with Senators Collins, McConnell, Murkowski and Paul voting with the Democrats to pass it. The resolution was endorsed by the U.S. Chamber of Commerce, the AFL-CIO, the United Steelworkers, the International Association of Machinists and Aerospace Workers, International Federation of Professional and Technical Engineers, the National Retail Federation, the North America’s Building Trades Unions, the Sheet Metal and Air Conditioning Contractors’ National Association, the U.S. Conference of Mayors, Foreign Policy for America (FP4A), National Taxpayers Union, Taxpayers Protection Alliance and Advancing American Freedom.

Rep. Gregory Meeks intends to introduce a similar resolution in the House.

The New Civil Liberties Alliance (NCLA), a public interest law firm acting on behalf of a stationery company (Emily Ley Paper), [sued](#) Trump and the administration on the grounds that IEEPA (cited as the basis for the tariffs covered by [his EO](#)) does not provide Trump with the authority to impose tariffs and, as a consequence, the tariffs are *ultra vires* and unconstitutional (04/03/25). NCLA receives financial support from Charles Kock and Leonard Leo.

The complaint, which focuses specifically on the tariffs imposed on China, cites Article I, Section 8 of the Constitution as granting Congress the sole authority to control tariffs. As noted in NCLA’s press release, “The President may not bypass [Congressional authority] by invoking “emergency” authority in another statute [IEEPA] that does not mention tariffs. His attempt to use the IEEPA this way not only violates the law as written, but it also invites application of the Supreme Court’s Major Questions Doctrine, which tells courts not to discern policies of ‘vast economic and political significance’ in a law without explicit congressional authorization.” No President has invoked IEEPA to impose tariffs.

As set out in the NCLA complaint, IEEPA authorizes a president to respond to a foreign threat by declaring a national emergency, then ordering one of the economic responses the statute describes ([50 U.S. Code § 1702\(a\)](#)). IEEPA defines an emergency as “an unusual and extraordinary threat, which has its source ... outside the United States, to the national security, foreign policy, or economy of the United States” ([50 U.S. Code § 1701\(a\)](#)). IEEPA provides that, after declaring a national emergency, a president can order a responsive action if it meets two requirements: the action must be included in the IEEPA’s list of permissible actions, such as freezing assets and blocking international transactions ([50 U.S. Code § 1702\(a\)\(1\)\(A\), \(B\)](#)) and the

specific action must be “necessary” to address the specific declared emergency ([50 U.S. Code § 1703\(b\)\(4\)](#)).

For commentary, see [“Lawsuit Could End Trump Tariffs and Stock Market Rout.”](#)

**Y1, Week Thirteen**, the Liberty Justice Center and Illya Somin of the Antonin Scalia Law School [filed](#) suit in the U.S. Court of International Trade on behalf of five small businesses (*V.O.S. Selections, Inc. et al.*), arguing that the administration lacks the authority to issue across-the-board worldwide tariffs without congressional approval (04/14/25). Specifically, IEEPA does not authorize the President to unilaterally impose the tariffs. **Y1, Week Seventeen**, a three-judge panel of the Court heard oral argument; the Court in April had [declined](#) to issue a temporary restraining order (04/22/25).

**Y1, Week Fourteen**, 12 Democratic state Attorneys General, led by Oregon Attorney General Dan Rayfield and Arizona Attorney General Kris Mayes, [filed](#) an action in the U.S. Court of International Trade challenging four tariff-focused EOs on the grounds that the IEEPA does not authorize the President to arbitrarily impose the tariffs covered by those EOs (04/23/25). (See generally, *POLITICO* [interview](#) with AG Rayfield.)

**Y1, Week Sixteen**, the plaintiffs [filed](#) a motion for a preliminary injunction.

**Y1, Week Seventeen**, the Brennan Center filed an *amicus* brief in the *Emily Ley Paper* case opposing the motion filed by the government to transfer the case to the U.S. Court of International Trade. The brief argues that the government’s “interpretation is contrary to the original purpose of both the NEA and IEEPA, which was to carefully circumscribe presidential use of emergency powers. Because IEEPA does not authorize the imposition of tariffs, it should not be considered to “provide” for tariffs for purposes of conferring exclusive jurisdiction on the Court of International Trade, and Defendants’ motion to transfer the case to that court should be denied.”

See generally the scathing [rebuke](#) of the tariffs by the *Wall Street Journal* Editorial Board (05/14/25) and the [rebuke](#) by Ana Swanson and Alan Rappeport in the *New York Times* (05/12/25).

**Y1, Week Nineteen**, the Court of International Trade [ruled](#) that Trump does not have authority under IEEPA to impose his sweeping global tariffs (05/28/25). Rather than rule on the plaintiffs’ motion for a temporary injunction, the three-judge panel ruled on the merits and, finding no genuine dispute as to any material facts and that the plaintiffs are entitled to a judgment in their favor as a matter of law, entered summary judgment against the government and permanently enjoined the tariffs. The government immediately filed an appeal.

The tariffs covered by the summary judgment included what the court termed “trafficking tariffs” – the 25% tariffs for Mexican and Canadian products and 20% for Chinese products, as well as the 10% tariffs on Canadian energy and energy resources, and the “Liberation Day” “worldwide and retaliatory tariffs” – the 10% duties on all imports from all trading partners, the country-specific tariffs ranging from 11% to 50% that were paused for 90 days (until July 9) for all countries except China, and the China tariffs. As to all three, the court was crystal clear: The court holds ... that IEEPA does not authorize any of the Worldwide, Retaliatory or Trafficking Tariff Orders. The

Worldwide and Retaliatory Tariff Orders exceed any authority granted to the President by IEEPA to regulate importation by means of tariffs. The Trafficking Tariffs fail because they do not deal with the threats set forth in those orders.”

The court addressed the case brought by the five business plaintiffs as well as the case brought by the 12 state plaintiffs, but applied its ruling to all importers – writing, “There is no question here of narrowly tailored relief; if the challenged Tariff Orders are unlawful as to Plaintiffs they are unlawful as to all.”

See blog post from plaintiff’s attorney Ilya Somin (“[We Won Out Tariff Case!](#)”).

The following day, District Judge Rudolph Contreras [ruled](#) in a separate case that IEEPA does not authorize the President to impose the tariffs set forth in the four tariff EOs (05/29/25) and, accordingly, that those tariffs are unlawful. The complaint had been [filed](#) by two businesses (*Learning Resources, Inc. et al.*) (04/22/25) in federal court, and the government had [moved](#) to transfer the case to the Court of International Trade – the case had not been transferred). Judge Contreras stayed his order for 14 days to allow the parties to appeal. **Y1, Week Twenty**, the government appealed Judge Contreras’ ruling.

Later that day, the Court of Appeals for the Federal Circuit [stayed](#) the Court of International Trade ruling in both the *V.O.S. Selections* case and state plaintiffs case while the cases are on appeal by the government (05/29/25).

In brief, [as summarized](#) by NBC News:

- Tariffs struck down:
  - 10% universal baseline tariff;
  - 20% duties on Chinese goods in response to its alleged failures to combat fentanyl trafficking;
  - 10% "reciprocal" duty targeting all Chinese goods; and
  - *De minimis* tariffs on Chinese goods valued at less than \$800.
- Tariffs remaining in place:
  - 25% on auto imports (excluding non-U.S. content of USMCA-compliant autos);
  - 25% on auto parts imports (USMCA-compliant parts exempt); and
  - 25% on all steel, aluminium, and aluminum articles.

Following the tariff rulings, *The Hill* [summarized](#) the most recent iteration of a disturbing trend that has been a hallmark of Team Trump, namely to attack the judiciary (*see also* [New York Times](#) coverage.)

- Deputy chief of staff [Stephen Miller](#) decried a three-judge panel’s ruling that initially halted Trump’s sweeping “reciprocal” tariffs as “judicial tyranny.”
- White House press secretary [Karoline Leavitt](#) called it part of a “troubling and dangerous trend of unelected judges inserting themselves into the presidential decision-making process.”
- National Economic Council Director [Kevin Hassett](#), attacked the panel as “activist judges.” The tactic allows Trump and his enablers to go on offense, where they are most comfortable, and galvanizes the MAGA base, creating, in



the words of *The Hill*, “a common opponent at a time when Democrats are out of power and largely helpless to impede the president’s agenda.”

- At the beginning of the week, on Memorial Day, Trump had rebuked “USA HATING JUDGES WHO SUFFER FROM AN IDEOLOGY THAT IS SICK.”

In a rich irony, following the rulings (delivered by judges appointed by Democrats and Republican presidents alike, including Trump), Leonard Leo, who was instrumental in placing conservative lawyers groomed by the Federalist Society, on the federal judicial bench, come under fire. Trump, writing on Truth Social, took aim: “I am so disappointed in The Federalist Society because of the bad advice they gave me on numerous Judicial Nominations. This is something that cannot be forgotten! With all of that being said, I am very proud of many of our picks, but very disappointed in others.”

There is a second rich irony to this. As the *Wall Street Journal* [highlighted](#), judicial precedents championed by Trump that bedevilled the Biden administration on policies ranging from combatting pollution to student-debt relief, have now come back to haunt Trump’s agenda. The Court of International trade relied, in part, on the “[major questions” doctrine](#), invoked by the Supreme Court in *West Virginia v. EPA* to stop federal agencies from “asserting highly consequential power” unless Congress has clearly delegated such authority to the executive branch, and, in part, on the Supreme Court’s decision in *Loper Bright Enterprises v. Raimondo*, which overruled the deference accorded to federal agencies to interpret ambiguous statutory provisions, known in legal and regulatory circles as the “[Chevron deference](#).” Pursuant to his [Ensuring Lawful Governance](#) Proclamation, these precedents formed part of Trump’s mandate to federal agency heads to repeal regulations deemed unlawful under ten Supreme Court decisions, [starting](#) with *Loper Bright* and *West Virginia v. EPA*.

**Y1, Week Thirty-Three**, the Court of Appeals for the Federal Circuit (7-4) [upheld](#) the ruling of the Court of International Trade in the consolidated cases that IEEPA does not provide Trump with the authority to impose the tariffs covered by five EOs (*i.e.*, the so-called reciprocal tariffs imposed in April and the trafficking tariffs imposed on Canada, Mexico and China). The Court [stayed](#) the ruling (by withholding the issuance of the mandate) until October 14 to give the administration the opportunity to appeal to the Supreme Court.

The court found that “[i]t seems unlikely that Congress intended, in enacting IEEPA, to depart from its past practice and grant the president unlimited authority to impose tariffs.” IEEPA “neither mentions tariffs (or any of its synonyms) nor has procedural safeguards that contain clear limits on the president’s power to impose tariffs.” Moreover, continued the Court, “whenever Congress intends to delegate to the President the authority to impose tariffs, it does so explicitly, either by using unequivocal terms like tariff and duty, or via an over- all structure which makes clear that Congress is referring to tariffs. This is no surprise, as the core Congressional power to impose taxes such as tariffs is vested exclusively in the legislative branch by the Constitution; when Congress delegates this power in the first instance, it does so clearly and unambiguously.”



Trump called the Federal Circuit a “Highly Partisan Appeals Court” whose ruling “would literally destroy the United States of America.”

In an interview with CNN’s Jake Tapper, *New York Times* correspondent Maggie Haberman [called](#) the Federal Circuit ruling a “big blow” to Trump’s agenda: “This is the one that a lot of people who follow trade issues have been concerned about and is the outcome that they anticipated, frankly. You know, the president has used a lot of emergency powers in a lot of situations that many who are watching don’t think qualify as emergencies. This was one that was always going to be difficult.” She notes that if the Supreme Court upholds the ruling, it will require reimbursements of hundreds of millions of dollars overseas.

While the Federal Circuit affirmed the Court of International Trade’s holding that the trafficking and the reciprocal tariffs exceed the authority delegated by IEEPA and the lower court’s grant of declaratory relief that the five EOs are “invalid as contrary to law,” it remanded the case back to the Court of International Trade to reconsider the propriety of granting a universal permanent injunction in light of the Supreme Court’s holding in *CASA* and the so-called four *eBay* factors.<sup>13</sup>

Also, on Friday of that Y1, Week, Trump cancelled the so-called *de minimis* exemption for commercial packages entering the United States, having values below \$800. The exemption had been revoked in May for packages originating in China and Hong Kong, and has now been revoked for all of our trading partners. All commercial shipments, regardless of value, now are subject to duties, taxes and fees. The *de minimis* exemption had been in place since 1938 and was increased from \$200 to \$800 in 2015 as a means to foster small business growth on e-commerce platforms.

**Y1, Week Forty-Two**, the Supreme Court is hearing oral arguments on Trump’s appeal of the lower court ruling on his tariffs. As Adam Liptak [reports](#), the administration point person on the appeal, the Solicitor General, may have made a tactical blunder. In [oral argument](#), the Solicitor General claimed the tariffs were a policy tool and not a type of tax – “The fact that they raise revenue,” he said, “is only incidental.” But Trump has focused at length in posts about the money his tariffs is raising, [posting](#), for example, “It will be a BONANZA FOR AMERICA!!!” If the Justices find the tariffs are the equivalent of a tax, they will likely rule against the administration; a diplomatic tool could garner greater deference.

The blunder may be that the administration’s [brief](#) is replete with Trump statements, and while judges typically would not give weight to public statements these public statements are now part of the record. The article quotes law professor Jonathan Adler as saying, “In effect, the government brief opened the door to considering the president’s statements by including them in the briefing, and that may enable the court

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<sup>13</sup> The four factors set out in *eBay Inc. v. MercExchange, L.L.C.* being: that plaintiff has suffered an irreparable injury; that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and that the public interest would not be disserved by a permanent injunction.

to consider the president's remarks when it would normally be very reluctant to do so."

For an excellent analysis of the state of play on the court challenge to the tariffs, see "[A SCOTUS Bench Memo for the Trump Tariff Case: Separation of Powers, Delegation, Emergencies, and Pretext.](#)"

**Y1, Weeks Forty-Four and Forty-Five**, a series of cases have been brought seeking a declaratory judgment that the tariffs imposed under IEEPA are unlawful: [Illuminate USA LLC](#), [Berlin Packing, LLC](#), [Toyota Tsusho Canada et al.](#), [Hydro Gear](#), [Moog, Inc. et al.](#), [LONGi Solar Technology \(US\), Inc.](#), [Warren Valves LP et al.](#), [Positec USA, Inc. et al.](#), [Valeo North America, Inc. et al.](#), [Bumble Bee Foods LLC](#), [Argonaut Manufacturing Services, Inc.](#) and [Mazak Corporation](#). Most of the plaintiffs in these cases are represented by Crowell & Moring. The reason for these separate lawsuits is that, even if the IEEPA tariffs are found to be unlawful, importers that paid IEEPA duties are not guaranteed that they will get a refund unless they have their own legal judgment. Keep in mind that if the IEEPA duties are required to be refunded the money will be paid to the importers, and not to the consumers to whom the higher costs were passed on.

### **Transgender Rights**

A federal judge temporarily blocked the Federal Bureau of Prisons from carrying out the EO directing incarcerated transgender women into men's prisons and ending gender transition medical facilities.

### **United Farm Workers, et al.**

The United Farm Workers and a group of migrant farm workers sued for declaratory and injunctive relief in respect of violations of the Fourth and Fifth Amendments. The complaint cites "detentive stops" without reasonable suspicion that the person stopped is in the country unlawfully and warrantless arrests without regard to probable cause that the person arrested is likely to escape before a warrant can be obtained.

**Y1, Week Fifteen**, District Judge Jennifer Thurston [granted](#) plaintiffs' motions for provisional class certification and for a preliminary injunction (04/29/25). The preliminary injunction applies to Border Patrol operations in the Eastern District of California, and bars the Border Patrol from stopping people without reasonable suspicion that they are noncitizens and in the country in violation of federal immigration law and arresting people without a warrant if agents do not have probable cause to believe the person is likely to flee. The case is supported by the ACLU ([see ACLU press release](#)).

### **Universities and Foreign Students**

#### **Harvard**

**Y1, Week Thirteen**, Harvard University is fighting back against the administration's threat to review about \$9 billion in federal funding after [Harvard officials](#) refused to comply with a [demands](#) that included decisions on hiring, admissions and curriculum deemed so onerous that Harvard fought back. The letter to Harvard from the antisemitism task force [reportedly](#) was sent without White House vetting, but as is

typical for an administration that finds it difficult to admit mistakes, the administration only doubled down. It announced it would “freeze” \$2.2 billion in multi-year grants that had already been awarded and terminate a \$60 million contract if Harvard did not back down.

Harvard President Alan Garber defended Harvard’s decision to fight back in a [letter](#) addressed to the Harvard community (04/15/25). In his letter, Garber notes that the administration “made clear that [its] intention is not to work with us to address antisemitism in a cooperative and constructive manner. Although some of the demands outlined by the government are aimed at combating antisemitism, the majority represent direct governmental regulation of the “intellectual conditions” at Harvard. Harvard he notes “will not surrender its independence or relinquish its constitutional rights.”

Harvard, represented by Ropes & Gray, King & Spalding and Quinn Emanuel, [sued](#) the administration (04/21/25), citing First Amendment, Title VI of the Civil Rights Act and Administrative Procedures Act grounds. Among other claims, the complaint sets out that “[t]he Government has not – and cannot – identify any rational connection between antisemitism concerns and the medical, scientific, technological, and other research it has frozen that aims to save American lives, foster American success, preserve American security, and maintain America’s position as a global leader in innovation. Nor has the Government acknowledged the significant consequences that the indefinite freeze of billions of dollars in federal research funding will have on Harvard’s research programs, the beneficiaries of that research, and the national interest in furthering American innovation and progress.”

**Y1, Week Fourteen** kicked off with a letter [signed](#) by more than 150 college and university presidents and leaders of scholarly societies (04/22/25) speaking out “against the unprecedented government overreach and political interference now endangering American higher education. We are open to constructive reform and do not oppose legitimate government oversight. However, we must oppose undue government intrusion in the lives of those who learn, live, and work on our campuses. We will always seek effective and fair financial practices, but we must reject the coercive use of public research funding.” *See also* [coverage](#) by the Guardian.

**Y1, Week Fifteen**, Trump [threatened](#) to revoke the tax-exempt status of Harvard.

**Y1, Week Seventeen**, the *New York Times* [reported](#) that DoJ had notified Harvard that it is investigating whether its admissions process had defrauded the government under the False Claims Act.

**Y1, Week Eighteen**, DHS, in its capacity as lead agency for the Student and Exchange Visitor Program (SEVP) under which foreign students can obtain F-1 visas to study in the United States (there is a similar program for J-1 visas), had sent Harvard a records request demanding information for each foreign student enrolled at Harvard. Harvard had produced information on April 30 and May 14, but DHS had deemed the response to be insufficient and revoked Harvard’s ability to continue to participate in the SEVP. The DHS notice stated that all students enrolled at Harvard under non-immigrant visas had to transfer to another university to retain their non-immigrant visa status and shut

down Harvard's ability to participate in the SEVP for the 2025-26 year. Across its 13 schools, Harvard hosts more than 5,000 such students from 143 countries and sponsors over 2,000 recent graduates who are participate in the Optional Practice Training program.

These foreign students represent over one-quarter of Harvard's total student population.

Harvard filed suit (05/23/25) [seeking](#) a temporary restraining order (*see also* [complaint](#) and [memorandum in support](#)). Harvard is represented by Jenner & Block, King & Spaulding, Quinn Emanuel and Lehotsky Keller Cohn. That same day, District Judge Allison D. Burroughs [granted](#) Harvard's motion for a temporary restraining order.

The *Wall Street Journal* Editorial Board [slammed](#) the Trump administration's attack on foreign students enrolled at Harvard, labelling it "a short-sighted attack on one of America's great competitive strengths: Its ability to attract the world's best and brightest" (05/23/25).

End of **Y1, Week Nineteen**, despite the [filing](#) of letter by the government that would pause the threatened visa cancellations of foreign students enrolled at Harvard for 30 days, Judge Burroughs, extended her temporary restraining order indefinitely and granted a preliminary injunction in favor of Harvard (05/29/25). *See* Harvard [update](#) to its community and [POLITICO](#) coverage.

Separately, while there have been threats to subject all foreign students seeking student visas to study in the United States to social media vetting, that vetting will apply immediately to all visas for students and others headed to Harvard for any purpose. *POLITICO* [reports](#) that the State Department has ordered its consulates to commence social media vetting to applicants headed to Harvard for antisemitic posts. *POLITICO* notes that, while primarily affecting students, the policy will also include faculty members, researchers, staff members and guest speakers at Harvard. Moreover, the cable reportedly directs consular officers to consider "whether the lack of any online presence, or having social media accounts restricted to 'private' or with limited visibility, may be reflective of evasiveness and call into question the applicant's credibility." Consular officers are to inform applicants with private social media accounts that they could be viewed as evading vetting and request they make their accounts public while their visa applications are reviewed.

**Y1, Week Twenty**, so now Harvard is a threat to national security, with crime rates having risen dramatically in recent years, which Harvard has failed to discipline "at least in some categories." The remedy? Per his [Enhancing National Security by Addressing Risks at Harvard University](#) Proclamation (06/04/25), restrict the entry of foreign nationals who seek to enter the country "solely or principally to participate in a course of study at Harvard University or in an exchange program hosted by Harvard University." Late last month, Judge Burroughs had blocked DHS from preventing Harvard from enrolling foreign students.

**Y1, Week Twenty-Two**, Judge Burroughs [issued](#) a preliminary injunction (06/20/25) in favor of Harvard. Specifically, among other conditions, the defendants were enjoined from giving effect to the revocation of Harvard's SEVP certification and

Harvard's Exchange Visitor Program. The preliminary injunction extends the temporary restraining order and is not time limited. In effect this means the Court has upheld the right of Harvard to host foreign students while the underlying challenge to the government's actions is decided.

Shortly after the ruling, Trump [posted](#) on Truth Social a statement that hinted at an agreement between Harvard and the administration would be announced over the week – “They have acted extremely appropriately during these negotiations, and appear to be committed to doing what is right.”

**Y1, Week Twenty-Seven**, in op-ed [calling out](#) what is at stake in the assault by the administration on Harvard, Rep. Mark Tavenner recounts a conversation with Education Secretary McMahon in which he tries to understand what “viewpoint diversity” really means and whether the administration has the authority to enforce viewpoint diversity on college and university campuses. He relates that she obfuscated when asked whether Harvard should be compelled to hire an election denier or immunologists that agree with HHS Secretary on vaccine efficacy. She then had this to say when pressed about hiring a Holocaust denier: “I believe that there should be diversity of viewpoints relative to teachings and opinions on campuses.” Never mind that this response comes from an official in an administration that claims to be fighting antisemitism. Equally troubling is that this administration is seeking to impose on an independent institution of higher learning its own views on freedom of speech and is using a concept that is ill-defined to force its way.

**Y1, Week Twenty-Eight**, Columbia University [announced](#) that it had reached [agreement](#) with the government to settle multiple federal agency investigations into alleged violations of federal anti-discrimination laws. Columbia agreed to pay \$200 million over three years to the federal government and agreed to pay \$21 million to settle investigations brought by the EEOC. A critique of the settlement written by the Knight First Amendment Institute at Columbia University was [published](#) August 4.

**Y1, Week Thirty-Four**, District Judge Burroughs [handed](#) Harvard University a victory (09/03/25), ruling that the cut-off of \$2.2 billion in research funding was unlawful.

The Court concluded that while “Harvard was wrong to tolerate hateful behavior for as long as it did,” the government “used antisemitism as a smokescreen for a targeted, ideologically-motivated assault on this country’s premier universities.” These actions violate the First Amendment, Civil Rights Act and Administrative Procedure Act, and “jeopardized decades of research.” “We must fight against antisemitism, but we equally need to protect our rights, including our right to free speech, and neither goal should nor needs to be sacrificed on the altar of the other.”

The Court continued, “the idea that fighting antisemitism is [the government’s] true aim is belied by the fact that the majority of the demands they are making of Harvard to restore its research funding are directed, on their face, at Harvard’s governance, staffing and hiring practices, and admissions policies – all of which have little to do with antisemitism and everything to do with Defendants’ power and political views.”

## ***Columbia***

**Y1, Week Twenty-Two**, District Judge Mary Kay Vyskočil [ruled](#) against the plaintiffs in a lawsuit brought against the government for actions taken against Columbia University – she denied their motion for a preliminary injunction and dismissed their case against the government for lack of standing (06/16/25). The lawsuit had been [brought](#) by the American Association of University Professors and the American Federation of Teachers seeking a preliminary injunction requiring the administration to reinstate and restore approximately \$400 million in federal grants and contracts to Columbia had been terminated (03/25/25).

Columbia was not a party to the lawsuit, which proved fatal to the case. The plaintiffs had not moved for a temporary restraining order (or request an expedited hearing on a preliminary injunction, instead waiting a month), which the Judge implied would have allowed the Court to rule on standing and allow the plaintiffs to refile with the proper parties, as had happened in an earlier case brought by Columbia students, and undermined the case for finding imminent harm.

## ***George Mason***

The *New York Times* [profiles](#) Gregory Washington, George Mason University's first Black president, whose diversity agenda has made him a target of the Trump administration. Washington has been accused of violating the Civil Rights Act by discriminating against white academics in hiring and promotions. The administration has also demanded a personal apology over Washington's support for racial diversity. Washington has refused to back down. He is one of the few university leaders to publicly fight back, a short list that includes Harvard's and Princeton's presidents, but he is also the only president to be targeted individually.

The American Association of University Professors [called](#) the DoJ Civil Rights Division investigation of George Mason as “an attack on academic freedom.”

## ***Texas A&M***

The president of Texas A&M, Mark Welch III, [resigned](#) after facing criticism over his handling of the firing of a lecturer and two administrators. The lecturer, Melissa McCoul, was fired after a video filmed by a student challenging McCoul for raising gender identity in the classroom went viral. Texas State Rep. Brian Harrison shared the video after it went viral, and shared it with other lawmakers. It soon caught the attention of the governor, who incidentally back in January had [threatened](#) to have Walsh removed (he could not remove him directly but he appoints the Board of Regents, which could) over claims that the university had breached Texas' ban on DEI programs.

McCoul was teaching an English course entitled “Literature for Children” during summer session, and while discussing “Jude Saves the World, a novel about a 12-year-old who comes out as nonbinary, shared a graphic of a purple “gender unicorn.” The student, citing a Trump EO recognizing only two biological sexes, called the segment illegal, prompting McCoul to respond it was not illegal and eventually asking the student to leave the classroom. The administrators who were removed were the Dean



of the College of Arts & Sciences and the head of the English Department. See Texas Tribune coverage [here](#) and [here](#).

### ***University of California***

**Y1, Week Forty-Three**, District Judge Rita F. Lin [granted](#) the University of California a preliminary injunction enjoining the administration from demanding that the University of California pay a \$1.2 billion settlement (11/14/25). Among other things, the Court found that each of the following would violate the university's First Amendment rights:

- requiring the university to make hiring, firing, or funding decisions on the basis of Plaintiffs' members' protected speech or freedom of assembly;
- requiring the university to restrict its curriculum, scholarship, or research based on the Defendants' preferred viewpoints;
- requiring the university to screen international students based on "anti-Western" or "anti-American" views and/or "socialize" international students to favored "norms";
- requiring the university to institute reporting requirements concerning Plaintiffs' protected speech or freedom of assembly;
- requiring the university to adopt specific definitions of "sex," "male," and "female," or adopt Defendants' favored views as to gender or gender affirming care and disallowing inconsistent speech by its faculty, staff, or students; and
- restricting how the university decides scholarship awards, hiring, or admissions, beyond what current constitutional or statutory law requires.

### ***University of Virginia***

Former UVa president James E. Ryan [published](#) an open letter to the Faculty Senate setting forth his account of his in-effect forced resignation. The letter seeks to set the record straight from Ryan's perspective in response to the accounting of the resignation written by Rector Rachel Sheridan and Virginia Governor Glenn Youngkin, which he says differed "in significant parts" from his perspective. The events that led to his resignation were triggered by a resolution drafted by Youngkin's office as to how the university should handle DEI policies and, following cutting back on the resolution to the point where the board was prepared to accept it, Youngkin's interview on Fox News claiming that the university board had done "something radical and sweeping" by declaring that "DEI is dead."

### ***Foreign Students, Generally***

End of **Y1, Week Fourteen**, in the face of a wave of court-imposed restraining orders and just hours before ICE officials were expected to testify under oath in court, the Trump administration abruptly reversed its policy of terminating visas for foreign students studying in the United States who had minor, and often dismissed, brushes with law enforcement (04/25/25). The terminations, based on data in a federal database (the Student and Exchange Visitor Information Systems (SEVIS) database ), triggered, [according](#) to *POLITICO*, more than 100 lawsuits, with judges in more than 50 of the

cases, spanning at least 23 states, enjoining the actions. Dozens more judges appeared ready to follow suit before the reversal.

According to the Associated Press, an emailed statement from ICE [reads](#) as follows: “ICE is developing a policy that will provide a framework for SEVIS record terminations. Until such a policy is issued, the SEVIS records for plaintiff(s) in this case (and other similarly situated plaintiffs) will remain Active or shall be re-activated if not currently active and ICE will not modify the record solely based on the NCIC finding that resulted in the recent SEVIS record termination.”

According to the Association of American Universities, a higher education advocacy group (as [quoted](#) by *Reuters*), in 2024, 1.1 million foreign students in the country (over half of whom are from China and India) contributed \$44 billion to the U.S. economy. Since late March, ICE deleted more than 4,700 names from SEVIS, often citing criminal activity, according to the American Immigration Lawyers Association. Students whose records were deleted from SEVIS meant they technically were no longer in the country legally and were at risk of detention and deportation. Some were prohibited from attending classes or accessing campus resources, while others were detained or forced to self-deport.

While according to *Time*, the reversal applies to students with “minor” or “dismissed” legal infractions, it remains unclear whether cases like Khalil’s or Öztürk’s are affected by the reversal. *Time* also noted that the State Department, which separately revoked a number of student visas, did not respond to a request for comment as to whether those cancellations are being reversed as well.

**Y1, Week Eighteen**, in response to a suit brought by a group of foreign students holding F-1 visas, District Judge Jeffrey S. White [granted](#) the plaintiffs’ motion for a preliminary injunction (05/22/25). The court started out by quoting case law for the benefit of the government, “Lest any Defendant be unsure, [the Due Process clause] ‘applies to all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary or permanent.’” The court issued the injunction on a nationwide basis to avoid an end-run by the government, observing that only a nationwide injunction would prevent the government from engaging “in a game of whack-a-mole” to avoid “skirting [its] own mandatory regulations.”

End of **Y1, Week Nineteen**, Secretary of State Rubio announced that the State Department in conjunction with the DHS would work to “aggressively revoke visas for Chinese students, including those with connections to the Chinese Communist Party or studying in critical fields. We will also revise visa criteria to enhance scrutiny of all future visa applications from the People’s Republic of China and Hong Kong. In the 2023/24 academic year, there were approximately 277,000 Chinese students [studying](#) in the United States. See [POLITICO](#) coverage.

NAFSA, the Association of International Educators [estimates](#) that during the 2023-2024 academic year, 1.1 million foreign students enrolled at U.S. colleges and universities contributed \$43.8 billion to the American economy and supported more than 378,000 jobs.

**Y1, Week Thirty-Three**, the administration [is proposing](#) new rules that would limit student visas to a maximum of four years. The proposed rule was first proposed under President Trump in 2020 but was withdrawn by the Biden administration.

### **Voice of America and Radio Free Europe/Radio Liberty**

Citing an unprecedented attack on freedom of the press, on democracy and on journalistic integrity, the AFGE, the American Federal of State, County and Municipal Employees, the NewsGuild-CWA, the AFSE, Reporters Without Borders and seven individuals [sued](#) the US Agency for Global Media (USAGM) to challenge the actions taken against VOA (03/21/25). Plaintiffs are represented by the Government Accountability Project, Emery Celli Brinckerhoff Abady Ward & Maazel, Democracy Forward and State Democracy Defenders Fund (*see* [press release](#)). The case was heard by District Judge Royce C. Lamberth.

Earlier in the week, Radio Free Europe/Radio Liberty [sued](#) the US Agency for Global Media seeking a temporary restraining order and permanent injunction (03/18/25). The plaintiffs are represented by Covington & Burling. Judge Lamberth [granted](#) the plaintiffs' motion for a temporary restraining order on March 25.

**Y1, Week Ten**, Michael Abramowitz, director of VOA and three VOA journalists [sued](#) seeking a temporary restraining order, preliminary injunction and permanent injunction, among other things, declaring that the actions requiring VOA to cease operations was unlawful and order the government to cancel orders placing employees on administrative leave. Plaintiffs are represented by Zuckerman Spaeder.

**Y1, Week Fourteen**, Judge Lamberth, who by then was handling six consolidated cases brought by employees and contractors relating to the actions taken against USAGM, [granted](#) plaintiffs' motion for a preliminary injunction, in part, as it relates to VOA, Radio Free Asia and Middle East Broadcasting Networks, but denied the motion as to RFE/RL and Open Technology Fund since they are subject to separate pending actions (04/22/25).

Judge Lamberth found that “the defendants had no method or approach towards shutting down USAGM that this Court can discern. They took immediate and drastic action to slash USAGM, without considering its statutorily or constitutionally required functions as required by the plain language of the EO, and without regard to the harm inflicted on employees, contractors, journalists, and media consumers around the world. It is hard to fathom a more straightforward display of arbitrary and capricious actions than the Defendants' actions here.” He also concluded that “the defendants' termination of grants to the [networks] and shutting down VOA “potentially run roughshod over a ‘bulwark of the Constitution’ by interfering with Congress's appropriation of federal funds.”

Judge Lambeth ordered the Trump administration to restore all employees and contractors to their news programs and unfreeze funding streams for Radio Free Asia and Middle East Broadcasting Networks and restore VOA programming so as to fulfil USAGM's statutory mandate that it “serve as a consistently reliable and authoritative source of news.”

End of **Y1, Week Fifteen**, as *The Hill* [reported](#), the fate of VOA reporters in unclear following a ruling (2-1) by the D.C. Circuit [granting](#) the administration a stay of District Judge Lambeth's ruling, on the ground that the District Court lacked jurisdiction (05/03/25).

**Y1, Week Sixteen**, the D.C. Circuit (*en banc*) [granted](#) administrative stays of the D.C. Circuit panel stays, effectively requiring the government to pay out \$25 million in grants that it had frozen (05/07/25). RFE/RL had [petitioned](#) for the *en banc* hearing earlier in the week (05/04/25). The ruling applied across the consolidated cases.

In a [post](#), senior advisor to USAGM Kari Lake announced USAGM is planning to partner with the conservative media outlet One America News Network (OAN). NPR [quoted](#) former USAGM CFO Grant Turner as saying that, "Kari Lake providing One America News Network to our global audiences makes a mockery of the agency's history of independent non-partisan journalism." As summarized by NPR, OAN settled various defamation suits brought by voting software companies and election workers against it in respect of disproven claims that they helped rig the 2020 election.

**Y1, Weeks Twenty-Eight and Twenty-Nine**, Kari Lake fires VOA Director Abramowitz after she removed him as "Director, Voice of America" and reassigned him as "Chief Management Officer" in Greenville, North Carolina and he refused to go, citing the reassignment as "illegal." The illegality is that the International Broadcasting Act [expressly provides](#) that the head of VOA may only be removed if the removal has been approved by a majority of the International Broadcasting Advisory Board" and no such vote was taken.

Recall that Abramowitz is one of the plaintiffs suing the government to challenge its efforts to dismantle USAGM. In a filing with the Court (08/04/25), his counsel [notes](#) that "Right in the middle of litigation about Defendants' willingness to follow the law, they are firing Director Abramowitz for refusing to accept a reassignment because he insisted that Defendants follow the law."

Last week, Judge Lambeth had issued an [order to show cause](#) directing the administration to explain how it is complying with his preliminary injunction (07/30/25), including how it restored VOA programming such that it is producing and broadcasting news consistent with its obligations under the International Broadcasting Act, how its actions are consistent with VOA's congressional appropriations and whether it has notified Congress of its significant reduction in broadcast hours, as required by the Further Consolidated Appropriations Act of 2024.

Do not let the technical language obscure the fact that Judge Lambeth scolded the government for its failures to comply with his preliminary injunction and lamented the "paucity" of information from the administration on how it is complying with its statutory obligations in running VOA. The part of the injunction at issue is an order to restore VOA programming such that USAGM fulfils its statutory mandate that VOA "serve as a consistently reliable and authoritative source of news."

As for the treatment of Abramowitz, the Judge writes, "perhaps *more shockingly*, on July 8 – the day this Court ordered a second round of supplemental briefing, and a full ten days before the defendants filed the second supplemental memorandum – the

defendants informed Plaintiff Michael Abramowitz that he would be removed from his position as Director of VOA. However, the defendants made no mention of his *monumental personnel decision* in their filings to this Court” (emphasis added and citation omitted).

The *Washington Post* [reports](#) that, during the hearing, Judge Lamberth asked the Assistant U.S. Attorney representing the administration why he should not start a contempt trial for violations of the preliminary injunction. This was one of a few testy exchanges reflecting the Judge’s frustration and exasperation with the government’s responses, prompting him at one point to ask “what is the point of the Voice of America, if it has no voice.” Recall that the D.C. Circuit had stayed portions of the injunction, but the government had not appealed the portion of the order requiring it to uphold the statutory obligations of VOA.

Judge Lamberth did not rule from the bench, and so we await his formal ruling.

**Y1, Week Thirty-Three**, Judge Lamberth [granted](#) partial summary judgment in favor of Director Abramowitz, blocking his removal (08/28/25). Abramowitz can only be removed with the approval of the majority of the International Broadcasting Advisory Board. Earlier in the week, the judge [ruled](#) that the administration had failed to demonstrate that it was complying with his order to restore VOA operations. He gave the government “one final opportunity, short of a contempt trial” to demonstrate its compliance and ordered Lake to sit for a deposition by September 15. Lake then announced RIFs of more than 500. See [The Guardian](#) coverage.

### **West Point (US Military Academy)**

Graham Parsons, a professor at West Point, [pens](#) an op-ed explaining why he is resigning from his tenured position after 13 years on the West Point faculty. He cites the abandonment of core principles: “Once a school that strove to give cadets the broad-based, critical-minded, nonpartisan education they need for careers as Army officers, it was suddenly eliminating courses, modifying syllabuses and censoring arguments to comport with the ideological tastes of the Trump administration.” He also cites pressure from administrators to withdraw an article about the long-standing tradition in the U.S. military to be politically neutral.

### **Lessons from Abroad**

#### ***Poland***

David French’s [interview](#) with Aleksandra Gliszczynska-Grabias, a law professor and author in Poland who was part of a rule of law coalition that fought back for democracy after the Law and Justice Party, a right-wing, populist movement, came to power in 2015 (04/02/25), has tremendous resonance with what we are facing today in this country.

Gliszczynska-Grabias starts out by noting that the democratic pro-rule of law side was ill-prepared for the onslaught against the rule of law. Early on, the new government appointed three judges to the Constitutional Tribunal in a manner that was unconstitutional and then refused to allow judgments of the properly constituted court (that it did not like) to be published, which meant that the judgments did not have the

force of law. Thereafter, the government began to attack not only the independent judiciary but also individual judges. Judges involved on politically sensitive cases, or who expressed opposition to challenges to the independence of the judiciary, often faced threats of disciplinary proceedings and even criminal charges and often were subject to state-inspired intimidation campaigns.

Interestingly, while the publication ban was a technical detail of sorts, it crystallised the threat. She described the ban, as “something that should have never happened. Something that really proved what the government [intended] to do and how it [would operate].”

What is particularly interesting was the response. Gliszczynska-Grabias acknowledged that ordinary citizens would have tuned out, but lawyers were able to mobilize citizens at scale to restore the rule of law based on a three-pronged approach designed largely to translate “rule of law” and “constitutional order” into narratives that would resonate. First, judges and prosecutor associations left their gowns in the courtroom and when into the streets in cities, towns and villages to talk to people.

Second, a small foundation comprised of four lawyers mobilized resources for social campaigns and legal actions, intended to publicize what was going on. Third, an ombudsman was able to speak about the law and the constitutional crisis in ways that were easily comprehensible. Rather than push a political line, those behind the effort were strictly nonpartisan, independent actors and they pushed a nonpartisan message, “What are the values and the laws that are endangered by the current actions of the government?”

Recall too that judges also [protested publicly](#), with messages to citizens “defend us so that we can defend you.”

Gliszczynska-Grabias speaks of courage and patience in fighting back, but also of the importance of support to counter the feelings of helplessness, hopelessness and isolation and of not being understood at the outset. There is much to learn here.



## CAN'T MAKE THIS STUFF UP

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### Nuclear Safety

After declining to provide exemptions for national security functions, the Trump administration fired employees at the agency responsible for the security of our nuclear weapons, the [National Nuclear Security Administration](#). They [reportedly](#) scrambled to rehire the fired employees, but were stymied because their email accounts had been disabled.

### Classified Information Posted by DOGE

DOGE posted classified information (headcount and budget) of the National Reconnaissance Office (NRO), the intelligence agency responsible for designing, building and maintaining our intelligence satellites. The story first was reported by [HuffPost](#).

### Signalgate and its Aftermath

"You have got to be kidding me," [posted](#) Hillary Clinton. Recall the most common attack in 2016 against the Secretary, "but the emails."! And recall the repeated calls by Trump during the 2016 campaign and for years afterwards for the Secretary to be imprisoned for using a private email server for official business while she was secretary of state. So, what was all the fuss?

The National Security Adviser, the Vice President, the Defense Secretary, the DNI and various other national security officials (altogether 18 national security officials were included in the “Houthi PC” working group) were discussing the administration’s upcoming plans for bombing Houthi positions to reopen shipping lanes in the Red Sea, including both policy considerations and, eventually, precise operational details of the attack.

So far so good, but there were two problems. First, they were discussing highly classified information on a commercial messaging platform, Signal, and, second, they had erroneously included a journalist in the chat, editor-in-chief of *The Atlantic*, Jeffrey Goldberg. When first asked about the consequential security breach, Trump claimed not to know about the incident, even though a statement from a spokesperson for the National Security Council had been issued by an administration spokesperson confirming the incident. Goldberg’s account of the security breach is available here: [“The Trump administration accidentally texted me its war plans.”](#)

As Bradley Moss, a national security lawyer noted in an [interview](#) with Greg Sargent, the lesser offense is an archival one. The text messages were subject to the Federal Records Act and to a lesser extent the Presidential Records Act. The auto-delete function potentially triggers issues under these record retention mandates. The more serious is the potential criminal liability for violations of the Espionage Act (which governs the handling of so-called “national defense information”), by reason of placing national defense information onto a commercial, non-secure platform and, separately, for including Goldberg, who was not cleared for the information.

Following the media frenzy set off by Goldberg’s reporting, Hegseth first attempted to discredit Goldberg and then appeared to deny what the White House had already confirmed (and presumably is stored on Goldberg’s phone) that war plans were texted. Jonathan Lemire ([“Trump goes after the messenger”](#)) tracked the fallout as Democrats pressed the case and called out the hypocrisy, while Trump attacked Goldberg and *The Atlantic*, and David Graham ([“But her emails!”](#)) reminds us that many on the Signal chat had skewered the Secretary and others had doubled down on leaks.

American Oversight filed a [lawsuit](#) raising claims under the Federal Records Act due to the automatic deletion of records subject to retention (03/25/25) and filed a [motion](#) for temporary restraining order to halt destruction of records (03/26/25). The case was assigned to Chief Judge Boasberg, who by minute order [granted](#) the temporary restraining order (03/27/25).

**Y1, Week Thirteen**, three senior Pentagon officials – the chief of staff to the deputy Secretary of Defense, a senior adviser to the Secretary of Defense and the deputy chief of staff – [reportedly](#) were placed on administrative leave as part of an investigation into leaks (04/16/25). Two of the three previously worked at Concerned Veterans for America, a nonprofit once led by the Secretary of Defense.

And then more revelations. The *New York Times* [reported](#) that Defense Secretary Hegseth had shared detailed information about the March 15 strike on the Houthis in Yemen on a second Signal group that included his wife, his brother and his personal attorney. Unlike the first Signal chatgroup reported, this one was created by Hegseth

himself. See also [Democracy Labs](#). The New York Times report also notes that aides had warned Hegseth not to share sensitive details in his Signal chat group.

Pentagon spokesperson John Ullyot, less than 48 hours after resigning and withing two hours of the revelations about the second Signal chat group, published an [op-ed](#) in *POLITICO* (04/20/25) in which he described “a month of total chaos at the Pentagon,” “from leaks of sensitive operational plans to mass firings, the dysfunction is now a major distraction.” Ullyot states that the allegations against the three officials placed on leave were false and part of a smear campaign. *POLITICO* [reported](#) that Hegseth’s chief of staff also resigned (04/18/25) and that the three officials had also been dismissed.

**Y1, Week Twenty-Two**, National Security Action has been monitoring Hegseth’s testimony before three congressional committee, and among other statements:

- In response to [questioning by Rep. Adam Smith \(D-WA\)](#) and [Rep. Mike Turner \(R-OH\)](#), Hegseth repeatedly refused to deny the possibility that DoD maintains operational plans to conduct military invasions of two U.S. allies, Greenland and Panama.
- When [pressed by Rep. Ro Khanna \(D-CA\)](#) about whether he would abide by a ruling by the Ninth Circuit in a pending case on the National Guard deployment in Los Angeles, Hegseth refused to say he would abide by the court’s ruling. Instead, he asserted federal courts do not have the power to rule on issues relating to U.S. national security – which is patently false.
- In [exchanges with Rep. Seth Moulton \(D-MA\)](#) and [Rep. Salud Carbajal \(D-CA\)](#) about his Signal chats, Hegseth falsely and confusingly claimed that all communications by the Secretary of Defense are inherently classified and the Secretary is “authorized” to communicate in whichever manner he chooses. The Secretary of Defense is held to the same classification standards and regulations as every other government employee.
- [Rep. Pat Ryan \(D-NY\) questioned](#) Chairman Caine and Secretary Hegseth about rules, regulations, and practice regarding political activities by military leaders. Hegseth defended Trump’s [campaign-like rally](#) at Fort Bragg, suggesting the President should be allowed to give political speeches while wearing campaign merchandise at military installations if he chooses.
- [Rep. Carlos Gimenez \(R-FL\) asked](#) Hegseth if the Trump Administration would come to Europe’s defense if Russia were to attack a NATO country, and Hegseth dodged the question, only saying Article V is “real.”

**Y1, Week Twenty-Five**, Hegseth’s days may be numbered after it emerged that the Pentagon had frozen weapons shipments to Ukraine apparently without White House approval and without notifying members of Congress. See [The Hill](#) coverage. The State Department, Ukrainian officials and allies also were blindsided. See [NBC News](#) coverage.

**Y1, Week Forty-Six**, the DoD IG [reportedly](#) found that the information shared on the Signal chat by the Secretary of Defense could have put the mission that was the subject of the chat, U.S. personnel and national security at risk had it fallen into the wrong

hands (12/03/25). The DoD IG found that while the mission ultimately was not jeopardized, Hegseth violated the DoD's own policies when he used Signal for official business. The IG also found that the information Hegseth shared was classified at the time he received it.

Hegseth would not sit for an interview with investigators, and would only provide a written response. In his response, Hegseth stated that he was able to declassify information; the IG did not determine whether in fact Hegseth had declassified information by the time it was shared.

The IG's report was sent to the Senate Armed Services Committee and a redacted, unclassified version is expected to be made public tomorrow.

### **DHS Recruitment Post Invokes Bible Verse**

**Y1, Week Twenty-Nine,** [Advance Democracy](#) reported that DHS increasingly promotes Christian faith in its social media account, embedding Bible quotes in its recruitment efforts and promotions of Border Patrol operations. Some of the material may have violated copyright law as well. DHS posted on Instagram, Facebook and X a video associating Border Patrol work with Batman, including audio taken from the 2022 Batman film. The video reportedly overlaid text from Proverbs 28:1 ("The wicked flee when no man pursueth; but the righteous are bold as a lion").

Earlier in July, DHS reportedly posted on the same platforms a recruitment ad "Here I am, send me"—the video shows federal officers and military helicopters overlaid with the text, "HERE'S A BIBLE VERSE," and an individual quoting Isaiah 6:8 ("There's a Bible verse I think about sometimes. Many times. It goes: 'Then I heard the voice of the Lord saying, 'Whom shall I send? And who will go for us?'" And I said, 'Here am I. Send me.'") The video also contained a song with the lyrics "sooner or later, God'll cut you down," whose artist [posted](#) on social media a reminder of federal copyright laws and a cease-and-desist demand. ADI reports that the post remains on X with no video and remains on Facebook and Instagram with no audio.

### **Hegseth on Women and Christian Nationalism**

**Y1, Week Twenty-Nine,** *The Hill* [reports](#) that the Secretary of Defense reposted, with an endorsement, a video of a CNN news [segment](#) largely focused on Pastor Doug Wilson, a self-described Christian nationalist who co-founded the Communion of Reformed Evangelical Churches (CREC) in Idaho, who advocates for a Christian nation and Christian world, and who believes women should not have the vote (and believes the 19<sup>th</sup> Amendment should be repealed), should not hold senior leadership positions in the military, should not serve in high profile combat roles and should "submit" to their husbands. Recall that in December 2024 Hegseth had said that women should not serve in combat roles.

The CREC just opened a location in D.C., which [according to CNN](#), held its inaugural service in a building owned by a think tank co-led by Mark Meadows, Trump's former chief of staff. Hegseth, his wife and children attended the service.

Hegseth reportedly holds a monthly prayer service at the Pentagon, and the White House recently created a Faith Office.

The Secure Families Initiative, whose mission is to mobilize military partners, parents, kids and veterans to advocate for their communities, [issued](#) a statement calling for Hegseth to resign or be removed.

Meanwhile, The Guardian [reports](#) that, while Hegseth's link to the CREC and his crusader tattoos (the Jerusalem cross and "Deus Vult" tattoos [associated](#) with Christian extremism) caused consternation during his confirmation hearings, his open embrace of an ultra-conservative strain of Christianity, seen now in recruitment ads and social media activity, is causing increasing fissures in the ranks of the armed forces. A Pentagon video ad [posted](#) on X with the message "We Are One Nation Under God" shortly after the reposting of the Wilson segment, appears with a quote from Psalms 18:37. The Guardian quotes CEO Kristofer Goldsmith of [Task Force Butler](#) (which investigates extremism in the military) as saying more active duty troops are reaching out and raising concerns that the military is becoming a threat to democracy. At a time when recruitment is under pressure, the new campaigns may portend more troops adhering to extremist beliefs.

### **ICE Ices Ideas**

In a since-deleted promotional post on X, ICE described its mission as ensuring public safety and national security with a graphic that showing ICE stopping the people, money, products and *ideas*. The post coincided with the [announcement](#) by DHS that it would screen the social media posts of those seeking lawful permanent resident status, foreign students and non-Americans "affiliated with educational institutions linked to antisemitic activity."

### **House Passes SAVE Act**

As [noted above](#), the House passed the SAVE Act. If it becomes law, it will have the effect of disenfranchising millions of Americans as it will mandate producing a birth certificate, passport or possibly one of a limited number of other documents (but not a driver's license, including REAL IDs, as licenses do not indicate citizenship) every time one registers or re-registers to vote. It will end mail-in or online registration as it will require proof of citizenship in person to register. If someone moves, this will affect them. Married women who change their names will have their own challenges. So, why include this development in this section? Simple, it could disenfranchise over 20 million Americans who do not have proof of citizenship readily available, not to mention four out of five married women who changed their names.

This legislation will have bipartisan impact – and data suggest that Democrats will be impacted to a lesser extent than Republicans. The good news is that Democrats in the Senate will save Republicans from themselves, as the legislation will need 60 votes to overcome the filibuster.

## Trump on Attending the Pope's Funeral

**Y1, Week Fourteen's** tone deaf [post](#): "Melania and I will be going to the funeral of Pope Francis, in Rome. We look forward to being there!" *Res ipsa!*

## Trump on Thinking He is the Pope

Trump prompts worldwide outrage after [posting](#) an AI-generated image of himself dressed as a pope during *Novemdiales*, the nine-day period of official mourning observed by the Catholic Church following the death of Pope Francis. The White House's official X account reposted the image.

## Trump on Minnesota Assassination

Two Democratic lawmakers, engaged in the highest calling to public service, were attacked. Minnesota Representative Melissa Hortman and her husband Mark were shot and killed in their home in an apparent politically motivated assassination, and Minnesota Senator John Hoffman and his wife Yvette were also shot in their home, but survived and remain in critical condition. He reportedly had a target list with names of dozens of Minnesota Democrats as well as abortion providers and pro-choice activists. Trump condemned the violence shortly after the attack – "Such horrific violence will not be tolerated in the United States of America. God Bless the great people of Minnesota, a truly great place." He then proceeded to tell *ABC News* that he "may" call Governor Walz, and then called him a "terrible governor" and "grossly incompetent person." As of Sunday night, Trump had not called Governor Walz. The Governor has spoken with Vice President Vance and with President Biden.

**Y1, Week Twenty-Two**, Trump ruled out calling Governor Walz, as it would be a "waste of time."

## Trump on Thinking He is Funny

**Y1, Week Thirty-Eight**, as the country headed to a government shutdown, Trump posted a deepfake [video](#) of Senate Minority Leader Chuck Schumer and House Leader Jeffries shortly after the two left the White House. Jeffries appeared to [reply on X](#): "Bigotry will get you nowhere. Cancel the Cuts. Lower the Cost. Save Healthcare. We are NOT backing down." Later, Jeffries [posted](#) a photo of Trump with Jeffrey Epstein. Schumer in his [reply](#) said, "If you think your shutdown is a joke, it just proves what we all know: You can't negotiate. You can only throw tantrums."

## Passing the Cost of His Fine to the U.S. Taxpayers

Trump had the audacity to have his DoJ seek to be [substituted](#) as the defendant in the E. Jean Carroll case (04/11/25). By doing so, the burden of paying the \$83.3 million fine would have fallen to the taxpayers. The Second Circuit [denied](#) the motion (06/18/25). The DoJ argued that Trump's denials of Carroll's sexual assault claims were made within the scope of Trump's employment as president and thus protected under the Federal Employees Liability Reform and Tort Compensation Act of 1988 (also known as the Westfall Act). The Act overrides the Federal Tort Claims Act to protect federal employees from common law tort lawsuits in respect of acts they undertook in the course of their employment. A hearing follows on Trump's appeal of the underlying verdict.



**Y1, Week Forty-Four**, Trump has appealed the \$5 million judgment on the *Carroll* case to the Supreme Court. Recall that in December 2024, the Second Circuit [denied](#) his appeal of the judgment.

### **Deepfake – Obama Arrest**

**Y1, Week Twenty-Seven**, Trump [posted](#) on Truth Social an AI-generated video clip of President Obama being arrested in the Oval Office by FBI agents.

### **Painting Over Pride Mural**

A cross walk that resembled the LGBTQ Pride flag that was part of a memorial to the 49 people killed at the Pulse Night Club in Orlando in 2016 was painted over by the Florida Department of Transportation. The removal follows a letter from Transportation Secretary Sean Duffy calling for crosswalks to be kept “free from distractions.” The crosswalk has been repainted.

### **“It Reminds Me of Spinal Tap concerts”**

*The Hill* [reports](#) that this line comes from Sen. Thom Tillis, followed by “... It’s like every time we turn around, somebody’s blowing up. It’s just not a very efficient use of resources.” What he is referring to is a series of Trump nominees nominated for key senior posts who have been removed or have left after only a short time in office. This is causing frustration among Republican Senators, who have spent time and effort to get the confirmations through (a Democratic block means each nominee must be brought to the floor).

CDC Director Monarez and IRS Commissioner are the latest Senate-confirmed officials to be ousted after internal clashes. Also on the list are the #2 at Treasury, Deputy Secretary Michael Faulkender, who was [ousted](#) after five months on the job. Jared Isaacman (Elon Musk’s preferred candidate) had his nomination to lead NASA pulled at the last minute. Aaron Reitz was confirmed to lead DoJ’s Office of Legal Policy, but left two months later to run for Texas Attorney General.

### **Don’t Fear the Reaper!**

**Y1, Week Thirty-Eight**, Trump posts of Truth Social images of President Biden and other prominent Democrats, with the heading “THE PARTY OF HATE, EVIL, AND SATAN.” He then says: “The Democratic Party is Dead! They have no leadership! no message! no hope! their only message for America is to hate Trump!”

It then gets weirder as Trump posts a deepfake video showing Trump and Vance as band members set to Blue Öyster Cult’s “Don’t Fear the Reaper.” Russell Vought is shown as the Grim Reaper. The video pans to the Capitol and changed song lyrics become: “Here the power’s gone.” “Russ Vought is the reaper. He wields the pen, the funds, and the brain... Dems you babies... gonna tie your hands... won’t be able to fly... cry-baby end your plan.”

### **Truth Social Dives into Predictive Markets**

**Y1, Week Forty-Four**, Truth Social announced the operator of Truth Social, Trump Media and Technology Group, will make predictive markets available on their social

media platform through an arrangement with Crypto.com/Derivatives North America, a CFTC-registered exchange and clearinghouse.

### **“Things Happen!”**

**Y1, Week Forty-Four**, when ABC reporter Mary Bruce asked Saudi Crown Prince Mohammed bin Salman (MBS) about the murder of Jamal Khashoggi and then the release of the Epstein files, he said, replied “You’re all psyched up. Somebody psyched you over at ABC and they’re going to psych it. You’re a terrible person and a terrible reporter.” He then accused ABC of being “one of the perpetrators” of a Democratic hoax over Epstein. “I think the license should be taken away from ABC because your news is so fake and it’s so wrong, and we have a great commissioner, the chairman, who should look at that.” (The commissioner reference would have been to FCC Chair Brendan Carr. Note that the FCC issues licenses to stations, not networks.)

The questioning prompted Trump to say, first in respect of Khashoggi, “You’re mentioning somebody that was extremely controversial. A lot of people didn’t like that gentleman you’re talking about. Whether you like him or didn’t like him, things happen.” Then, referring to MBS, Trump said to Bruce, “But he knew nothing about it, and we can leave it at that. You don’t have to embarrass our guest by asking a question like that.” See [ABC7NY](#) coverage.

Recall that a CIA assessment [released](#) in 2021 concluded that a team of 15 Saudi agents had been acting on MBS’s order when in October 2018 they killed and dismembered Khashoggi at Saudi Consulate in Istanbul. Khashoggi had been a longtime columnist for the Washington Post and frequent critic of the Saudi regime.

Referring to Trump’s comments, the *Washington Post* editorial board [wrote](#) in an editorial they labelled as setting the record straight about their murdered colleague, “These distortions dishonor Khashoggi’s legacy, stand at odds with the facts and are beneath the office of the president.” The editorial continued,

“The relationship with Saudi Arabia still produces some benefits, but even in a complicated world, an American president should be able to respect Khashoggi’s legacy while conducting the messy business of statecraft. Forgetting Mohammed’s brutality and Khashoggi’s warnings is a choice, and Trump made the wrong one.”

Trump’s defense of MBS is similar to the comments [he made](#) during a 2019 interview with Bob Woodard when he said he “saved” MBS’s “ass” after news of Khashoggi broke and that he was “able to get Congress to leave him alone.” See [TIME](#) coverage.

The exchange in the Oval Office triggered a new allegation about a Trump phone call. Rep. Eugene Vindman, together with 36 other House members, [has urged](#) Trump to release the still classified transcript of a phone call between MBS and Trump following the murder of Khashoggi. Vindman, who many will recall also had been on the “perfect call” that Trump had with President Zelensky that led to the first impeachment, reviewed the transcript while service as NSC deputy legal advisor.

### **Scouting America f/k/a The Boy Scouts**

A relationship between the Scouts and DoD dating back over a century is likely to end if the Secretary of Defense has his way because [reportedly](#), in his view” the Scouts

have become “genderless,” are promoting DEI, are no longer a meritocracy and have become an organization designed to “attack boy-friendly spaces.” Reportedly, the Pentagon will no longer provide medical and logistical aid to the 10-day National Jamboree (at which as many as 20,000 scouts convene in West Virginia) and will no longer allow Scout troops to meet at military installations, where many bases have active Scout programs. NPR notes that the jamboree is both a training exercise and an opportunity for the military to recruit civic minded kids.

Apparently, while Congress mandates support, there is an exemption and Hegseth is invoking it – that exemption allows the Secretary of Defense to withhold support if he decides that providing support would be “detrimental to national security.”

NPR also notes that scouting “has long been a part of military recruiting efforts. As many as 20% of cadets and midshipmen at the service academies are Eagle Scouts, according to statistics from Scouting America. Moreover, enlistees who've earned Eagle get advanced military rank and better pay. That practice would end.”

### **Thin Skin**

In the third such incident in two weeks, Trump lashed out at another female journalist, this time over [reporting](#) that said Trump was “showing signs of fatigue” and “signs of wear.” The article was co-written by Katie Rogers and Dylan Freedman. Trump [called](#) out the “Creeps at the Failing New York Times” and the “Radical Left Lunatics in the soon to fold New York Times” who did a hit piece on him. He then called out Rogers as “a third-rate reporter who is ugly, both inside and out.”

### **Trump Mocks Rob Reiner**

**Y1, Week Forty-Eight**, following the discovery of the bodies of Rob Reiner and his wife, Trump fell into a familiar mantra of making it all about himself. He shockingly attributed the Reiner’s death to “anger he caused others through his massive, unyielding, and incurable affliction with a mind crippling disease known as Trump Derangement Syndrome.” A handful of Republicans had the courage and humanity to [push back](#) against this shameful and disrespectful outburst; others declined to comment. Trump then doubled down on his comments with a second round of attacks saying Reiner was “very bad for our country” and reiterating his accusation that Reiner was “deranged.” Incidentally, when Charlie Kirk was assassinated, Reiner described his reaction as “horror – absolute horror.”

### **Retribution for Scheduling A Failed Polygraph**

**Y1, Week Forty-Eight**, POLITICO [reports](#) that six CISA employees are under investigation and on administrative leave allegedly for “misleadingly” organizing a polygraph test for the acting Director, Madhu Gottumukkala, which he failed. Reportedly, DHS opened an investigation into whether the staff provided “false information” about the need for the test, which was scheduled after Gottumukkala sought access to certain highly sensitive cyber intelligence shared with CISA.

he fallout from this incident, in July, adds to the turmoil at the agency, compounding the impact of the departure of close to a third of the CISA staff, most recently after personnel were given an ultimatum to move into immigration enforcement at DHS or

quit. CISA has not had a Senate-confirmed head since the former Director, Jen Easterly, left in January. Confirmation of Trump's nominee to head CISA, Sean Plankey, is stalled in the Senate.

### **Trump Attempts to Rename the Kennedy Center**

**Y1, Week Forty-Nine**, Rep. Joyce Beatty [filed](#) a lawsuit against the Board of Directors of the Kennedy Center to halt the renaming of the Kennedy Center as “The Donald J. Trump and The John F. Kennedy Memorial Center for the Performing Arts.” Beatty, an *ex officio* member of the board, claimed that a vote by the board to rename the institution “exceeded its statutory authority” and requested that a judge declare it to be void (12/22/25). According to the complaint, Beatty had called into the board meeting but was muted when she tried to speak out about the name change. The complaint also notes that, because Congress named the center as “the John F. Kennedy Center for the Performing Arts” and has not voted to approve any change, the purported renaming violates federal law.

Beatty seeks a judgment declaring the renaming unlawful and an injunction ordering the administration to remove the sign purporting to rename the Kennedy Center.

Beatty is represented by the Washington Litigation Group and Democracy Defenders Action.

The Hill [lists](#) seven acts that have pulled out of Kennedy Center performances since Trump first took over the Kennedy Center in February and then renamed it this week. Jonathan Chait, writing in the *Atlantic* (“[The Show Won’t Go On](#)”), notes that ultimately the threats by Trump, Ric Grenell (his letter to jazz musician Chuck Redd is available [here](#)) and others ultimately are hollow. They have turned cancel culture on its head – now Republicans are trying to force artists to “participate in a politicized ritual at an artistic institution now renamed, Soviet-style, after the still-living head of its reigning personality cult.” All they can try to do is the shame or browbeat artists, but that will only backfire.

Media reports that the 2025 Kennedy Center Honors ratings fell precipitously – the average of 3.01 million viewers, according to Nielsen, represented a drop of around 25% from 2024. *See, e.g., Washington Post* coverage.

Recall when business leaders began to quit two of Trump's economic advisory councils following Charlottesville, Trump announced he [was shutting](#) down both councils. We now have Trump [announcing](#) the closure, subject to board approval, of the Kennedy Center for two years for renovations no one associated with the Center thinks are needed. Only two months ago, as David Grahman (“[Trump Made a Bad Bet on the Kennedy Center](#)”) pointed out, Trump was lauding his having “saved the building” after taking over an institution that [he does not own](#). Embarrassment of slumping subscription revenues and ticket sales, and the withdrawal of artists no doubt hit a nerve.

## **Rep. Ilhan Omar**

**Y2, Week 2**, following an attack against Rep. Ilhan Omar at a town hall she was hosting, when [asked](#) by *ABC News* about the attack, Trump said that he had not seen the footage of the attack but then claimed with no evidence that Omar had staged the incident. “I don’t think about her. I think she’s a fraud. She probably had herself sprayed, knowing her.” Trump regularly vilifies Omar.

U.S. Capitol Police said after the attack that threats against members of Congress increased for the third year in a row. It said it investigated 14,938 concerning statements, behaviors and communications directed against members of Congress, their families and their staff last year, compared to 9,474 matters investigated in 2024.

## **Racist Post**

**Y2, Week Three**, during the first week of Black History Month and only days after Trump [cited](#) the contributions of Black Americans to “our national greatness,” Trump posts a racist video clip depicting Barack and Michelle Obama as apes in the jungle. The video, which was up for about 12 hours and then taken down, focused on repeatedly and thoroughly debunked claims about fraud in voting machines used in the 2020 election. Before the post was taken down, Karoline Leavitt dismissed the “fake outrage” over the Trump post, referring to depiction of the Lion King as an excuse (as most know, there are no apes in the Lion King). Trump later said he would not apologize – “I didn’t make a mistake.” See [CNN](#) coverage.

## **Melania, the Movie**

Amazon invested \$75 million for production and distribution of the film, \$35 million of which was paid for marketing, and \$40 million paid to Melania’s production company for the rights. Melania reportedly received \$27 million. RawStory [reports](#) that soldiers at eight military facilities reported being forced to buy tickets and attend screenings of the film. During its second week, the film grossed \$2.27 million in North American theatres, a drop of 67% from its first week (\$7.2 million) and dropped from No 3 to No 10 in the domestic box office charts.

## **Drone Incursion in El Paso?**

Consistent with how this administration operates, conflicting explanations were offered for the abrupt closure of the airspace over El Paso. Secretary of Transportation Sean Duffy and officials from the White House and DoD claimed Mexican cartel drones breached U.S. airspace, but according to the New York Times, two people briefed by administration officials said the closure of the air space was prompted by the use of new counter-drone technology and concerns about the risks it could pose to other aircraft in the area.

Apparently CBP officials deployed a high-energy anti-drone laser loaned by DoD without giving FAA officials sufficient time to assess risks to commercial aviation. This prompted the FAA to shut down the airspace for 10 days. The pause quickly was rescinded on orders from the White House. Reportedly, CBP officials thought they were firing on a cartel-operated drone, but it turned out to be a party balloon.

The initial closure announcement from the FAA cited “special security reasons” and barred all aircraft from flying in the area around El Paso below 18,000 for 10 days, until one day after a previously scheduled meeting on February 20 between the FAA and DoD to discuss the safety implications of deploying the new anti-drone technology, which was being tested.



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### Arrests of Democrats

On Thursday (**Y1, Week Twenty-One**), Sen. Alex Padilla was [forcefully removed](#) from a press conference called by DHS Secretary Noem and handcuffed. After Noem said federal authorities were not going away but would stay on to “liberate” LA from its “socialist” leader, Padilla shouted “I’m Senator Alex Padilla. I have a question for the Secretary.” He was then grabbed by federal agents, shoved from the room, handcuffed and taken away. As Charlie Sykes noted in his post “[What happened to Padilla was shocking. And the MAGA response has been ominous](#),” normally an incident like this would end in an apology from Noem and the agents. But these are not normal times – and this administration does not apologize, instead it escalates. Noem claims Padilla lunged; the widely circulated videos show no lunging. Speaker Johnson said Padilla should be censored.

This administration has [threatened to arrest](#) a sitting Democratic governor and mayor and has already arrested [a state court judge](#) and [a Democratic mayor](#), and brought charges against [a Democratic congresswoman](#).

**Y1, Week Twenty-Two**, in NYC, the Comptroller who is running for Mayor was handcuffed and [arrested](#) for “assaulting law enforcement and impeding a federal officer” by what appeared to be ICE agents at NYC’s principal immigration courthouse. Brad Lander was accompanying a migrant targeted for arrest and kept asking whether agents had a judicial warrant and repeated (referring to himself) “you do not have authority to arrest US citizens.” He was later [released](#) to Governor Kathy Hochul and the charges were [dropped](#). See [New York Times](#) coverage.

As the NYT notes, DHS prosecutors increasingly have surprised a number of migrants [by dismissing their cases](#) when they appear in court, a tactic that allows ICE agents to arrest them in the hallways once they leave and place them in expedited

deportation proceedings without hearings. The following day, Reps. Dan Goldman and Jerry Nadler said they would observe immigration court proceeding and would request access to ICE field office on site.

Attorney Kaivan Shroff, [speaking](#) to *CBS News*, explained that in New York State it is New York court policy to require a judicial warrant (one signed by a judge) to detain an undocumented migrants at a courthouse, and that an administrative warrant (signed by an ICE official) is insufficient. The Southern District Court of New York is said to be investigating.

**Y1, Week Twenty-Eight**, 12 Democratic members of the House [sued](#) ICE and DHS challenging the “oversight visit policy” to DHS and ICE detention facilities as being unlawful (07/30/25). The plaintiffs are represented by Democracy Forward Foundation and American Oversight. The complaint challenges to the obstruction of congressional oversight that members have sought to conduct at DHS and ICE detention facilities, in which both citizens and noncitizens have been detained, without due process. See [Democracy Forward](#) press release.

### **Deportations & Detentions – of persons in the United States**

As the more prescient feared in the run-up to the election, were Trump given a chance to implement his deportation schemes and as enforcement shifted from migrants crossing the southern border to anyone arriving at formal ports of entry and to anyone in the United States, civil liberties would quickly become a casualty. A tracker of persons taken into custody by ICE or adjacent authorities, deported by ICE, in hiding, self-deported or who died in ICE custody (United States Disappeared Tracker) is available [here](#). Inspired by the BlueSky account [USA Disappeared Tracker](#), this tracker is the brainchild of a data analyst in Ohio, Danielle Harlow (see “[The Data Analyst Tracking the Immigrants Disappeared by ICE](#)” in *New York Magazine*).

### **Mahmoud Khalil**

**Y1, Week Eight** brought us yet more evidence of the slide towards authoritarianism cloaked in normalcy. A recent graduate of the School of International and Public Affairs at Columbia University, Mahmoud Khalil, was detained and transported to a detention facility in Louisiana. Khalil is a permanent resident of the United States (colloquially known as a “green card holder”). Khalil has an American wife. ICE agents said he was being detained after revocation of his student visa (issued in December 2022), and when advised he was a permanent resident (since 2024), the agents reportedly advised that his permanent resident status had been revoked as well.

As has been widely reported (see [NYT](#)), while a student at Columbia, Khalil, who was a negotiator and spokesman for the protesters, played a major role in campus protests that broke out after October 7<sup>th</sup>. Rubio made reference to a DHS [post](#) that accused Khalil of engaging in “activities aligned to Hamas.” As often can be the case, there is far more texture to Khalil’s story, all of which underscores how wrong his detention and attempted deportation are. See this profile [First they came from Mahmoud Khalil](#).

Khalil’s counsel [filed](#) a petition for writ of habeas corpus (03/09/25) and [filed](#) its memorandum in support of its petition the following day (03/10/25). A federal judge (District Judge Jesse M. Furman) [ordered](#) that Khalil not be deported pending review

of the petition challenging his detention (03/12/25). Khalil's counsel [filed](#) an amended petition for writ of habeas corpus and its complaint (03/13/25). The government [filed](#) its response (03/17/25) and has [sought](#) dismissal of the challenge. The Judge [ordered](#) the case transferred to New Jersey rather than the Western District of Louisiana, and denied the government's motion to dismiss (03/19/25). The case then moved to District Judge Michael Farbiarz.

The government then submitted additional arguments in support of its position (03/23/25), [citing](#) as a basis for the deportation a provision of the INA ([8 U.S. Code § 1227\(a\)\(4\)\(C\)](#)) that allows the Secretary of State to deport persons as to which he/she has reasonable grounds to believe that their "presence or activities in the United States ... would have potentially serious adverse foreign policy consequences for the United States." See also State Department Foreign Affairs Manual, [9 FAM 302.14](#).

**Y1, Week Eleven**, Judge Farbiarz, in the Khalil case, [found](#) that his court has jurisdiction over the case and denied the government's motion to dismiss (04/01/25). In doing so, the Judge ruled that the court's jurisdiction is not defeated by the removal of Khalil to Louisiana.

**Y1, Week Twelve**, Assistant Chief Immigration Judge based in Louisiana Jamee Comans ruled that Khalil is subject to deportation. Khalil has until April 23 to file for relief and is entitled to remain in the United States until then. No evidence was presented concerning unlawful conduct by Khalil; the only submission was the [Rubio memo](#). The federal habeas corpus process before Judge Farbiarz in New Jersey District Court continues. Judge Farbiarz ordered the government and Khalil's legal counsel to immediately report to his court after the immigration hearing for an update. The ACLU issued [this statement](#) following the ruling (04/11/25).

**Y1, Week Twenty-One**, Judge Farbiarz [denied](#) Khalil's bail request and so remains in federal custody (06/13/25). The Court accepted the government's new allegation that detention was warranted based on a fraud charge, and denied bail so long as the detention is not based on the foreign policy threat. That new charge followed the Judge's [ruling](#) (05/28/25) that the original charge – that activism in support of Palestine represented a threat to a compelling foreign policy interest – likely was unconstitutional (based on a finding that 8 U.S. Code § 1227(a)(4)(C) as applied to Khalil was vague and thus in violation of the Due Process Clause) and insufficient for detention. The government now alleges he committed fraud on his green card application (relating to his work history and involvement with certain NGOs including UNRWA). Note that because of the finding of vagueness, on the original charge, the Court did not need to reach the First Amendment claim.

**Y1, Week Twenty-Two**, Judge Farbiarz [ordered](#) that Khalil be released on bail (06/20/25).

**Y1, Week Twenty-Five**, the Center for Constitutional Rights [filed](#) a notice on behalf of their client, Khalil, of a claim for damages under the Federal Tort Claims Act for false arrest, false imprisonment, malicious prosecution, abuse of process, intentional infliction of emotional distress and negligent infliction of emotional distress (07/10/25). The filing of the notice is a precursor to the bringing of a lawsuit under

the Act, in which Khalil will be [seeking](#) \$20 million. The Act allows individuals to sue the U.S. government for damages for civil law violations. The suit will name the State Department, DHS and ICE.

**Y1, Week Thirty-Six**, Jamee Comans, an immigration judge in Louisiana, has ordered Khalil to be deported to Algeria or, failing that, Syria for failure to disclose certain information in his I-485 green card application (09/12/25). The order was disclosed in his counsel's [petition](#) to Judge Farbiarz for relief (09/17/25). The specific charge is failure to disclose involvement, association and participation with UNRWA and Columbia University Apartheid Divest (CUAD) in response to Part 9 [of the form](#). The order comes in spite of the separate order issued in federal court in New Jersey by Judge Farbiarz blocking his deportation while his challenge to his detention and deportation is heard. See [POLITICO](#) coverage.

**Y1, Week Fifty-Two**, the Third Circuit (2:1) [vacated](#) the decision of the District Court and remanded it to the District Court with instructions to dismiss Khalil's habeas petition (01/15/26). The decision exposes Khalil to re-arrest, and his lawyers plan to appeal to the full Third Circuit (*en banc*). The majority found that the District Court was not the proper venue for the habeas petition (in technical terms, it lacked subject-matter jurisdiction); rather, under the INA, an immigration court should have ruled first. See [New York Times](#) coverage.

### ***Dr. Badar Khan Suri***

**Y1, Week Nine**, a second graduate student, Dr. Badar Khan Suri, was detained by DHS agents on March 17. Suri, an Indian citizen, is a fellow at the Alwaleed bin Talal Center for Muslim-Christian Understanding, an interfaith research center housed at Georgetown University. He was informed that his J-1 visa (a non-immigrant visa for foreign nationals participating in educational and cultural exchange programs) had been revoked. His counsel has filed a *habeas corpus* petition on grounds that his arrest violates his First and Fifth Amendment rights and challenges the legality of his detention under US immigration law. Khan Suri was detained in Virginia, and within hours sent him first to detention facilities in Louisiana and then Texas.

District Judge Patricia Giles, acting on the petition for a writ of habeas corpus, [ordered](#) that Khan Suri not be removed from the United States pending a contrary court order (03/20/25). In a statement, [quoted](#) in the *Washington Post*, Suri Khan stated he had never been to any protest and surmised that he was targeted because he is married to an American citizen of Palestinian descent under recent scrutiny by a conservative group ([Canary Mission](#)) alleging family ties to Hamas.

**Y1, Week Seventeen**, Judge Giles ordered the immediate release of Khan Suri after two months of detention in Texas (05/14/25). Judge Giles [reportedly](#) noted in court that the First Amendment does not distinguish between citizens and non-citizens and that release was in the public interest to “dispel the chilling effect of retaliation for protected speech and intimate association.”

This was the third ruling ordering the release of students targeted for deportation after their student visas were revoked on the ground their presence in the United States was

contrary to U.S. foreign policy interests. The others are Rümeysa Öztürk and Moshen Mahdawi. See [POLITICO](#) coverage.

### ***Yonseo Chung***

**Y1, Week Ten**, Yonseo Chung, a Columbia student and permanent resident who has resided in the United States since she was 7 years old, [sued](#) to enjoin her detention and deportation (complaint and petition for writ of habeas *corpus* filed 03/24/25). Chung had participated in student protests in 2023 against the Gaza invasion and had been arrested at a recent protest in support of other student protesters facing university disciplinary action. Following her arrest, she was given a desk citation and released. An ICE official signed an administrative arrest warrant for her and ICE agents arrived at the home of her parents seeking her. A federal law enforcement official advised Chung’s counsel that her lawful permanent resident status has been “revoked.” U.S. District Judge Naomi Reice Buchwald [issued](#) a temporary restraining order (03/25/25).

**Y1, Week Seventeen**, a search warrant for Chung [was unsealed](#).

### ***Rümeysa Öztürk***

**Y1, Week Ten** also saw a Tufts University Ph.D. student, Rümeysa Öztürk, detained on the streets of Somerville, MA. Her crime? An [op-ed](#) written with three other students in the Tufts student newspaper critical of the university response to the war in Gaza. She has not been charged with a crime. Her first writ of habeas corpus remains under seal.

District Judge Indira Talwani issued an [order](#) that Öztürk not be removed from Massachusetts without prior notice. She nonetheless was sent to an ICE detention facility in Louisiana. An [Amended Petition for Writ of Habeas Corpus and Complaint](#) was filed by the ACLU (03/28/25) and, in response, District Judge Denise J. Casper [ordered](#) that Öztürk not be removed from the United States unless ordered by the court.

**Y1, Week Eleven**, Judge Casper [denied](#) the government’s motion to deny Öztürk’s habeas petition and its alternative request to transfer the case to the Western District of Louisiana (04/04/25). The Judge allowed the relief sought by Öztürk and transferred the case to the District Court in Vermont.

**Y1, Week Twelve**, the *Washington Posts* [reports](#) that days before ICE agents detained Öztürk the State Department had concluded that the administration had not produced any evidence showing Öztürk had engaged in antisemitic activities or made public statements supporting Hamas, as the administration had maintained. (Homeland Security had said Öztürk engaged in activities “in support of Hamas,” a U.S.-designated terrorist organization, but none of Homeland Security, ICE or prosecutors have provided evidence for that claim.) This suggests that the Secretary Rubio did not have a basis for revoking Öztürk’s visa under the INA (needing [reasonable grounds](#) to believe a person’s presence or activities has “adverse foreign policy consequences for the United States”). It has been reported that Secretary Rubio could try to fall back on discretionary authority. (See Declaration [filed](#) by Öztürk setting out the facts of her arrest and detention (04/10/25).)

**Y1, Week Thirteen**, District Judge William K. Sessions III [ruled](#) that his District Court in Vermont would retain jurisdiction over the habeas petition, and ordered that Öztürk be transferred to an ICE detention facility in Vermont (04/18/25).

**Y1, Week Sixteen**, Öztürk [filed](#) a supplemental memorandum in support of her motion for release, following which the Second Circuit [denied](#) the government's appeal and ordered that Öztürk be transferred to an ICE detention facility in Vermont by May 14 (05/07/25). (See also ACLU [press release](#).) Judge Sessions, rather than wait for Öztürk to be returned to Vermont from Louisiana, ordered that she be released immediately on bail (05/09/25). The government appealed the District Court's transfer order to the Second Circuit Court of Appeals. Oral arguments were heard by a three-judge panel on September 30, 2025, and a decision is still pending.

**Y2, Week Four**, to bring you up to date, a federal judge in Massachusetts [ruled](#) that Öztürk's SEVIS record was wrongfully terminated and must be reinstated, allowing her to fully participate in her educational and training program once more (12/05/25). While the government filed a notice of appeal of this decision (02/06/26), her SEVIS record remains reinstated. Meanwhile, as noted above, another federal judge determined in *AAUP v. Rubio* that the government's policy of arresting and detaining scholars like Öztürk violated the First Amendment, and documents released as part of the case confirmed that the government targeted her solely on the basis of the op-ed (02/22/26).

Immigration Judge Roopal Patel in late January had ruled (under seal) that DHS had failed to meet its burden of proving Öztürk's removability and thus terminated removal proceedings against her. See [28\(j\) Letter](#) to the Second Circuit filed this week.

### ***Moshen Mahdawi***

**Y1, Week Thirteen**, Moshen Mahdawi, a Columbia student and permanent resident who had lived in the United States for ten years, was arrested after arriving for a citizenship interview in Vermont. Mahdawi reportedly walked away from acting as an organizer of pro-Palestinian demonstrations in March 2024, in part, after being sidelined for advocating for a dialogue with supporters of Israel.

Mahdawi [filed](#) a motion for writ of habeas corpus (04/14/25). District Judge William K. Sessions III [ordered](#) that Mahdawi not be removed from the United States or out of Vermont pending further order of the Court (04/14/25). He was released after 16 days in jail. Mahdawi was the first detained student activist to be released by order of a federal judge. I commend to you his op-ed in the *New York Times* ("[I was detained for my beliefs. Who will be next?](#)"), in which he notes that "The American government accuses me of [undermining U.S. foreign policy](#), a patently absurd pretext for deportation for political speech that the Trump administration dislikes. ... By seeking to deport me, the Trump administration is sending a clear message: There is no room for dissent, free speech be damned."

### ***J.O.P., et al.***

A lawsuit was filed on behalf of a Venezuelan (pseudonym: Cristian) who was covered by a 2019 [settlement agreement](#). That settlement agreement covered a class of migrants who had come to the United States as minors and had sought asylum. Among



other things, the settlement agreement provided that “[w]ith respect to any Class Member with a final removal order, ICE will refrain from executing the Class Member’s final removal order until USCIS issues a Final Determination on one properly filed asylum application under the terms of this Agreement,” and Section V.D., which provides that “the complaining Class Member shall not be removed from the United States” once a motion to enforce has been filed “unless and until the matter has been resolved in favor of Defendants.”

District Judge Stephanie A. Gallagher [issued](#) a temporary restraining order and [granted](#) plaintiffs’ motion to enforce the settlement agreement (04/23/25), after finding that the government had “breached the terms of the Settlement Agreement by removing at least one Class Member from the United States while his asylum application remains pending with USCIS.” (See also the accompanying [Order](#).) Judge Gallagher, echoing Judge Xinis’ order in the Abrego Garcia case, directed the government to “facilitate” the plaintiff’s return to the United States so that he may receive the process he is entitled to under the settlement agreement. By facilitate, the Judge wrote, “facilitating” the return “includes, but is not limited to, Defendants making a good faith request to the government of El Salvador to release [the plaintiff] to U.S. custody for transport back to the United States to await the adjudication of his asylum application on the merits by USCIS.”

**Y1, Week Sixteen**, the government [filed](#) a motion to vacate the order granting plaintiff’s motion to enforcement the settlement agreement (05/04/25). Judge Gallagher by [order](#) (05/06/25) denied the government’s motion in part and granted it in part to provide the government with time (by 05/08/25) to appeal (05/06/25). The government [appealed](#) to the Fourth Circuit, and **Y1, Week Eighteen**, the Fourth Circuit denied the government’s motion for a stay pending appeal (05/19/25).

**Y1, Week Twenty-Five**, Judge Gallagher, in a [letter](#) to counsel in the *J.O.P.* case, took judicial notice of the [UNHCR Report](#) that had surfaced in the *J.G.G.* case, and accused the government of having:

“repeatedly skirted this Court’s directive to provide information regarding the steps they have taken and will take to facilitate the return of Cristian to the United States. Instead, Defendants have repeatedly made oblique references to their request of “assistance” from the U.S. Department of State (DOS), which has “enter[ed] into negotiations to facilitate Cristian’s return” and “assumed responsibility on behalf of the U.S. Government for...diplomatic discussions with El Salvador.” Assuming the Government of El Salvador provided truthful information to the UN, no “diplomatic discussions” should be required here because El Salvador has no sovereign interest in Cristian’s continued confinement in that country. This Court directs Defendants to explain their position that “diplomatic discussions” involving the DOS are required to facilitate Cristian’s return to the United States in compliance with this Court’s Order.”

### ***Other Challenges by Venezuelan Plaintiffs***

**Y1, Week Eighteen:** See [Order](#) issued by District Judge John W. Holcomb certifying a class of all noncitizens in custody in the Central District of California covered by the

Alien Enemies Act Proclamation and temporarily enjoining their removal (05/19/25). The habeas petition brought by Darwin Antonio Arevalo Millan was [filed](#) under seal.

Also filed under seal was a motion requesting confirmation of whereabouts and establishing access to defense counsel in respect of Widmer Josneyder Agelviz-Sanguino. District Judge Keith Ellison [granted](#) the emergency motion (05/19/25), also ruling that if the government is unable to provide the access due to lack of control over El Salvador facilities, the government must identify “all efforts made to secure cooperation” and disclose all arrangements and agreements with El Salvador related to the plaintiff’s detention, *including any memorandum of understanding with, or funding ties to CECOT.*” (Emphasis added.)

The government appealed to the Fifth Circuit, which [granted](#) the government’s motion for an administrative stay (05/23/25).

**Y1, Week Twenty:** Judge Holcolm [granted](#) the plaintiff’s motion for a preliminary injunction and for class certification (06/02/25). The court order recites the growing body of judicial precedent in respect of issues arising under the invocation of the Alien Enemies Act, including rulings by a District Court judge and two appellate court judges in the *J.G.G.* case, a District Court judge in the *D.B.U.* case, a District Court judge in the Southern District of Texas in the *J.A.V.* case, a District Court judge in the Southern District of New York in the *G.F.F.* case and a District Court judge in the Western District of Pennsylvania in *A.S.R.* case – all finding against the government except the last case.

Judge Holcolm was confronted with the argument proffered by the government that all of these judges were wrong in finding that the Presidential Proclamation invoking the Alien Enemies Act could be subject to judicial review. He disagreed with the government’s contention, though he also disagreed with the conclusions of the other judges that the judiciary had the authority to determine whether the Alien Enemies Act was properly invoked – in other words the Judge was saying it was not up to him to decide whether an “invasion” or a “predatory incursion” had occurred. “[T]he Judiciary must defer to [Trump’s] judgement.” While the Court concluded that the plaintiff is unlikely to succeed on the merits of the claim that the Proclamation was unlawful, it also concluded that the plaintiff is likely to succeed on the merits of his due process claim. That was the basis for certifying the class and issuing the injunction.

### ***V.M.L.***

**Y1, Week Fourteen,** a petition for writ of habeas corpus was [filed](#) on behalf of a 2-year-old U.S. citizen who was deported along with her mother (04/24/25). District Judge Terry A. Doughty [scheduled](#) a hearing for May 16 “in the interest of dispelling our strong suspicion that the Government just deported a U.S. citizen with no meaningful process.”

### ***Momodou Taal***

Three Cornell University students [challenged](#) the Protecting the United States from Foreign Terrorists and Other National Security and Public Safety Threats EO and the Additional Measures to Combat Anti-Semitism EO against them and similarly situated

students (03/15/25). Momodou Taal's student visa was revoked. District Judge Elizabeth C. Coombe [denied](#) the motion for a temporary restraining order, though noted that the plaintiffs [were submitting](#) an amended complaint (03/27/25). The plaintiffs [voluntarily](#) dismissed their case (03/31/25). Taal [reportedly](#) left the country.

### ***Kseniia Petrova***

A Harvard Medical School research scientist, Kseniia Petrova, was detained for failing to declare scientific samples (frog embryos) she was carrying in her luggage on a flight from Paris to Boston. Customs officials cancelled her visit on arrival and initiated civil deportation proceedings. **Y1, Week Seventeen**, shortly after District Judge Christian C. Reiss in Vermont indicated she would grant bail in the civil immigration case against Petrova, DoJ [announced](#) criminal smuggling charges and she faces deportation to Russia, where she fears retaliation for political protest in support of Ukraine. She currently is in detention in Louisiana. Petrova fled Russia in 2022. See [New York Times](#) coverage. Petrova has filed a motion to dismiss her case. See *amicus* brief [submitted](#) by Massachusetts in support of the motion to dismiss. She also filed an asylum petition based on a "well-founded fear of future prosecution" if she is forced to return to Russia. Immigration experts believe the two-pronged approach of criminal charges interrupting the civil process is designed to encourage Petrova to self-deport, which in this case is unlikely.

**Y1, Week Nineteen**, Judge Reiss granted bail to Petrova in her immigration case (05/28/25), stating, according to *New York Times* [reporting](#), that "what happened in this case was extraordinary and novel," and without granting bail "there will be no determination" as to whether Petrova's constitutional rights had been violated. Petrova's status remains unclear because of the criminal smuggling charges. The government has also issued a so-called "detainer" relating to the immigration charges, potentially enabling the government to direct ICE to detain her again should bail be granted in the criminal case.

**Y1, Week Twenty-One**, after four months in jail for an offense that at worst should have resulted in a fine, Petrova is released on bail by Judge Judith G. Dein and emerges from the courtroom wearing a t-shirt emblazoned "Hakuna Matata." Petrova still faces deportation proceedings and criminal smuggling charges. See [Cambridge Day](#) coverage.

### ***Salam Maklad***

**Y1, Week Thirty**, District Judge Jennifer L. Thurston issued a preliminary injunction and [ordered](#) the release of Salam Maklad, a Syrian national slated for deportation who arrived in the United States in 2002 and claimed asylum. She later married a man who thereafter was granted asylum, which her legal team argued made her eligible for legal immigration status. She was arrested after attending what she believed was a routine "check-in" and placed in an "expedited removal proceeding." She has no criminal history.

### ***Sergio Alberto Barco Mercado***

**Y1, Week Twenty-Nine**, a recently detained undocumented Peruvian migrant [filed](#) a potential class action lawsuit challenging unsanitary conditions inside holding cells at

the ICE facility at 26 Federal Plaza (08/08/25). The plaintiff is represented by the ACLU Foundation, the New York Civil Liberties Union Foundation, Wang Hecker and Make the Road New York. See [Court Listener](#) docket.

**Y1, Week Thirty**, District Judge Lewis A. Kaplan [granted](#) a temporary restraining order (08/12/25) setting out minimum conditions for detention at the ICE facility.

***U.H.A., K.A., H.D., D. Doe, M. Doe***

**Y2, Week Three**, in another example of the heartless campaign to ensnare refugees who had lawfully been admitted to the United States, DHS announced that it would be targeting for investigation up to 5,600 lawfully refugees residing in Minnesota in “Operation Post-Admission Refugee Reverification and Integrity Strengthening” (“Operation PARRIS”). Following this, lawfully present refugees in Minnesota—including families and children—have been subject to warrantless arrest, unauthorized detention, and coercive interrogation, reports IRAP. DHS has claimed that all refugees who have been in the country for more than one year and have not yet been granted lawful permanent resident (LPR) status must be detained. DHS has taken this position even though refugees cannot obtain LPR status until the one-year mark after their arrival, and even though DHS itself has announced a freeze on deciding LPR applications for refugees. Kafkaesque! IRAP has been representing plaintiffs challenging PARRIS, who [filed](#) a motion for a temporary restraining order (01/24/26), which was [granted](#) (01/28/26). Plaintiffs have also filed a motion for contempt due to numerous alleged violations of the temporary restraining order (02/04/26).

***Seamus Culleton***

**Y2, Week Four**, the *Guardian* [reports](#) that an Irish man, Seamus Culleton, who has lived in the United States for twenty years, is married to an American citizen, had a valid work permit and driver’s license, had no criminal record and was applying for a green card, was arrested in Massachusetts in a random immigration sweep and has spent five months in ICE custody. (See also [Irish Times](#) coverage.) Other high-profile cases involving people from Ireland include [Cliona Ward](#), who had a green card but was detained by ICE for 17 days over a criminal record from more than 20 years ago and a visiting Irish tech worker who overstayed his visa by three days and agreed to deportation was [jailed](#) for about 100 days.

***Any Lucia Lopez Belloza***

**Y2, Week Four**, Federal Judge Richard G. Stearns [ordered](#) the administration to return Any Lucia Lopez Belloza, a college freshman, after she mistakenly [was deported](#) to Honduras (02/13/26). She was flown to Honduras two days after her detention just before Thanksgiving, despite a court order signed on November 21 [barring](#) her deportation while her case was pending.

***American Association of University Professionals, et al.***

The AAUP and the Middle East Studies Association (MESA) [sued](#) the Secretary of State, the Secretary of Homeland Security, the acting Director of ICE, Trump and the United States of America seeking a declaration that the government’s ideological

deportation policy violates the First and Fifth Amendments and the Administrative Procedures Act and to enjoin defendants from enforcing the policy, including via investigation, surveillance, arrest and deportation noncitizen students and faculty (03/25/25). Plaintiffs are represented among others by the Knight First Amendment Institute. In effect, the case challenges the targeting of foreign students because of their speech or activism.

**Y1, Week Eleven**, the plaintiffs [filed](#) their motion for a preliminary injunction.

**Y1, Week Fifteen**, District Judge William G. Young [denied](#) a motion to dismiss the case (04/29/25) as to three of the four counts (First Amendment as to the ideological deportation policy, First Amendment as to punishment of protected speech and violation of the Administrative Procedures Act), noting that the cases raises “novel First Amendment issues.”

**Y1, Week Thirty-Eight**, District Judge William G. Young, an 85-year old Reagan appointee who has served on the federal bench for 40 years, [delivered](#) a scathing rebuke to the administration’s assault on free speech as he ruled, following a full hearing and a nine-day bench trial with 15 witnesses and 250 exhibits, in favor of students targeted for support of Palestinian rights (09/30/25). The Knight First Amendment Institute’s press release was titled: “In Landmark Ruling, Federal Court Says Trump Administration Violated First Amendment By Arresting, Attempting to Deport Foreign Citizens for Pro-Palestinian Advocacy.” The Court addressed the arrests of Khalil, Chung, Khan Suri, Mahdawi and Öztürk.

The Court found that “This case – perhaps the most important ever to fall within the jurisdiction of this district court – squarely presents the issue whether non-citizens lawfully present here in United States actually have the same free speech rights as the rest of us. The Court answers this Constitutional question unequivocally ‘yes, they do.’ ‘No law’ means ‘no law.’ The First Amendment does not draw President Trump’s invidious distinction and it is not to be found in our history or jurisprudence. No one’s freedom of speech is unlimited, of course, but these limits are the same for both citizens and non-citizens alike.”

The Court found, “by clear and convincing evidence,”<sup>14</sup> that government officials, including the Secretary of State and the Secretary of Homeland Security, “deliberately and with purposeful aforethought, did so concert their actions and those of their two departments intentionally to chill the rights to freedom of speech and peacefully to assemble.” The Court ruled that “Plaintiffs have shown that Secretaries Noem and Rubio are engaged in a mode of enforcement leading to detaining, deporting, and revoking noncitizens’ visas solely on the basis of political speech, and with the intent

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<sup>14</sup> In a footnote, the Court noted that the customary standard of proof in civil litigation is “preponderance of the evidence.” It continued, “A more demanding standard, such as clear and convincing evidence, applies only when a statute or the Constitution requires a heightened standard or in certain other rare cases, such as ‘when the government seeks to take unusual coercive action – action more dramatic than entering an award of money damages or other conventional relief – against an individual.’” Nevertheless, the Court considers the facts here so compelling as to meet and exceed the higher standard. (Citations omitted.)

of chilling such speech and that of others similarly situated. Such conduct is not only unconstitutional, but a thing virtually unknown to our constitutional tradition.”

The Court found that “It is not enough for [it] simply to determine that the plaintiffs’ First Amendment constitutional rights have been violated. The Constitution is not self-effectuating. There must be some prospect of an effective remedy (we call it “redressability”) in order to proceed. The Court promised a suitable remedy, but before doing so in a 13-page section at the end, provided a stinging indictment of Trump’s retribution against law firms, higher education and the media. As for Trump, in the introduction to the litany of constitutional abuses, the Court notes, “The president’s palpable misunderstanding that the government simply cannot seek retribution for speech he disdains poses a great threat to Americans’ freedom of speech.”

See generally [CNN](#) coverage. Stay tuned.

**Y1, Week Fifty-Two**, as [covered](#) by the *New York Times*, Judge Young is to rule on the remedies for the violations of the First Amendment rights to free speech of the five students that had been subject to attempted deportations. Recall that in his September 30 scathing rebuke, Judge Young had reserved on the question of what to do about the violations. Judge Young will also consider requests from news organizations, including the *New York Times*, that he agree to unseal some evidence presented during the trial last year. The evidence is believed to include details about how officials justified arresting students and attempting to strip them of their visas or legal status.

*POLITICO* had the following [to say](#) about the hearing on Thursday (the judge’s ruling is due next week). Judge Young:

- “Excoriated” senior administration officials for trampling on First Amendment rights.
- Exclaimed, “There was no policy here. What happened here is an *unconstitutional conspiracy* to pick off certain people.” (Emphasis added.)
- Referring to Homeland Security Secretary Noem and Secretary of State Rubio, said, “I find it breathtaking that I have been compelled on the evidence to find the conduct of such high-level officers of our government – cabinet secretaries – conspired to infringe the First Amendment rights of people with such rights here in the United States. These cabinet secretaries have failed in their sworn duty to uphold the Constitution.”
- Said he plans to issue a ruling granting plaintiffs a “conclusive presumption” that future changes to their immigration status amount to retaliation for their suit. The ruling will place the burden on the government to prove that officials have good cause before moving forward with any planned changes to group members’ immigration status.
- Used “extraordinarily stark language,” describing Trump as an “authoritarian”: “We cast around the word ‘authoritarian.’ I don’t, in this context, treat that in a pejorative sense, and I use it carefully, but it’s fairly



clear that this president believes, as an authoritarian, that when he speaks, everyone, everyone in Article II is going to toe the line absolutely.”

- Compared the administration’s mass-deportation campaign to efforts to return formerly enslaved people to their owners under the Fugitive Slave Act, an 1850 law that compelled law enforcement agents to return to return fugitive slaves to their “owners,” even if captured in free states.
- Who considers this case to be one of the “most important” of his judicial career, asks rhetorically, “how did this happen? How could our own government, the highest officials in our government, seek to infringe the rights of people lawfully here in the United States? And I’ve come to believe that there’s a concept of freedom here that I don’t understand. The record in this case convinces me that these high officials, and I include the president of the United States, have a fearful view of freedom.”

**Y2, Week One**, Judge Young [issued](#) his annotated judgment as expected (01/22/26). In it, he declared that the enforcement policy at issue and its implementation violates the First Amendment and the Administrative Procedures Act. Accordingly, the enforcement policy is “of no effect, void, illegal set aside and vacated.” The Court, “in view of the concerted action of the highest Cabinet Officials of the Executive Branch to violate the First Amendment right of Free Speech of the Plaintiffs’ noncitizen members,” imposed the following remedial sanctions: any noncitizen member of the plaintiffs (AAUP or MESA) who was a member after March 25 and through September 30 have the right to challenge in court any change to their immigration status and any such change will be deemed retribution for the exercise of First Amendment rights.

See *The Hill* coverage.

### **Other Incidents**

**Y1, Week Thirteen**, there continue to be stories of American citizens being caught up in dragnets. An American citizen was detained and held in Florida despite producing a birth certificate, though eventually released, with the County Judge [reportedly](#) saying he lacked jurisdiction to override an ICE 48-hour detention request. The detention was under a Florida state anti-immigration law (S.B. 4-C codified at Fla. Stat. §§ 811.101-.103 (2025)) and the detainee was picked up after driving from Georgia to Florida. See also ProPublica’s “[Congress Has Demanded Answers to ICE Detaining Americans. The Administration Has Responded With Silence.](#)” A 19-year old American citizen residing in New Mexico was [detained](#) and held for ten days in Arizona because law enforcement authorities did not believe he was American. The case against him [was dismissed](#) (04/17/25) after relatives supplied a birth certificate and social security card.

An attorney who represents a pro-Palestine protester was detained at an airport and his phone searched (ultimately limited to contacts) notwithstanding his assertion that information on his device was privileged. See Democracy Now’s “[Michigan Lawyer Detained at Detroit Airport, Phone Seized; He Represents Pro-Palestine Protester.](#)”

**Y1, Week Twenty**, the *New York Times* [reports](#) that judges in immigration cases are facing delays and obfuscation by administration officials. The administration *modus*

*operandi* appears to be to violate orders or to deploy tactics to prevent federal judges from determining whether violations of law have occurred. While no penalties have been imposed yet by federal judges, three have said they have considered contempt orders. Seven weeks after Judge Xinis' direction that the DoJ advise what steps it has taken, or plans to take, to secure the release of Abrego Garcia, there appears to be no progress on how the government intends to fix its error. Judges Boasberg, Gallagher and Murphy are facing the same pattern of delay and evasion.

**Y1, Week Twenty-Two**, District Judge Kathleen M Williams [found](#) Florida Attorney General James Uthmeier in civil contempt of court for violating an April 18 temporary restraining order enjoining the Attorney General, the state wide prosecutor, state attorneys and their agents from enforcing SB 4-C and requiring them to provide actual notice of the order to any law enforcement officer with the power to enforce S.B. 4-C (06/17/25). The original temporary restraining order was expanded to cover all Florida law enforcement officers. Allegedly, Uthmeier complied with the order and then sent a follow-up letter stating that the order could be ignored.

The temporary restraining order was issued in response to a class action law suit [brought](#) by the Florida Immigration Coalition, the Farmworker Association of Florida, and two individuals (Y.M. and V.V.) to declare SB 4-C unconstitutional on the grounds it violates the Supremacy and Commerce Clauses (04/02/25). The Eleventh Circuit [denied](#) defendants' motion to stay the preliminary injunction.

**Y1, Week Twenty-Thirty**, Sen. Patty Murray is demanding answers from the administration about reports that two firefighters [were detained](#) by federal agents while fighting the Bear Gulch wildfire in Washington state's Olympic national forest. Federal law enforcement asked the firefighting crews to line up to check their IDs, according to the firefighters.

**Y1, Week Thirty-Four/Five**, in an incident that has caused outrage in South Korea, ICE/FBI/DEA/CBP/BATFBP/IRS agents raided a plant being built in Georgia to manufacture car batteries. The South Korean president reportedly ordered an effort to respond to the arrest of 300 South Korean nationals among the 475 [rounded up](#) at the site.

The raid was the largest single immigration-enforcement operation in the history of DHS. The plant, a joint venture between South Korean battery manufacturer LGES and Hyundai Motors, incidentally, is part of what would be the largest industrial investment in Georgia's history and had been celebrated by Gov. Brian Kemp as a boost for the state's economy.

The Guardian [reports](#) that at least one worker detained was living and working in the United States legally, and was mandated to voluntarily deport himself notwithstanding not having violated any law. This contradicts ICE's statement that all arrested were working illegally or violated visa conditions.

The [anger](#) over the raid is largely prompted by the fact that the South Korean had agreed to invest billions of dollars in the United States following a trade deal negotiated between the two countries. An attorney representing some of the detained [told](#) the Associated Press that many of the detainees were engineers and equipment

installers brought in for highly specialized work of getting the plant up and running. The attorney also notes that no company in the United States makes the equipment needed for the plant so engineers had to be brought in to do the work, for which training of three to five years otherwise would be required.

The detained South Koreans, together with 10 Chinese nationals, three Japanese nationals and an Indonesian national, flew to Seoul, though the return was delayed [reportedly](#) due to an offer by Trump for them to be “encouraged” to continue working in the United States. One South Korean national chose to remain in the United States. Recall that the week before, Trump had [warned](#) foreign companies investing in the United States to respect U.S. immigration laws and to hire and train American workers. Earlier in the week, South Korean President Lee Jae Myuind had called for improvements to the visa system, fearing with South Korean companies would hesitate to invest in the United States.

**Y2, Week Four**, CBS News [reports](#) that an internal DHS document that has not been made public shows that less than 14% of the close to 400,000 immigrants arrested by ICE over the past year had charges or convictions for violent criminal offenses. Less than 2% had homicide or sexual assault charges or convictions and only another 2% were accused of being gang members. Close to 40% had no criminal records at all, with most being accused of civil immigration offenses such as being in the country illegally. These figures do not include arrests by Border Patrol agents.

### **Deportations & Detentions – of persons seeking entry into the United States**

It was widely reported (*see, e.g., [Le Monde reporting](#)*) that a French scientist on assignment for the French National Center for Scientific Research was denied entry into the United States in early March after CBP agents at Houston airport searched his phone and found text messages in which he had expressed criticism of the Trump administration’s research policies. It has also been reported that US authorities accused the French researcher of “hateful and conspiratorial messages” and FBI investigation had been opened, but the “charges were dropped” before he was expelled. Incidentally, the French minister for higher education and research has been a critic of the Trump administration and Musk for ordering massive cuts to scientific research budgets and published, coincidentally on the same day the French scientist was denied entry, [a letter](#) calling on American researchers to relocate to France.

It was also widely reported (*see, e.g., [NewsYI, Week reporting](#)*) that a German permanent resident of the United States had been detained upon his return to the United States. CBP made reference to drug charges, but it is unclear what those are. Although the permanent resident has no ongoing legal issues, reportedly according to his family, he previously had a misdemeanor charge for marijuana possession in his vehicle. That charge was dismissed after cannabis possession laws changed.

It was also widely reported (*see, e.g., [Guardian reporting](#)*) that a Canadian entering the United States with a work visa that raised questions was detained for nearly two weeks and then deported. Three members of a UK punk rock band were detained and deported (*see [Guardian reporting](#)*).

## Denaturalization Threats

**Y1, Week Twenty-Four**, NPR [first reported](#) that a [DoJ Memorandum](#) advised DoJ prosecutors in the Civil Division that denaturalization of various groups of naturalized citizens based on a list of infractions would be among the Division's top five enforcement priorities. NPR notes that denaturalization was used heavily during the McCarthy era, grew during the Obama years and grew further during Trump 1.0. Historically citizenship was stripped due to lies about criminal convictions or memberships in illegal groups (the Communist party, and after the [establishment](#) 1979 of what was then called the Office of Special Investigations in DoJ (later merged into the Human Rights and Special Prosecutions Unit), Nazi war criminals).

In a 2019 Law Review article, Cassandra Burke Robertson and Irina D. Manta [note](#) that the Supreme Court, while failing to articulate a consistent view of citizenship, has set limits on the power of the government to remove citizenship at will and argue that denaturalization through civil litigation violates substantive and procedural due process rights as well as rights guaranteed under the Citizenship Clause of the 14<sup>th</sup> Amendment. The civil litigation route is particularly fraught for naturalized citizens who are targeted because there is no right to a court-appointed attorney and the burden of proof is lower than in a criminal proceeding. The risks incidentally extend as well to children of naturalized parents – if a parent loses citizenship, their children could be at risk as well.

NPR cited 2023 [data](#) showing that close to 25 million immigrants were naturalized (representing 7% of the total U.S. population of 334.9 million). Around 818,500 green card holders became naturalized citizens in FY 2024.

**Y1, Week Twenty-Five**, Trump threatens to revoke actor and comedian Rosie O'ell's citizenship because he disagrees with her criticism of him. Rosie [responds](#). Once again, this would be comical were it not the President of the United States and were there not countless examples of the rule of law being savaged.

## Freedom of Information Act (FOIA)

**Y1, Week Twenty-Nine**, Sasha Ingber [reports](#) that a dedicated FOIA office in the State Department's Office of Diplomatic Security (DS) was eliminated earlier this summer. This FOIA office processes requests on counterintelligence and law enforcement matters and is staffed by intelligence and military veterans. Ingber reports that the Information Access Programs Directorate, which was supposed to pick up the DS work declined to do so, citing lack of bandwidth and the necessary expertise.

## Threats Against Trump Enemies

### *Christopher Krebs*

**Y1, Week Twelve**, the 2020 election is never far from Trump's mind, and he still cannot let go. The latest targets of his ire include the former head of the Cybersecurity and Infrastructure Security Agency, who declared the 2020 election "the most secure in American history," after which he was fired by Trump.

Trump, in his [Addressing Risks from Chris Krebs and Government Censorship](#) Presidential Memorandum (04/09/25), revoked Krebs' security clearance and directed

his Attorney General and Director of Homeland Security to “take all appropriate action to review Krebs’ activities as a Government employee, including his leadership of CISA. This review should identify any instances where Krebs’ conduct appears to have been contrary to suitability standards for Federal employees, involved the unauthorized dissemination of classified information, or contrary to the purposes and policies identified” in the [Restoring Freedom of Speech and Ending Federal Censorship](#) EO. Trump also directed that, as part of that review, all of CISA’s activities over the last six years are to be reviewed, “focusing specifically on any instances where CISA’s conduct appears to have been contrary to the purposes and policies of the censorship EO.

**Y1, Week Fifteen**, it was widely reported (*see, e.g.,* [NYT reporting](#)) that Krebs lost access to Global Entry, the expedited entry program (05/01/25). Earlier in the week, 40 cybersecurity professionals [published](#) a letter in support of Krebs.

### ***Jack Smith***

**Y1, Week Twenty-Eight**, the New York Post [reported](#) that the Office of Special Counsel confirmed Saturday that it was investigating former Special Counsel Jack Smith for possible violations of the Hatch Act. Earlier in the week, Senator Tom Cotton [had urged](#) the Office to look into Smith’s activities on the basis that actions such as seeking accelerated trial dates in the two criminal cases against Trump were intended to influence the 2024 election. Hatch Act violations are civil not criminal.

To fit within the [Hatch Act](#), Smith would have to be found to have used his “official authority or influence for the purpose of interfering with or affecting the result of an election.” Examples cited for this include using official titles or positions while engaged in political activity. Penalties for violations of the Hatch Act [include](#) removal, reduction in grade, debarment from federal employment for a period not to exceed five years, suspension, reprimand or a civil penalty not to exceed \$1,000. *See* [Federal Employee Hatch Act Information](#).

Former federal prosecutor Andrew Weissman, who served on the Mueller team, [stated](#) in an interview with MSNBC that the administration is unlikely to bring criminal charges against Smith as that would open up lines of inquiry that Trump would be unlikely to want to re-open.

**Y1, Week Forty-Eight**, during a closed-door deposition before the House Judiciary Committee, Smith told lawmakers that his team had “developed proof beyond a reasonable doubt” that President Donald Trump had criminally conspired to overturn the results of the 2020 election and “had developed powerful evidence” that Trump broke the law by hoarding classified documents at Mar-a-Lago and then obstructing government efforts to recover the records. These statements, from Smith’s opening statement, come from [reporting](#) by the Associated Press. In the meantime, a portion of Smith’s report on the classified documents case remains under seal pending the outcome of a case before Judge Aileen M. Cannon. *See* [New York Times](#) coverage.

See also:

- [full transcript of Smith’s testimony](#)

- [video of Smith's testimony](#)
- [Smith's opening statement](#)
- *NewsY1, Week's* [Six Key Takeaways From Jack Smith's Deposition Transcript](#)

Marilyn W. Thompson, writing in *The Atlantic* (“[Get Ready To Start Hearing About Aileen Cannon Again](#)”), reminds us of the consequential role that Judge Aileen Cannon continues to play. First, she needs to decide whether to unseal the second volume of Special Counsel Smith’s investigative findings, which has been under seal for the past year, on the ground that making it public might prejudice the case against Trump’s co-defendants. Those charges were dropped some time ago. On Monday, she denied a motion from two advocacy groups requesting release of the report and then gave DoJ and other parties 60 days to file objections to unsealing the report.

Cannon is expected to preside next month over a federal grand jury called by the U.S. attorney for the Southern District of Florida, Jason Reding Quiñones, that consider aspects of the FBI’s raid on Mar-a-Lago, as well as broader allegations of a conspiracy by Democratic politicians and other government officials against Trump.

### ***Miles Taylor***

**Y1, Week Twelve**, a second target of Trump’s ire this week was Miles Taylor, who served as Chief of Staff to the Director of Homeland Security during Trump’s first term and authored both an op-ed and book under the pen name “Anonymous.” In his [Addressing Risks Associated with an Egregious Leaker and Disseminator of Falsehoods](#) Presidential Memorandum (04/09/25), alleges Taylor “illegally published classified conversations” and “disclosed sensitive information.” Trump ordered the suspension of security clearances of Taylor and the University of Pennsylvania, where Taylor is a visiting fellow teaching a course called “The Future of Conservatism and the GOP.” Similar to the Krebs Presidential Memorandum, this Presidential Memorandum calls for an investigation by the Secretary of Homeland Security into Taylor’s activities as a government employee.

**Y1, Week Thirteen**, a group of former national security and other officials signed an [open letter](#) calling out the President for punishing Krebs and Taylor and likening the actions to those of a “royal despot” and warning that the vendettas represent a path to “autocracy, not democracy.”

**Y1, Week Twenty**, Taylor spoke out about the impact of being targeted by Trump (see “[This Is the Scalpel They’ll Use to Ruin the Lives of Individuals the President Is Opposed To](#)” and “[Why I’m calling for an investigation into the Trump Administration](#)” as well as [an interview: Olivia Troye and Miles Taylor](#)). Abbe Lowell, Taylor’s counsel, [formally requested](#) the DHS IG and the DoJ IG to initiate an investigation into the actions taken or to be taken by DHS and DoJ against Taylor under the EO targeting him (06/03/25).

### ***President Biden***

Trump has ordered an investigation into whether Biden aides covered up declines in his mental state, including by the use of an automatic pen (autopen) to sign Biden’s



name on official documents. There is no evidence that documents were signed without Biden's knowledge. A July 2005 DoJ memorandum opinion [recognizes](#) the validity of documents signed by autopen, as long as the president is making the decisions. One likely theme of the investigation will be the validity of pardons issued by Biden in the final days of his administration. See [POLITICO](#) coverage. Another *POLITICO* article explores the potential implications of a broader investigation should the inquiry spiral beyond the issue of pardons (see "[The minefield surrounding Trump's Biden investigation](#)"). The article cites the possibility of a public relations nightmare, even if there is no basis for criminal charges, if potential 2028 presidential contenders or members of the Democratic Party apparatus or independent expenditure groups aligned with the campaign are called to testify on what they knew, when.

### ***2020 Election***

**Y1, Week Twenty-Two**, in yet another sign that Trump remains obsessed with the 2020 election outcome, while his White House was laser-focused on an impending attack against Iran, he posted on Truth Social, "Biden was grossly incompetent, and the 2020 election was a total FRAUD! The evidence is MASSIVE and OVERWHELMING. A Special Prosecutor must be appointed. This cannot be allowed to happen again in the United States of America! Let the work begin!" It would be up to Attorney General Pam Bondi to appoint or not appoint a special prosecutor.

### ***Sen. Adam Schiff***

DoJ is [conducting](#) a mortgage fraud investigations targeting Sen. Adam Schiff. Ed Martin reportedly also has been named as a special prosecutor for this investigation. Trump [called out](#) Schiff in a Truth Social post.

### ***Lisa Cook***

Ed Martin, in his new role as a special counsel for mortgage fraud, said he had received a criminal referral from the Federal Housing Finance Agency (FHFA) naming Lisa Cook, a governor on the Federal Reserve Board and had written to Fed Chair Jerome Power to remove Cook. FHFA Director Bill Pulte accused Cook of committing fraud in 2021 while seeking mortgages on two properties, both of which she listed as her primary residence within a two-Y1, Week period.

**Y1, Week Thirty-Two**, Trump [attempted](#) to fire Cook, citing allegations that she may have falsified records in order to obtain favorable terms on a mortgage, even though she has not been charged with wrongdoing or convicted of a crime. Cook, represented by Abbe Lowell and Democracy Forward Foundation, [is fighting back](#). See complaint [filed](#) on behalf of Cook (08/28/25) challenging her removal under the Federal Reserve Act (which provides the President can remove Fed governor for "cause") and the Fifth Amendment.

**Y1, Week Thirty-Five**, District Judge Jia M. Cobb [granted](#) Cook's motion for a temporary restraining order, and converted it to a preliminary injunction, finding that she was likely to be successful on the merits of her challenge to Trump's attempt to fire her. The Court found that "for cause" for purposes of the Federal Reserve Act would only cover acts while she was in office and that Cook had been denied her rights under the Fifth Amendment to due process. Trump [filed](#) an emergency appeal seeking

a determination by the following Monday before the Federal Open Market Committee meeting on Tuesday.

**Y1, Week Thirty-Six**, Monday night, the D.C. Circuit [denied](#) the government's motion for a stay and an administrative stay. Cook sat for the FOMC meeting on Tuesday and Wednesday. Presumably, the next stop, the Supremes. Also, documents [reviewed](#) by the *New York Times* suggests that Cook did not seek to deceive lenders, characterizing during the loan-application process a second property as a "vacation home" and potentially rebutting any inference of fraud that she treated two properties as her primary residence. The documents were referenced in a submission to the D.C. Circuit. See also [Reuters](#) coverage.

**Y1, Week Thirty-Seven**, the administration applied to the Supreme Court for a stay of the injunction of the District Court that rejected the firing of Cook. Lawyers for Cook [urged](#) the Court to preserve the status quo and keep the injunction in place. The filing cites the importance to the American economy of the Fed's independent and warns that ousting Cook on an interim basis while her claims are pending in the District Court would have "dire consequences for the financial markets." It posits that "granting the President's request for immediate relief to alter the status quo would sound the death knell for the central-bank independence that has helped make the United States' economy the strongest in the world."

**Y1, Week Forty-Five**, the Supreme Court announced it will hear oral arguments on the challenge by Cook to her firing on January 21, 2026.

### ***Lisa Monaco***

**Y1, Week Thirty-Seven**, Trump [demanded](#) that Microsoft fire Lisa Monaco, recently appointed as its president of global affairs. In his Friday Truth Social [post](#), Trump accuses Monaco of being a pawn of the "architects of the worst ever Deep State Conspiracies against our Country (RUSSIA, RUSSIA, RUSSIA, the January 6th Hoax, the Illegal Raid on Mar-a-Lago, the Biden "Autopen" Scandal, the Documents Witch Hunt, and more!). Among other obsessions, Trump calls January 6<sup>th</sup> a "hoax." Monaco's security clearance was [revoked](#) by Presidential Memorandum in March.

Monaco served as the Deputy Attorney General under Biden, where she, together with Attorney General Merrick Garland, oversaw DoJ probes of Trump's alleged election interference and mishandling of classified documents. She previously served as homeland security advisor to President Obama.

Trump's hook are the "major contracts" that Microsoft has with the government, though it would seem unlikely that Trump would order the decoupling of the government from Microsoft. He says her role gives her access to highly sensitive information and ties that to the contracts.

See also [Business Insider](#) coverage.

Association with a target of Trump's ire has once again ensnared long-serving federal employees. This time, a 20-year veteran prosecutor who led the national security section in EDVA, Michael Ben'Ary, and Maya Song were fired after being called out [called out](#) by Julie Kelly, a right-wing influencer. *CBS News* [reports](#) that Ben'Ary was

the lead prosecutor in the high-profile prosecution scheduled for trial later this year of Mohammad Sharifullah, a suspected plotter in the Abbey Gate terror attack in Afghanistan in 2021, which killed 13 American service members and about 170 Afghans as the U.S. military was withdrawing from Kabul. Song was the deputy lead prosecutor in the office who was demoted when lead prosecutor investigating Comey, [Erik Siebert](#), was removed. Both had worked as senior advisers to Monaco during the Biden years.

These firings add to turmoil in the office following [Erik Siebert's](#) removal.

**Y1, Week Thirty-Eight**, in a blistering farewell note to his colleagues and referring to his removal just before the start of the Abbey Gate trial, Ben'Ary [called out](#) the DoJ for prioritizing Trump's revenge agenda over justice and national security. Alluding to the Kelly post, he went on to say that "Justice for Americans killed and injured by our enemies should not be contingent on what someone in the Department of Justice sees in their social media feed that day."

## **Indictments of Trump Enemies**

### ***Jim Comey***

**Y1, Week Thirty-Seven**, I was unsure where to place this item, but opted for its own section because, just as the targeting of Jimmy Kimmel was far more than the desire to sideline one late night comedian from ABC, so too must we see the indictment of Jim Comey as far more than Trump's revenge against the former FBI Director for the Russia investigation. As former prosecutor Andrew Weissman noted in an interview with Jennifer Rubin, "What does it mean to our country, to democracy, to the rule of law, that separates us from Russia when the President can snap his fingers and get someone indicted?"

And what does it mean for a country that was warned explicitly that this was coming and brought it on anyway.

A brief reminder of how Comey became a villain:

- July 2016: Comey declines to recommend charges against Secretary Clinton over her handling of classified material while Secretary of State;
- October 2016: FBI Deputy Director McCabe directs a special assistant to provide a reporter at the *Wall Street Journal* to counter reporting that suggested the FBI was not being tough on Secretary Clinton in respect of its investigation of the Clinton Foundation (this representing an acknowledgement that the FBI was investigation claims involving the Clinton Foundation, the acknowledgement of which ran counter to FBI policy);
- March 2017: Comey announces the FBI is investigating potential collusion between the Trump campaign and Russia while testifying before the House Intelligence Committee;

- May 2017: Comey testifies before the Senate Judiciary Committee.
- May 2017: Trump fires Comey, allegedly for violating DoJ procedures while overseeing the investigation of Secretary Clinton's use of private email servers;
- June 2017: Comey testifies before the Senate Intelligence Committee and alleges that Trump had presumed him to drop the FBI's investigation into then-National Security Adviser Michael Flynn; Trump accuses Comey of lying under oath and leaking classified information;
- April 2018: the FBI IG issues a report to the Senate Judiciary Committee relating to allegations against FBI Deputy Director McCabe;
- May 2018: in his memoirs, Comey accuses Trump of being "unethical, and untethered to truth and institutional values";
- August 2019: Charlie Kirk calls out Comey for leaking information to the media and then lying to the Senate Judiciary Committee;
- September 2020, in questioning that forms the basis for the indictment, Comey is [questioned](#) by the Senate Judiciary Committee about his handling of the Russia investigation;
- May 2024: Comey is interviewed by the Secret Service about a photo posted on social media of seashells that spell out 86 47; and
- September 2025: Comey is indicted.

The bare bones two-count [indictment](#) was signed by Lindsey Halligan, installed three days earlier as the EDVA U.S. Attorney following the forced resignation/firing of Erik Siebert. Halligan reportedly presented the case to the grand jury herself; grand jurors hear only one side of the story and only need to find "probable cause" rather than likelihood of a finding of guilt. The *Washington Post* [reports](#) that only 14 of the 23 grand jurors voted to indict (barely above the majority needed) and that grand jurors rejected a third count of lying to Congress.

Two days before the indictment, Trump sends his missive to "Pam" calling for "justice to be served, now!" *ABC News* [reports](#) that prosecutors in her office had provided Halligan with a detailed memorandum recommending that she decline to bring perjury and obstruction charges against Comey. The reporting notes that a monthslong investigation had "failed to establish probable cause of a crime – meaning that not only would they be unable to secure a conviction of Comey by proving the claims beyond a reasonable doubt, but that they couldn't reach a significantly lower standard to secure an indictment [based on DoJ guidelines]."

*POLITICO* [sets out](#) sets out various factors that could doom the case against Comey:

- *Overt political pressure by Trump to bring the indictment* - Judges may throw out a criminal case at an early stage of the proceedings if they find that the charges are not supported by sufficient evidence or that prosecutors violated the constitutional rights of the defendant. One route to dismissal is to argue that the indictment is the result of a "selective" or "vindictive" prosecution. While typically a tough standard to meet, in Comey's case, there is ample

public evidence that the charges were the result of pressure from Trump as part of his revenge and retribution agenda.

- *Peculiarities in the indictment itself* – If the crux of the indictment is that Comey lied to Congress when he stated that he did not authorize the media leak regarding the investigation of Secretary Clinton, there may be no case. Recall that Comey's then deputy Andrew McCabe admitted to leaking the information and said that Comey had approved the leak *after* the fact. National Review Senior Fellow Andrew McCarthy [argues](#) that the case should be dismissed because Comey testified that he did not *authorize* the leak and, therefore, his statement does not necessarily contradict McCabe's version. McCarthy also notes that the FBI IG found that Comey's account that he did not *approve* the leak was overwhelmingly corroborated,

It starts in May 2017 at which Comey testifies before the Senate Judiciary Committee and is answering questions asked by Sen. Grassley. The topic was the investigation of Secretary Clinton. Grassley: "Director Comey, have you ever been an anonymous source in news reports about matters relating to the Trump investigation or the Clinton investigation?" Comey: "Never." Grassley: "Question two, relatively related, have you ever authorized someone else at the FBI to be an anonymous source in news reports about the Trump investigation or the Clinton investigation?" Comey: "No."

Fast forward to September 2020. Sen. Ted Cruz appears to misquote McCabe by introducing the May 2017 testimony and then saying: "Now, as you know, Mr. McCabe, who works for you, has publicly and repeatedly stated that he leaked information to the *Wall Street Journal* and that you were directly aware of it and that you directly authorized it. Now, what Mr. McCabe is saying and what you testified to this committee cannot both be true. One or the other is false. Who's telling the truth?" He then asks Comey: "Have you ever *authorized* someone else at the FBI to be an anonymous source in news reports about the Trump investigation or the Clinton investigation?" Comey said, in response, "I can only speak to my testimony. I stand by the testimony you summarized that I gave in May of 2017." Cruz then says: "So your testimony is you've never *authorized* anyone to leak? And Mr. McCabe, if he says contrary, is not telling the truth, is that correct? Comey: Again, I'm not going to characterize Andy's [McCabe's] testimony, but mine is the same today."

*POLITICO* also notes that if the focus is on leaks via [Professor Richman](#), then the questioning by Cruz is more ambiguous as he referred to authorization to leak directed at "someone else at the FBI" – Richman was an adviser to the FBI.

- *Halligan's own inexperience* – no career prosecutor signed the indictment. Typically, the line prosecutors (at the assistant U.S. Attorney level) sign federal criminal indictments. Many are noting that prosecutors can face sanction for bringing cases that lack legal basis. This point was made by ethics counsel to three former presidents in a [letter](#) sent to the Chairs and Ranking Members of

the Senate and House Judiciary Committees, who cite both the DoJ Principles of Federal Prosecution and the Virginia Rules of Professional Conduct.

- *A Covid-era technology issue* – the 2020 hearing took place virtually and from the start there were internet connectivity issues. Where words and understanding of those words are key to a criminal prosecution, one would expect that doubts would be resolved in the defendant's favor.

**Y1, Week Thirty-Eight**, Sen. Lisa Murowski [spoke out](#) without directly criticizing Trump, noting that the independence of the DoJ “is called into question when overt political pressure from the White House leads to unusual personnel changes and criminal charges filed just days after the President calls for them. ... As the legal process moves forward, I expect the DOJ to act in accordance with the Constitution and federal law, and to demonstrate that this case is being handled free from political interference.”

Trump [posted](#) on Truth Social that Comey “was off to a very good start” because he was “assigned a Crooked Joe Biden appointed Judge.” He is referred to Judge Michael Nachmanoff. Adding to the evidence that would likely find its way into a motion to dismiss, Trump calls Comey “Corrupt” and “Dirty Cop” and that he “LIED!”

See also coverage by Joyce Vance, “[Indictment Shows Danger of Subservient Prosecutors](#).” The *Washington Post* [reports](#) veteran prosecutors “are unnerved by what they see as an unprecedented push by President Donald Trump to inject politics into their staffing and charging decisions, ... a strategy they say could jeopardize national security investigations.”

*Reuters* first [reported](#) that an FBI agent had been relieved of duty for declining to arrange for a “perp walk” for Comey after he was indicted. In comments during MSNBC [coverage](#) of the firing of the FBI agent, former RNC Chair Michael Steele had this to say: “James Comey is no different than any other citizen. He’s a private citizen who’s being hauled in front of a judicial process for what? For what? That’s where you have to ask yourself, ‘Why is this happening?’ It’s happening because one man is so insecure, he’s so juvenile in his thinking that this is the only way he can. He can’t move on from it. And we get caught up in it.”

**Y1, Week Thirty-Eight**, calling the indictment against him “an egregious abuse of power by the federal government,” Comey [moved](#) under Federal Rule of Criminal Procedure 12(b)(3)(A) to dismiss the indictment on the grounds that the prosecution is vindictive and selective (10/20/25). Separately, Comey [moved](#) to dismiss the indictment *with prejudice* also under 12(b)(3)(A) on the ground that Halligan’s appointment as U.S. Attorney violated the Appointments Clause, and therefore the indictment should be treated as a nullity. Failing dismissal on the grounds of vindictive and selective prosecution, Comey is seeking discovery “into the suspect prosecutorial decision-making process that led to this flawed indictment and a hearing at which the government must justify its decision to bring these unfounded and retaliatory charges.”

An *amicus* brief submitted in support of Comey’s motion to dismiss on vindictive and selective prosecution grounds on behalf of a group of university professors and



scholars who have studied autocratic consolidation and democratic backsliding is available [here](#). *Amici* posit that the Comey indictment “mirrors many of the features of politicized prosecutions in the countries we study”: Trump’s statements reflecting that he has long viewed Comey as an adversary; Trump has violated longstanding norms of prosecutorial independence in directing his Attorney General to bring the indictment; and it was only after the U.S. Attorney Siebert departed that the newly-installed U.S. Attorney Halligan, formerly a Trump personal counsel, presented the indictment to the grand jury, over the objections of career prosecutors who maintained they lacked evidence to do so. *Amici* note that, for example, the capture of prosecutorial agency in Hungary, Turkey and Venezuela by “autocratic legalists” proceeds in three steps, evident in the prosecution of Comey, they reduce prosecutorial independence; install loyalists as prosecutors; and target political opponents and those who seek to hold the regime accountable for criminal prosecution.

**Y1, Week Forty-Two**, Magistrate Judge William Fitzpatrick expressed frustration and at times exasperation with prosecutors during a procedural hearing at which he ordered prosecutors to turn over materials to Comey and his counsel. At issue were electronic communications seized from law professor Daniel Richman by prosecutors in 2019 and 2020 as part of an internal investigation of leaks during the Russian investigation. Prosecutors were ordered to turn over those communications as well as grand jury transcripts. The grand jury material presumably would highlight how Halligan characterized the evidence against Comey during her first appearance before the grand jury. As for the material seized from Richman, who had earlier served as counsel to Comey, raising the spectre of privileged communications that may have been improperly introduced into evidence.

Prosecutors [filed](#) their response to Comey’s motion to dismiss on the grounds of vindictive and selective prosecution. The New York Times remarked that it was difficult to tell how some of the evidence in the filing was relevant to the specific charges against Comey. They characterized the filing as an effort to build their case that Comey used Richman to provide information to reporters without making the connection between the narrative they hoped to build and the allegations set out in the indictment.

Lawfare’s Benjamin Wittes and Anna Bower [were blunter](#): “the case is unspeakably, breathtakingly devoid of merit. To see it laid out in all its patchwork thread-baredness is to gasp with embarrassment for the prosecutors who have presented this to an American court. It is to understand why no career prosecutor in the Eastern District of Virginia would work this case and why Interim U.S. Attorney Lindsey Halligan had to import two sacrificial lambs from North Carolina to litigate the matter.” *See also* Bower’s [follow-on](#) analysis that publicly available documents may further undermine the case against Comey.

**Y1, Week Forty-Four**, headlines capture the moment – Judge “excoriates,” “blasts,” “scolds” DoJ for its investigation and prosecution of Comey, finding a “disturbing pattern of profound investigative missteps that led an FBI agent and a prosecutor to potentially undermine the integrity of the grand jury proceeding” and potential

“government misconduct resulting in prejudice to Mr. Comey.” Judge delivers a “remarkable rebuke.”

Magistrate Judge Fitzpatrick ordered that all grand jury material be turned over to Comey, citing the following as grounds:

- the facts establish a reasonable basis for the defense to challenge whether the Richman Warrants were executed in a manner consistent with the Fourth Amendment and the orders of the issuing court;
- the facts establish a reasonable basis for the defense to challenge whether the government exceeded the scope of the Richman Warrants in 2019 and 2020 by seizing and preserving information that was beyond the scope of the warrants;
- the facts establish a reasonable basis for the defense to challenge whether the government had the lawful authority to search the Richman materials anew in 2025;
- the facts establish a reasonable basis for the defense to challenge whether the government’s 2025 seizure of the Richman materials included information beyond the scope of the original warrants;
- the nature and circumstances surrounding the government’s potential violations of the Fourth Amendment and court orders establish a reasonable basis to question whether the government’s conduct was willful or in reckless disregard of the law;
- the facts provide a reasonable basis for the defense to show that they were prejudiced by the government’s use of the Richman materials in the grand jury, particularly if the government’s conduct was willful or reckless, given the centrality of these materials to the government’s presentation;
- the facts establish a reasonable basis for the defense to challenge whether the government took sufficient steps to avoid the collection and review of privileged materials, including the reasons why Mr. Comey was never afforded the opportunity to assert a privilege over his communications until after the indictment was obtained;
- the facts establish a reasonable basis for the defense to challenge whether privileged information was used, directly or indirectly, by the government to prepare and present its grand jury presentation;
- the nature and circumstances surrounding the disclosure of potentially privileged information establish a reasonable basis to question whether the government’s conduct was willful or in reckless disregard of the law;
- the prosecutor made statements to the grand jurors that could reasonably form the basis for the defense to challenge whether the grand jury proceedings were infected with constitutional error; and
- the grand jury transcript and recording likely do not reflect the full proceedings because, although it is clear that a second indictment was prepared and presented to the grand jury, the transcript and audio recording of the proceedings do not reflect any further communications after the grand jury began deliberating on the first indictment.<sup>15</sup>

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<sup>15</sup> As the New York Times pointed out in its coverage, it is highly unusual for a judge to examine how a prosecutor acted in from of a grand jury. Judge Fitzpatrick pointed out that Halligan appears to have misrepresented the law when she suggested Comey did not have a Fifth Amendment right to avoid testifying at his own trial. She also appears to

And if the Magistrate's order was unprecedented, what followed was perhaps even more shocking. Apparently during a hearing before Judge Nachmanoff, in response to a question from the judge, Halligan admitted that she had never shown the second – and final – indictment to the full grand jury before the jury foreperson signed the charging document. Instead of presenting a new indictment to the grand jury after the grand jury rejected one of the three counts, Halligan simply brought an altered version, omitting the rejected count, to be signed, which was seen only by the foreperson and one other grand juror.

Later in the hearing, one of Halligan's subordinates, Tyler Lemons, acknowledged that someone in the Deputy Attorney General's office had instructed him not to discuss in open court whether his predecessors had -- or had not -- written a memorandum setting out their reasons for not bringing charges against Comey, because that was privileged information. Lemons then acknowledged that a draft of such a memorandum had in fact been written. See [New York Times](#), [POLITICO](#) and [CNN](#) coverage.

**Y1, Week Forty-Seven**, Judge Kollar-Kotelly [ruled](#) that the government illegally accessed electronic files obtained from Daniel Richman and [ordered](#) DoJ to return the evidence to Richman (12/12/25), save for one copy to be deposited under seal with the Court for future access pursuant to a lawful search warrant and judicial order. The ruling relates to electronic data obtained years earlier from Richman as part of an investigation into a leak to the media that ended with no charges being filed. DoJ had continued to hold onto the data and conducted searches of that data this fall, without a new warrant, as they prepared their case against Comey. DoJ prosecutors were also barred from accessing the evidence as part of their investigation of Comey.

Judge Kollar-Kotelly began her opinion as follows: “When the Government violates the Fourth Amendment’s prohibition on unreasonable searches and seizures by sweeping up a broad swath of a person’s electronic files, retaining those files long after the relevant investigation has ended, and later sifting through those files without a warrant to obtain evidence against someone else, what remedy is available to the victim of the Government’s unlawful intrusion?” The remedy is the subject of her order.

**Y1, Week Fifty-Two**, DoJ fires the No. 2 official in the EDVA U.S. Attorney's office after he reportedly declined to pick up the case against Comey. Career prosecutor Robert McBride was brought into the EDVA office to serve as first assistant to U.S. Attorney Lindsey Halligan and stepped up after Judge Currie [ruled](#) last November that Halligan was not legally entitled to run the office. See [MS Now](#) coverage.

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have told the grand jury they did not have to rely solely “on the record before them” but instead “could be assured the government had more evidence – perhaps better evidence – that would be presented at trial.” There are also questions about the presentations she made to the grand jury of a second, two-charge indictment after grand jurors rejected one count, with the Court noting that if the second indictment was never presented, the Court will be un “uncharted legal territory in that the indictment returned in open court was not the same charging document presented to and deliberated upon by the grand jury.”

## **Letitia James**

**Y1, Week Thirty-Nine**, Lindsey Halligan [filed](#) a second indictment in EDVA, this one against NY AG Letitia James, alleging one count of bank fraud and one count of making false statements to a financial institution in respect of a third property (10/9/25). As [explained](#) by the *New York Times*, the charges relate to a property the terms of the mortgage for which required the property to be used as a secondary home and not as an investment. Had the mortgage provided been for an investment property the accumulated interest over the life of the mortgage loan would have been \$18,933 (the alleged “ill-gotten gains”). According to interactive data provided by the United States Sentencing Commission (cited by the *New York Times*), 38 people were sentenced in 2024 for federal mortgage fraud convictions, and most of those cases involved dollar amounts in excess of \$550,000.

Most had expected claims involving a second property, which was the subject of a criminal referral from FHSA, the assumption being that even Halligan concluded it was not going to fly. Legal experts note there is no time period set out in the indictment, which generally is short of details. Halligan reportedly brought the case to the grand jury herself, and only her signature appears on the indictment. The case has been assigned to District Judge Jamar Walker; the initial court appearance is scheduled for October 24.

By Friday evening, it was widely reporting that neither the Attorney General nor the Deputy Attorney General were aware that a grand jury vote on the indictment would be held on Thursday. The Associate Attorney General overseeing the work of the U.S. Attorneys across the country also was surprised by the timing of the indictment.

Keep an eye out for a motion to dismiss on the basis of “vindictive” or “selective” prosecution, vindictive based on Trump’s statements and Social Media post or selective because there may well be Republicans with the same or similar issue.

**Y1, Week Forty**, James [filed](#) a notice of intent to file a motion on unlawful appointment of Halligan (10/23/25). In a footnote to the filing, the motion suggests that it be heard consolidated with the similar motion filed by Comey. James also [filed](#) a motion to enforce rules prohibiting extrajudicial disclosures and statements by the government concerning her case. This follows an exchange of a series of Signal messages between Halligan and a *Lawfare* journalist Anna Bower over a 33-hour period, which Halligan had initiated. *Lawfare* subsequently [published](#) the texts, noting that at no time had Halligan said she was not speaking “on the record.”

**Y1, Week Forty-Three**, separately, NY AG James has been seeking to block [DoJ criminal investigations](#) into two cases pursued by her office – the successful civil fraud case against Trump and his real estate operations accusing them of defrauding lender, and a case against the National Rifle Association, which led to a restructuring of the organization under court supervision. Recall that a New York state judge had imposed \$500 million in penalties plus interest based on a finding that the Trump Organization had misrepresented the value of its properties and assets for years to secure more favorable loan terms and insurance rates. In August, a state appeals court voided the

penalties but kept in place the finding of fraud. Munger, Tolles & Olsen is representing James in challenging the subpoenas.

Prosecutors had issued two subpoenas as part of these criminal investigations. Both subpoenas had been signed by John A. Sarcone III, an interim U.S. Attorney. James is seeking to quash both subpoenas on various grounds, including that Sarcone has been serving as interim U.S. Attorney illegally since his 120 days lapsed in August. James' filings were submitted in August, but on Friday, District Judge Lorna G. Schofield ordered that many of the legal filings related to the two cases be unsealed. While judges have ruled in the cases involving Alina Habba, Sigal Chattah and Bill Essayli that the same tactics used to keep Sarcone in place are unlawful, thus far no judge has agreed to dismiss the underlying indictments or void other investigations taken by these purported U.S. Attorneys. James urged Judge Schofield to be the first to quash an indictment.

**Y1, Week Forty-Three**, District Judge Cameron McGowan Currie (who sits in South Carolina, but was assigned the case to avoid potential conflicts of interest in Virginia of judges having to rule on the legality of a prosecutor who appears before them) indicated she would rule by Thanksgiving as to whether Halligan was legally in her post when she obtained indictments against Comey and James.

As a reminder, three U.S. attorneys have been deemed to have been serving illegally. As the *New York Times* notes, this case differs from the other three, first given the high-profile nature of the cases and the defendants, and second, none of the other U.S. Attorneys were as personally involved in the relevant cases – Halligan was the sole prosecutor to present evidence in both the Comey and James cases and the sole prosecutor to sign the indictments.

There is an interesting technical argument, namely whether each new appointment starts a new 120-day period (in effect creating an end-run around the Senate confirmation process under the Constitution and as provided for under the FVRA) by allowing a series of interims to serve unconfirmed for 120 days), or whether Halligan is subject to the 120-day period that began to run for her predecessor, who was forced out, Erik Siebert.

One more twist: the Attorney General [submitted](#) a sworn statement claiming she had retroactively appointed Halligan as of September 22 as a “Special Attorney” able to conduct cases, and that she was ratifying Halligan's actions based on her review of the grand jury proceedings. The ratification reportedly was met with some scepticism by the judge who noted to the prosecutor before her that she herself had requested a complete set of grand jury notes, and had only received a portion, with prosecutors blaming the gap on the transcription service. “She could not have done it,” was the response to Bondi's claim.

**Y1, Week Forty-Five**, Judge Currie [granted](#) NY AG James' motion to dismiss the indictments against her and [granted](#) Jim Comey's motion to dismiss the indictment against him, in each case on the ground that Halligan's appointment as interim U.S. Attorney violated 28 U.S. Code § 546 and the Appointments Clause and thus that the indictments were unlawful exercises of executive power (11/24/25). Moreover, the

Attorney General's attempts to ratify Halligan's actions were ineffective. The dismissals were without prejudice. The Court also ruled that the power to appoint an interim U.S. Attorney for EDVA pursuant to 28 U.S. Code § 546 during the current vacancy lies with the District Court until a U.S. Attorney is nominated by the President and confirmed by the Senate under 28 U.S. Code § 541.

In note 21 to the Comey order, the Court noted that generally the return of an indictment tolls the applicable statute of limitations, but where the indictment is invalid, it does not toll the statute of limitations. In other words, the lapse of the five-year statute of limitations on September 30 that caused a rush to indict means the case cannot be resuscitated. The Court also noted that the six-month grace period available under 18 U.S. Code § 3288 was unavailable to allow the attempted ratification because it only applies where an indictment has previously been dismissed and when the Attorney General attempted to ratify the indictment the indictment had not yet been dismissed.

Note that Judge Currie only had jurisdiction over the question of whether Halligan's appointment was or was not lawful, and had no jurisdiction over the motions to dismiss for selective or vindictive prosecution or the other defense available to Comey that are before Judge Nachmannoff.

See Jim Comey's [response](#) to the dismissal of the case against him.

This is unlikely the last word we will hear on either of these cases.

**Y1, Week Forty-Six** in another embarrassing setback for DoJ and less than two weeks after Judge Currie dismissed the initial mortgage fraud case against James on the ground that Halligan was not serving lawfully, a grand jury sitting in Norfolk, Virginia refused to re-indict James on mortgage fraud charges. Nothing prevents DoJ from trying again to re-indict her. See [Washington Post](#) coverage. Recall that when prosecutors present cases to grand juries, it is largely a one-sided affair; there is no presentation by the defense.

**Y1, Week Forty-Seven**, and DoJ tried again, and in what many legal analysts labelled unprecedented and a massive embarrassment for DoJ, a second grand jury, sitting in Alexandria, Virginia reportedly declined to re-indict. Both the Norfolk and Alexandria indictments reportedly were presented by a federal prosecutor from Missouri, Roger Keller. See [New York Times](#) coverage.

In a separate case, District Judge Leonie M. Brinkema expressed surprise that Halligan's name remained on court filings despite the ruling last month holding that her appointment was unlawful and asked a federal prosecutor to explain why.

Senate Democrats Kaine and Warner are likely to veto efforts via the blue slip process for the White House [nomination](#) of Halligan as U.S. Attorney for EDVA to advance in the Senate. Trump in a Trust Social post again [called](#) on Senate Republicans to terminate the blue slip process. See [Courthouse News Service](#) coverage.

**Y1, Week Fifty-One**, Judge Lorna Schofield [ruled](#) that John Sarcone was serving unlawfully, making him the fifth Trump-appointed U.S. Attorney to be so disqualified (01/08/25). Judge Schofield quashed the two grand jury subpoenas that he had issued



last summer directing Letitia James' office to provide information relating to the cases James brought against Trump and the NRA, writing "Any of his past or future acts taken in that capacity are void or voidable as they would rest on authority Mr. Sarcone does not lawfully have."

**Y2, Week One**, Lindsay Halligan is leaving her post as the top prosecutor in EDVA. The announcement by the Attorney General of her departure comes as District Judge David J. Novak, after noting that "this charade of Ms. Halligan masquerading as the United States Attorney for this District in direct defiance of binding court orders must come to an end," [issued](#) an order barring Halligan from representing herself as a U.S. Attorney in any pleading or otherwise before his court, until such time as she is Senate confirmed or is appointed by the court under 28 U.S. Code § 546(d), should either occur (01/20/26). Halligan was nominated by Trump for a second time on January 13, but the Senate has not moved forward with her nomination.

Should Halligan persist in ignoring Judge Currie's November order finding that she was serving unlawfully and this order, this order provides that she would be subject to disciplinary proceedings as would any other signatory to a pleading bearing her name. See [NBC News](#) coverage.

**Y2, Week Four**, the Northern District of New York Board of Judges appointed Donald T. Kinsella as the new U.S. Attorney for the Northern District of New York to replace John Sarcone (whose title on the office website is now First Assistant U.S. Attorney), and only hours later Kinsella was fired by the White House.

### ***John Bolton***

**Y1, Week Thirty-One**, FBI agents raided the home and office of John Bolton, a consistent critic of Trump after being fired in 2019 as National Security Adviser, pursuant to a court-issued warrant. It was [reported](#) that the raid was part of an investigation into the mishandling of classified information. FBI Director Patel posted the following that morning: "NO ONE is above the law... @FBI agents on mission." Attorney General Bondi shared his post, adding: "America's safety isn't negotiable. Justice will be pursued. Always."

**Y1, Week Thirty-Five**, the [affidavit](#) in support of the raid suggests that the FBI believes Bolton may have violated the Espionage Act by mishandling "national defense information." The affidavit interestingly redacts 10 pages related to the hack of his email account by a "foreign entity."

**Y1, Week Thirty-Nine**, John Bolton was [indicted](#) (10/16/25) for alleged transmission and retention of national defense information. The 18-count indictment alleges that Bolton sent more than 1,000 pages of "diary-like entries" to two people "related" to him while he was handling the nation's most sensitive military, intelligence and diplomatic matters, many of which contained information designated as classified up to "Top Secret/Sensitive Compartmented Information." Unlike the bare-bones indictments filed against Comey and against James, which Halligan alone signed, the Bolton indictment was signed by veteran national security prosecutor Thomas M. Sullivan on behalf of the interim U.S. Attorney for Maryland, Kelly O. Hayes, and by four other prosecutors.

Bolton pleaded not guilty and was released on his own recognizance.

### ***Concluding Thoughts on the Comey and James Indictments***

On Joyce Vance's October 10 [podcast](#) in conversation with former SDNY U.S. Attorney Preet Bharara, Bharara called the Comey indictment a "watershed moment." He makes the point that those who warned of the dangers of retribution were right and that those who dismissed Trump's pledge to exact retribution as idle threats should now understand how vulnerable they are, and in fact how vulnerable not an insignificant segment of society is. The latter group miss the point of what has happened when a President can simply DM a prosecutor and direct them to indict someone. It may not happen to them, though it could, and it could also happen to their company, to their senior management, to their directors, to their school, to their hospital ... the list is endless, as no one is immune. And in conclusion. Bharara asked somewhat rhetorically, what happens when Trump runs out of Democrats to go after?

Perhaps we are seeing the beginning of a crack in the wall of silence among Republicans lawmakers and other officials. Recall the Oklahoma governor has spoken out on the deployment of third-state National Guard to Blue states. Nebraska House Republican Don Bacon (who is not running for re-election) [told](#) CNN's Pamela Brown, in response to a question about the Comey and James indictments,

"Well, I think it was a mistake. As I already mentioned, him putting out these demands for indictments, I don't think it's right. I think it's -- again, it's unseemly that presidents don't normally do this. And, to me, it just -- I think it's foolish. He's hurting his own case by making these demands. Because I guarantee you, Director Comey and James here are going to use -- are going to use his words against him in as part of their defense during these cases."

See also [The Hill](#) coverage.

### ***Indictments of Others – Who May Be Next?***

**Y1, Week Thirty-Eight**, a bizarre Truth Social [post](#) by Trump claiming that 274 FBI agents were secretly placed in the crowd on the Capitol on January 6<sup>th</sup> prior to and during what he labelled the "January 6<sup>th</sup> Hoax" calls out another former FBI Director, Christopher Wray. Trump later accused Wray of "inappropriate" behavior.

The allegation about the 274 agents prompted Kash Patel [to contradict](#) his boss, indirectly, in comments made to Fox Digital News, saying the agents were "sent in *after* the riot had begun to try to control the unruly crowd." Patel then went on to criticize Wray and made no mention of the Trump post -- "That is not the proper role of FBI agents, and Wray was not forthcoming about what happened when he testified numerous times on Capitol Hill. This was the failure of a corrupt leadership that lied to Congress and to the American people about what really happened."

An FBI IG report, issued in December 2024, [confirms](#) that FBI agents were deployed to assist the U.S. Capitol Police and to respond to reports of pipe bombs placed outside the DNC and RNC headquarters. The IG report did find that 26 confidential informants were among the crowd on the Capitol, but nearly all had not told the FBI of their plans to attend and none were instructed to violate the law or participate in the

insurrection. The IG report found “no evidence” that the FBI had “undercover employees in the various protest crowds, or at the Capitol, on January 6.”

**Y1, Week Forty-Two**, MSNBC [reports](#) that DoJ is preparing to issue a series of grand jury subpoenas as part of an investigation into former CIA Director John Brennan and reviews by CIA and FBI into Russian interference in the 2016 election. Recall that the Durham investigation [had found no](#) evidence of criminal wrongdoing by Brennan or anyone else connected with the Russian investigation.

### **Interagency Weaponization Working Group**

**Y1, Week Forty**, a letter written by Steady State, a group of over 340 former national security officials, called out the activities of the Interagency Weaponization Working Group (IWWG), reportedly (based on [Reuters](#) reporting) composed of 40 officials from across the federal government and apparently tasked with pursuing retribution against individuals perceived as political opponents of the President. The IWWG participants include representatives from, among other agencies, ODNI, DoJ, CIA, DoD, DHS, FBI and IRS. The targets presumably were associated with the January 6<sup>th</sup> or classified documents cases or the Russia investigation. *See also* “[Trump Names More Foes He Wants Prosecuted as Bondi and Patel Look On.](#)”

**Y1, Week Forty-Two**, Talking Points Memo [asks](#) whether federal grand juries are being empanelled in Florida as part of a broader investigation into whether Democrats in the Biden and Obama administrations conspired to violate Trumps’ rights. Bloomberg uncovered an [order](#) empanelling two grand juries in January.

### **Journalists**

**Y1, Week Twenty-Three**, Alistair Kitchens, an Australian who had reported on Columbia University protests on a Substack blog, was stopped on an incoming flight from Melbourne to LAX, interrogated, refused entry and deported. He [chronicled](#) his ordeal, including the admission by the lead CBP officer that it was due to what he “wrote online about the protests at Columbia University,” in The New Yorker. He notes incidentally that the posts had been taken down before he left Australia. *See* [Substack](#) coverage.

I cite these as there are increasing concerns among non-Americans about travel to the United States, which has the potential to impact both business and leisure travel. *See* [Foreign Tourism Takes a Hit](#), below.

**Y1, Week Twenty-Four**, independent digital journalist Mario Guevara was released from ICE detention following an [outcry](#) from freedom of the press and civil rights groups, including the Committee to Protect Journalists. Guevara was arrested while covering immigration protests in Atlanta. He had been held for two weeks. He [reportedly](#) has authorization to live and work in the United States, and is in the process of applying for his green card. Guevara left El Salvador with his family in 2004, saying he was beaten and repeatedly harassed because of his political reporting for the newspaper La Prensa Grafica. The family immigrated to Georgia, where Guevara worked as a reporter for Mundo Hispanico, Georgia’s largest Spanish-language newspaper, until launching his own online news site, MGNews.

DeKalb reportedly dropped the charges against Guevara. Apparently, he is [back](#) in ICE custody.

**Y1, Week Thirty-Eight**, Guevara was [deported](#) back to El Salvador. The Committee to Protect Journalists [issued](#) a statement quoting one of its Program Coordinators, “Make no mistake, this is not a simple immigration case as authorities would have the public believe. Guevara was first detained in retaliation for his reporting and throughout his prolonged detention the government argued that he was being held because his livestreaming activity posed a danger to law enforcement activity. It is shameful that the U.S. government is deporting Guevara, the first time that CPJ has documented this type of retaliation related to reporting activity.”

**Y1, Week Forty-One**, Sami Hamdi, a British journalist, media commentator and critic of Israel, was detained by ICE at San Francisco International Airport while on a speaking tour. His visa reportedly was revoked and so he faces deportation. Media [reports](#) that Laura Loomer had written a series of posts accusing Hamdi of supporting terrorist organizations. Counsel for Hamid has [filed](#) a petition for a writ of habeas corpus (10/27/25).

**Y1, Week Fifty-Two**, the home of Washington Post reporter Hannah Natanson was searched by the FBI, which seized her phone, a personal and a work computer, a voice recorder, a hard drive and a Garmin running watch. In December, Natanson [had documented](#) the purge of hundreds of thousands of federal workers.

The search reportedly is part of an investigation into a government contractor accused of illegally retaining classified government materials. The Washington Post also received a subpoena seeking communications between the contractor and other employees. In an email to the newsroom, Washington Post Executive Editor Matt Murray called the search an “extraordinary, aggressive action” that is “deeply concerning and raises profound questions and concern around the constitutional protections for our work.”

The Washington Post was advised that Natanson is not the focus of the investigation. [Reportedly](#), the government contractor was messaging Natanson at the time of his arrest and that the contractor has been charged with retaining classified materials but has not been charged with leaking material to the media. Although concerns have been raised about potential exposure of journalists under the Espionage Act (which makes it a crime to “gather, transmit or communicate without authorization “national defense information”), there is no law that expressly makes it a crime for a journalist to obtain classified information. (Julian Assange was charged under the Espionage Act, but he and the government [reached](#) a deal in 2024 in which he pleaded to one count of violating the Espionage Act.)

First Amendment advocacy groups noted that the search of Natanson’s home marked the first time a journalist’s home had been raided as part of a national security lead investigation.

**Y2, Week One**, the Washington Post and Natanson [filed](#) with a District Court (EDVA) a request for the return of all seized materials and an order directing the government to maintain, but not review, the preservation copies of those materials under seal

(01/21/26). District Judge William B. Porter [granted](#) the requested order (01/21/26). The Washington Post is represented by Williams & Connolly and Natanson is represented by Hecker Fink.

**Y2, Week Three**, DoJ prosecutors apparently failed to tell a magistrate judge when applying for the warrant to search Natanson’s home about a 1980 law ([the Privacy Protection Act](#)) that provides that it shall be unlawful” for investigators to search for or seize journalistic work product belonging to a reporter unless the reporter itself is suspected of committing certain crimes related to those materials. The unsealed affidavit in support of an application for the search warrant is available [here](#).

As the New York Times noted, the remedy for violations of the Privacy Protection Act is monetary damages, not suppression of evidence. However, Rule 41 of the Federal Rules of Criminal Procedure [allows](#) those “aggrieved by unlawful” searches make a motion for the return of their property. The Washington Post cited Rule 41 in their [motion](#) for the return of Natanson’s property that is unrelated to the investigation into the contractor.

### **Don Lemon**

**Y2, Week One**, a federal magistrate judge, Douglas Micko, [rejected](#) an attempt by DoJ to bring criminal charges against former CNN and now independent journalist Don Lemon for appearing next to protesters as they entered a church in St. Paul, interrupting a service. (Prosecutors appear before magistrate judges for a determination as to probable cause to bring criminal charges, after which a grand jury will determine whether to indict.) The magistrate judge allowed charges to go forward with respect to three protestors, but not in respect of Lemon or another journalist independent Minnesota journalist Georgia Fort.

Apparently, protestors in the video claimed that a pastor at the church appeared to be an ICE official. A person with the same name as the pastor is [listed](#) as a defendant in a federal complaint brought against DHS and ICE, among others, to halt allegedly unlawful policies and practices. Three protestors [reportedly](#) have since been arrested and charged with violating the FACE Act, which makes it a crime “to use force, threats, or physical obstruction to injure, intimidate, or interfere with a person who is exercising their First Amendment right of religious freedom at a place of worship.”

In a video of the episode that he posted on YouTube, Lemon says “I’m just here photographing, I’m not part of the group... I’m a journalist.”

Lemon is represented by Abbe Lowell, how said, “The magistrate’s reported actions confirm the nature of Don’s first amendment protected work this weekend in Minnesota as a reporter. It was no different than what he has done for more than 30 years, reporting and covering newsworthy events on the ground and engaging in constitutionally protected activity as a journalist.”

**Y2, Week Two**, the New York Times reports that DoJ withdrew its request for the chief federal judge in Minnesota (Judge Schiltz) to issue arrest warrants for Lemon and four other people after the hearing was postponed for security reasons due to the visit of the Vice President to Minneapolis and the judge declined to act on an urgent basis as requested by the government. (Apparently, minutes after magistrate judge

Micko’s ruling, prosecutors reached out to Judge Schiltz who was at home caring for his adult disabled son.)

The judge, in a [letter](#) to the chief judge of the Eighth Circuit, described the request of second guessing a magistrate judge as being “unheard of” in his District and in fact in the entire Eighth Circuit. The government, he noted, cited “national security” concerns fearing “copycat invasions of churches and synagogues.” Judge Schiltz then sent a [second communication](#) to the chief judge noting that his checking with fellow chief judges in the Circuit confirmed the DoJ request was “unheard of,” that there was no evidence the two journalists had engaged, or conspired to engage, in any criminal conduct, and that DoJ’s arguments about urgency “make no sense.”

Instead of waiting for Judge Schiltz, prosecutors directly petitioned the Eighth Circuit (which sits above Judge Schiltz District Court) seeking an order directing a judge in the lower court to sign the complaint and immediately issue arrest warrants for the five remaining suspects. A three-judge panel of the Eighth Circuit [declined](#) to do so. *See [New York Times](#) coverage and [POLITICO](#) coverage.* And, then on Thursday, Lemon, [Fort](#) and three others were arrested. The arrests were made on the basis of grand jury indictments.

Following a hearing in Los Angeles, Lemon was released without bond by order of District Judge Patricia Donahue. Fort was also [released](#). Abbe Lowell [released](#) a statement on Lemon’s behalf: “The unprecedented attack on the First Amendment and transparent attempt to distract attention from the many crises facing this administration will not stand. Don will fight these charges vigorously and thoroughly in court.”

Incidentally, it is hard to avoid the conclusion that “racialization” of this assault on freedom of the press played a part.

**Y2, Week Four**, Lemon has now entered his plea of not guilty. During the hearing, his counsel, Abbe Lowell, indicated that he intends to file a motion seeking access to the grand hurry materials and a motion to declare the indictment unconstitutional. Lemon has hired as co-counsel Joseph H. Thompson, a former federal prosecutor in Minnesota who was one of the six DoJ prosecutors who resigned over the handling of the investigation into the killing of Renee Good. *See [CNN](#) coverage.*

### **Masked Agents**

**Y1, Week Twenty-Two**, CNN captured the moment: “It has become the new calling card of the Trump administration’s immigration crackdown: Federal officers, often masked and not wearing uniforms or displaying badges, arresting people outside courtroom hearings, during traffic stops and in workplace sweeps.”

In his op-ed (“[Parsing ICE’s mixed-up, hard-to-believe assault claims](#)”), Philip Bump raised the use of face masks by ICE agents and questions ICE’s justifications. Bump first highlighted the issue of the masks and the likelihood that civilians impersonating ICE agents might also be operating in his column “[Is that guy with a gun an ICE agent - or just a guy with a gun?](#)” Bump posits that the use of the masks could be to obscure who in fact picked up students and others off of American streets for deportation. Bump actually describes two worrying trends – the use of masks and charges for



“assaulting” federal agents when video clips tend to belie that the likes of [Lander](#), [Baraka](#) and [McIver](#) assaulted anyone.

ICE justifies the use of masks as a response to an increase in attacks against its officers. ICE cited a figure of a [413% increase](#) in assaults, but as Bump points out a percentage increase is meaningless when you do not know the baseline. Bump concludes,

“[W]e should not and cannot take ICE’s representations about the need for its officers to obscure their identities at face value. That the organization would not provide evidence for its claims, that it has been eager to level dubious charges against Democratic legislators and that it conflates assaults of officers engaged in official acts with putative threats to them personally all diminishes the extent to which we should grant ICE the benefit of the doubt.”

The New York City Bar Association issued a [Statement on Wearing of Masks by ICE Agents](#) in which it did not mince words:

“In this light, the decision to begin concealing the faces of law enforcement agents who are carrying out arrests and detentions appears to be an effort to evade accountability, and to decrease transparency in response to increasing allegations of government overreach, abuse of power, and violations of constitutional rights. The use of masks is one among a panoply of legal issues presented by the administration’s recent actions against immigrants and visitors (and some citizens) but a significant one that can – and should – be immediately addressed and remedied.

The right to challenge the government’s and its agents’ potentially unlawful acts is fundamental to our democratic system of government. This mask policy invites further rule of law erosion and compromises the courts’ ability to act as a check on the federal government by evaluating possible constitutional and statutory rights violations associated with ICE’s nationwide detention campaign. It poses a severe risk to a detained person’s rights and safety, and to the public at large. Weighed against these concerns, the administration cannot justify concealing its officers’ identity while they are rightfully subject to legal and public scrutiny. The New York City Bar Association urges ICE to terminate this practice immediately and ensure the transparency and accountability for its agents’ actions that our laws and our democracy require.”

Incidentally, as of the [end of April](#), ICE had arrested 66,463 illegal aliens and removed 65,682 aliens. CNN [reported](#) that, in spite of descriptions by senior Trump officials of captures of migrants convicted of murder, assault and rape who “[reigned terror](#)” on American communities, internal government data obtained by CNN shows that only a fraction of the migrants taken into custody had convictions for serious violent or sexual crimes.

**Y1, Week Thirty-Five**, the California legislature passed [SB-627](#), which bans the use of masks by law enforcement officers operating in California, with a few exceptions. The Governor has not yet indicated whether or not he intends to sign the bill, and has until October 12 to decide. In the bill becomes law, any law enforcement agency operating in California, including ICE, would need to implement (and publicly post) a mask policy consistent with the legislation by July 1, 2026. Similar legislation is being introduced in other states - including

- [New York](#),
- [Illinois](#),

- [Massachusetts](#),
- [Pennsylvania](#) and
- [Michigan](#).

## **Maryland Position on Habeas Corpus**

**Y1, Week Twenty-Three**, in a highly unusual move, the Trump administration has [sued](#) all of the federal lower court judges sitting in Maryland over a [standing order](#)<sup>16</sup> issued in May that prevents the government from deporting any detainee who has filed a petition for a writ of habeas corpus in a federal court sitting in Maryland for a period of two business days after the filing. The complaint sites “egregious judicial overreach.” The lawsuit comes at a time when the administration is quick to criticize judges in public and has taken actions that violate court orders. Note that it is a federal judge sitting in Maryland that presided over the removal of Abrego Garcia, who by the administration’s own acknowledgement was wrongfully deported.

**Y1, Week Twenty-Eight**, Lawyers Defending American Democracy, Lawyers Society for the Rule of Law Institute and Judge J. Michael Luttig [filed](#) an *amicus* brief arguing that the lawsuit is, in effect, an effort to penalize an entire federal court jurisdiction for rulings the President does not like. The brief asserts that the administration is attempting to interfere with a federal court’s inherent authority to manage its own docket and exercise its constitutional authority, and emphasizes that the administration’s action threatens the separation of powers and the rule of law by depriving noncitizen detainees the right of access to the courts and deprives the court of its constitutional authority to adjudicate cases.

**Y1, Week Thirty-Two**, District Judge Thomas T. Cullen [threw out](#) the case brought against the Maryland bench, writing “[a]ny fair reading of the legal authorities cited by Defendants leads to the ineluctable conclusion that this court has no alternative but to dismiss (08/26/25). To hold otherwise would run counter to overwhelming precedent, depart from longstanding constitutional tradition, and offend the rule of law.” Among other grounds, the court noted that the government had failed to identify a cause of action that would permit it “to entertain a lawsuit between two coordinate branches of government, and this court will not be the first to create one.”

The court took judicial notice of the confrontational tactic of the government of suing the entire Maryland bench, noting in a footnote: “Indeed, over the past several months, principal officers of the Executive (and their spokespersons) have described federal district judges across the country as “left-wing,” “liberal,” “activists,” “radical,” “politically minded,” “rogue,” “unhinged,” “outrageous, overzealous, [and] unconstitutional,” “[c]rooked,” and worse. Although some tension between the coordinate branches of government is a hallmark of our constitutional system, this

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<sup>16</sup> The standing order provides that once a habeas petition is filed, the detainee may not be removed until at least 4 p.m. on the second business day after the petition is filed. See [Law.com](#) coverage.

concerted effort by the Executive to smear and impugn individual judges who rule against it is both unprecedented and unfortunate.”

**Y2, Week Four**, an analysis undertaken by *ProPublica* [found](#) that in the first 13 months of the Trump administration, more *habeas* petitions have been filed (more than 18,000 – on average more than 200 per day over the past six weeks) than under Obama, Biden and the first Trump administration. California and Texas account for 40% of new cases. See [ProPublica](#) tracker of *habeas* cases. An analysis by POLITICO found that over 300 federal judges have ruled against the administration’s detention operations.

### **“Dear Pam”**

**Y1, Week Thirty-Seven**, I mentioned this briefly above in reporting on the departure of U.S. Attorney Erik Siebert, but it merits more detail. In a Saturday night [rant](#) on Truth Social, presumably sent by accident, Trump again said the quiet part out loud. The President of the United States is demanding this his Attorney General prosecute several of his political opponents, blatantly overriding norms on a president’s involvement, let alone direction, in law enforcement investigations, whether or not there is any basis for them, that date back to the post-Watergate era.

Joyce Vance in her Saturday Substack (“[Show me the man and I’ll find the crime](#)”) reminds us of the [origins](#) of that comment. It is attributed to Stalin’s ruthless and longest serving head of the secret police, Lavrentiy Beria, who boasted that he could prove criminal conduct of any person, even if they were innocent. As Vance notes, this describes the standard m.o. of an authoritarian regime – targeting political enemies regardless of innocence or guilt, intended to quash opposition.

Secretary Hillary Clinton [exclaimed](#), “Imagine if Richard Nixon had just tweeted out the Watergate scandal rather than putting it on secret tapes.” Gregg Nunziatta, Executive Director of the conservative-leaning Society for the Rule of Law [warned](#) “Never in our history, not even during Watergate, has a single news cycle so comprehensibly established the deep corruption and politicization of the Department of Justice.” *POLITICO* [reminds](#) us that Attorney General Alberto Gonzales resigned after DoJ fired nine U.S. Attorneys for what appeared to be political reasons.

*New York Times* journalists Alan Feuer, Glenn Thrush, Maggie Haberman and Devlin Barrett in their Sunday reporting (“[Trump Demands That Bondi Move ‘Now’ to Prosecute Foes](#)”) note that Saturday’s “demand for the prosecution of his foes also underscores how his desire for retribution against those who pursued him after his first term remains as intense as ever, and how he appears to feel less constrained by political and legal norms in imposing payback.” The failure of the reported efforts by the Attorney General and her deputy to keep Siebert in place (to which Trump reportedly said “I don’t care”) in favor of advice from officials with little or no experience as prosecutors (Ed Martin, the head of DoJ’s weaponization working group, and William Pulte, the director of the Federal Housing Finance Agency (FHSA)) shows how far the institutions have fallen.

Just to put things into perspective, recall the GOP outcry when then former President Bill Clinton met with Attorney General Loretta Lynch for under a half hour while they both were at Tucson airport.

### **Quick Reaction Force**

**Y1, Week Forty-One**, buried in one of the EOs issued as part of the National Guard deployment in D.C. was a reference to a [quick reaction force](#). The *Guardian* and the *Washington Post* are now reporting that DoD has orders relating to a “quick reaction force” and a separate National Guard Reaction Force. The former, to a number around 200, reportedly is supposed to be trained, equipped with riot-control equipment and ready of deployment by January 1, 2026. The latter, reportedly based on a memorandum reportedly signed by the director of operations for the National Guard Bureau, Maj. Gen. Ronald Burkett is expected to be operational by April 1, and will number 23,000 National Guard from all 50 states and three territories, excluding D.C. D.C. apparently is to have a “specialized military police battalion” of 50 within the D.C. Guard “dedicated to ensuring safety and public order in the Nation’s capital as the circumstances may necessitate.”

### **Raids – We Should Not be Looking Away**

It is happening all over – people being stopped in clear violation of 4<sup>th</sup> Amendment protections. And, yes, those 4<sup>th</sup> Amendment protections are qualified at airports and borders, but violations are happening across the country.

**Y1, Week Thirty-Eight**, as widely reported (*see, e.g.,* Cindy Hernandez’s Chicago Sun-Times [reporting](#)), DHS said federal agents with Border Patrol, the FBI and BATF arrested 37 people in the raid. DHS said some of those arrested “are believed to be involved in drug trafficking and distribution, weapons crimes and immigration violators.” DHS also claimed the neighborhood was “a location known to be frequented by TdA members and their associates,” but gave no evidence to support the assertion, and authorities did not confirm that any of the people arrested were members of TdA. These agents “busted down their doors overnight, pulling men, women and children from their apartments, some of them naked . . . . Agents approached or entered nearly every apartment in the five-story building, and U.S. citizens were among those detained for hours.” Many residents reportedly returned to find their apartments trashed. See Amnesty International’s press release (“[Pre-Dawn ICE Raid in Chicago Is Attack on Human Rights, Spreads Fear and Intimidation](#)”).

A similar [raid](#) occurred in suburban Elgin, when agents led by DHS Secretary Noem rode in a military vehicle and blew down the front door of a home where they detained six people, including two U.S. citizens. Neighbors said federal agents used flashbang grenades to burst through the building and several drones and helicopters were deployed.

**Y1, Week Thirty-Eight**, Joyce Vance, after chronicling not only the Chicago pre-dawn raid but other raids where children were targeted (“[Are We the Nazis Now?](#)”), posted below a photo of a six-year old girl with her hands cuffed behind her back, a

quote from Anne Frank, *The Diary of a Young Girl*. Here is slightly longer version of that quote:

“Terrible things are happening outside. At any time of night and day, poor helpless people are being dragged out of their homes. They’re allowed to take only a knapsack and a little cash with them, and even then, they’re robbed of these possessions on the way. Families are torn apart; men, women and children are separated. Children come home from school to find that their parents have disappeared. Women return from shopping to find their houses sealed, their families gone.”

Meanwhile, Speaker Johnson, in an interview with Fox News, called the No Kings protest scheduled for October 18 as a “hate America rally” that would attract “the pro-Hamas wing” and “the antifa people.” See [The Bulwark](#) coverage.

**Y1, Week Thirty-Eight**, Nicole Foy, writing for ProPublica (“[We Found That More Than 170 U.S. Citizens Have Been Held by Immigration Agents. They’ve Been Kicked, Dragged and Detained for Days](#)”), recounts the results of their investigation of detentions of U.S. citizens – the results are shameful. The title of her article captures the gist. In contrast to the world in which Justice Kavanaugh [thinks](#) we all live in (“If the officers learn that the individual they stopped is a U.S. citizen or otherwise lawfully in the United States, they promptly let the individual go”), Foy reported:

“... that is far from the reality many citizens have experienced. Americans have been [dragged](#), [tackled](#), [beaten](#), [tased](#) and [shot](#) by immigration agents. They’ve had their [necks kneeled on](#). They’ve been held outside [in the rain while in their underwear](#). At least three [citizens](#) were [pregnant](#) when [agents detained them](#). One of those women had already had the [door of her home blown off](#) while Department of Homeland Security Secretary Kristi Noem [watched](#). About two dozen Americans have said they were held for [more than a day](#) without being able to phone lawyers or loved ones.”

**Y1, Week Thirty-Eight**, the Chicago Headline Club, Block Club Chicago, Chicago Newspaper Guild Local 34071, NABET-CWA Local 54041, Illinois Press Association and various individual plaintiffs [sued](#) for injunctive and declaratory relief in respect of excessive and retaliatory force by federal agents in Chicago (10/06/25). Federal Judge Sara Ellis [issued](#) a temporary restraining order (10/09/25) that covered a range of challenged conduct, including:

- arresting journalists;
- issuing of crowd dispersal orders unless justified by exigent circumstances;
- using riot control weapons on members of the press, protesters, or religious practitioners who are not posing an immediate threat to the safety of a law enforcement officer or others;
- firing of tear gas or compressed air launchers, except in circumstances where deadly force would be authorized;
- using force against an individual who poses no immediate threat of physical harm to others, unless necessary and proportional to effectuate an apprehension and arrest; using any riot control weapon without giving at least two separate warnings when feasible at a sound level where the targeted individual(s) can reasonably hear it; and

- seizing or arresting any non-violent protester who is not resisting a lawful crowd dispersal order, unless there is specific probable cause to believe that the individual has committed a crime for which a custodial arrest is warranted and for which the law enforcement officer has lawful authority to make an arrest

Federal agents were order to have visible identification.

The number of arrests as part of Operation Midway Blitz exceeds 1,800; complaints of excessive force abound.

Following allegations that Border Patrol agents were baseless deploying tear gas after Judge Ellis ordered them not to, the Judge [extended](#) the temporary restraining order, specifically ordered conspicuous identifiers on uniforms and ordered that Border Patrol agents wear body cameras (10/28/25). She also ordered use of force reports and corresponding videos, and that Border Patrol Commander Gregory Bovino appear each day at the end of the day to report on use of force activities. She ordered the defendants to provide names, dates of arrest or detention, charges or citations, and resolution of arrest or detentions between September 2 and October 29 not directly related to immigration enforcement. See [Capitol News Illinois](#) coverage.

On Wednesday, the Seventh Circuit issued an order temporarily blocking the requirement that Bovino continue to appear in person in court. He did [appear](#) in court on Tuesday to explain a video showing him throwing tear gas. See [Capitol News Illinois](#) coverage. Judge Ellis told Bovino, during the hearing “Kids dressed in Halloween costumes walking to a parade do not pose an immediate threat to the safety of a law enforcement officer. They just don’t. And you can’t use riot-control weapons against them.” Judge Ellis was referring to incidents over the weekend, when masked federal agents [used](#) chemical irritants against Chicago residents for the fourth day, according to witnesses and rapid response teams. One incident occurred before dozens of costumed kids [planned to march down the street in a Halloween parade](#).

The Seventh Circuit order did not cover any of the other requirements set out in Judge Ellis’ order.

Democratic congressional candidate Kat Abughazaleh and five others were indicted for conspiring to impede a federal agent’s vehicle outside an ICE facility in suburban Chicago on September 26. See [PBS News](#) coverage.

**Y1, Week Forty-Two**, Judge Ellis [issued](#) a preliminary injunction in respect of the matters covered by her temporary restraining order, in effect extending that order after hearings on the underlying facts (11/06/25). She reportedly characterized the evidence provided by the administration as “simply not credible.” She characterized the tactics used by ICE as “shock[ing] the conscience.”<sup>17</sup> She also said that videos and photographs introduced by both plaintiffs and the administration showed the

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<sup>17</sup> The phrase “shocks the conscience” first entered constitutional jurisprudence in the 1952 Supreme Court decision in [Rochin v. California](#). The Court held that conduct by state agents, though not specifically prohibited by the Constitution, nonetheless could violate due process of law if it “shocks the conscience” in that offends “those canons of decency and fairness which express the notion of justice of English-speaking peoples.”



government violating the limits set by her initial temporary restraining orders, deploying tear gas, flash-bangs and pepper balls with “no warning whatsoever.” She also noted that Bovino himself has deployed tear gas without warning and lied about the circumstances that led to his actions. She said in Brighton Park on Oct. 4, video shows that “Defendant Bovino obviously attacks and tackles” a person to the ground, despite saying he never used force against that person. See [CBS News](#) and [ABC News](#) coverage.

### **Supporting Transnational Repression**

**Y1, Week Thirty-Eight**, Nate Schenkkan, writing in Foreign Policy (“[Trump Is Supporting Transnational Repression](#)”) reports that Russian and Iranian asylum seekers are being deported back to their countries of origin, who may be imprisoned upon arrival because of their involvement in opposition campaigning. America, Schenkkan warns, has shifted from being against transitional repression to being “an eager collaborator” “proactively embrac[ing] the return of dissidents as a matter of policy.”

Not only is this a major policy reversal (Schenkkan cites bipartisan support under the Biden administration for a “whole-of-government policy push” to combat transnational repression as a matter of both foreign policy and domestic policy. Moreover, the participation of the United States in transnational repression breaches domestic and international law, which prohibits the return of someone to a country where they are likely to face torture or other ill treatment (a concept known as “refoulement”). Refoulement is expressly prohibited under domestic law by virtue of the U.S. accession to [UNCAT](#), which was signed and ratified in 1990.

### **Fatalities/Injuries at the Hands of ICE Agents**

#### ***Minneapolis***

**Y1, Week Fifty-One**, on Wednesday, the surge turned deadly as ICE agents drove down a street in suburban Minneapolis. A video of the incident shows several masked officers approaching Renee Nicole Good in her maroon SUV. According to eyewitnesses, two agents were yelling at her simultaneously and at cross purposes to turn around, back up, stop, and get out of the car. She rolled down her window to hear and speak with them.

One ICE agent can be heard telling her to “get out of the fucking car”. She reversed, and tried to drive away when one of the agents, standing at the SUV’s front-left corner, fired two shots. The car accelerated and then smashed into parked vehicles. Renee Good was dead. A doctor on the scene apparently was prevented for attending to her, and it took an ambulance team 15 minutes to reach the scene as it was blocked by ICE vehicles. Paramedics approached on foot.

Let’s be clear: there was no legal justification for detaining Renee Good or even ordering her out of her car, much less shooting her as she tried to drive away. This was state-sanctioned murder.

There is tension between state and federal authorities regarding the investigation into the killing. Initially, the Minnesota Bureau of Criminal Apprehension’s (BCA) Force

Investigations Unit [was to participate](#) in the investigation alongside the FBI, but was then advised by the FBI that the U.S. Attorney's Office had reversed course: the investigation would be led solely by the FBI, and the BCA would no longer have access to the case materials, scene evidence or investigative interviews necessary for it to complete a thorough and independent state investigation. Gov. Walz has said he had ordered the Minnesota National Guard to be "staged and ready" to assist with protecting infrastructure and aiding local law enforcement, if needed.

Homeland Security Secretary Noem told reporters that Minnesota does not have jurisdiction over the investigation, while portraying Renee Good as a "domestic terrorist" and claiming that the ICE agent who shot Good was acting in line with established protocols. Court records show that the agent previously was injured during an arrest in June in which he was dragged by a vehicle for 100 yards.

Trump accused Renee Good of running over the ICE agent, but when three New York Times reporters who were in the Oval Office for an interview and Trump [viewed](#) a slow-motion video of the shooting and the reporters pointed out that it did not appear to show that, Trump replied, "it's a terrible scene. I hate to see it." He did not dial back – "I watched the one woman screaming, the one woman in the car before she got shot I heard was unbelievably bad, badly behaved. You're supposed to listen to law enforcement."

Vance [called](#) Renee Good's death "a tragedy of her own making," [adding](#) in a separate post on X: "I want every ICE officer to know that their president, vice president, and the entire administration stands behind them." The next day, Vance [posted](#) that Democratic politicians "should be asked a simple question: Do you think this officer was wrong in defending his life against a deranged leftist who tried to run him over?" In yet another post, [he wrote](#) that the agent "was doing his job" and that responsibility falls on Good "and all of the radicals who teach people that immigration is the one type of law that rioters are allowed to interfere with."

Right-wing commentators weighed in, calling for Democratic leaders to be [removed](#) from office or [arrested](#), or accusing Democrats of [aiding](#) "domestic terrorism" (Stephen Miller) or [sedition](#). Democrat in Congress labelled the shooting murder (available [here](#) and [here](#)).

After the FBI rescinded its agreement to cooperate with state officials, the Hennepin County Attorney, Mary Moriarty, said Minneapolis officials would launch an independent investigation into the killing.

Heather Cox Richardson, writing the following day, [makes an interesting](#) observation about the potential power of the narrative around this shooting. Renee Good, she notes, fits squarely in the Trump base, she was a white, suburban mother, whose ex-husband told reporters she was a Christian stay-at-home mom. And, she is an American citizen. And, so, "there is no hiding the murder of Renee Good, captured on video by several witnesses as it was. The Trump administration is working desperately to smear Good and to convince the public that, contrary to widespread video evidence, the federal agent put in place by the Trump regime shot her in self-defense.

### *The Investigations*

Carol Leonnig and Ken Dilanian [report](#) that at least six senior attorneys in the Criminal Section of the Civil Rights Division have quit in frustration after the Assistant Attorney General for Civil Rights Harmeet Dhillon decided that DoJ would not conduct a separate investigation into the ICE agent's killing of Renee Good (though there may be other issues that prompted the departures as well). The criminal section [would normally investigate](#) any fatal shooting by a law enforcement officer and has long specialized in investigating potential or alleged abuse or improper use of force by law enforcement officers. Dhillon's decision was first [reported](#) last Friday by CBS News. Deputy Attorney General Todd Blanche also released a statement stating that "there is currently no basis for a criminal civil rights investigation" into the killing.

The six who quit, who include the section's chief (Jim Felte), the principal deputy chief, the deputy chief (Paige Fitzgerald) and the acting deputy chief, represent the largest mass resignation at DoJ since February, when five prosecutors in the Public Integrity Section [resigned](#) over the dismissal of the bribery charges against Eric Adams.

The FBI's investigation continues, though it [appears](#) to be focused as much on Renee Good's purported activism as on the agent who shot her to death.

The following day six prosecutors from the U.S. Attorney's office in Minneapolis, including the No. 2 in the office (Joseph H. Thompson) who has been [leading](#) the social services fraud investigation,<sup>18</sup> reportedly quit following demands by DoJ officials that the widow of Renee Good, Becca Good, be investigated. The prosecutors reportedly were also dismayed that state and local law authorities had been excluded from the investigation into the killing and DoJ's reluctance to investigate the ICE agent who shot Good. See [Washington Post](#) coverage. The New York Times named the other departing prosecutors as Harry Jacobs, Melinda Williams and Thomas Calhoun-Lopez. Jacobs had been Thompson's deputy overseeing the fraud investigation, which began in 2022. Calhoun-Lopez headed the violent and major crimes unit.

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<sup>18</sup> The fraud investigation relates to plots to bill state agencies for safety net services (including to feed children during the pandemic, to aid people at risk of becoming homeless and to treat children with autism) that were never provided. The federal investigation began in 2021 and 70 were charged by the Biden DOJ. Since then, more defendants have been added, bringing the total charged to 98, and at least 60 have been convicted, [according](#) to the Attorney General. In mid-December, it was broadened significantly to cover 14 Medicaid-funded programs, over and above the three safety net programs run by Minnesota agencies. Thompson was the visible face of the investigation. See [New York Times](#) coverage.

**Y2, Week 2**, Trump has nominated a federal prosecutor, Colin McDonald, to lead a newly created unit at DoJ focused on "national fraud enforcement." The fraud czar (formerly an Assistant Attorney General), who would be subject to Senate confirmation, and his unit would, [according](#) to the Vice President "be run out of the White House under the supervision of the Vice President and the President," rather than the Attorney General and the Deputy Attorney General. See [Time](#) coverage and the White House [Fact Sheet](#).

For a discussion of the ability of state prosecutors to successfully prosecute federal agents, *see* Prosecuting Federal Agents, [below](#).

### *The Fallout*

Minnesota city and state officials have sued to declare the surge of federal agents in Minneapolis as part of Operation Metro Surge unlawful and block its implementation, block a series of specific tactics used by federal agents and mandate body cams as well as visible identification. *See* discussion, [below](#). *See also* [Axios](#) coverage of how Minneapolis prepared for, and is fighting back, against the federal onslaught.

Amidst increasing tension on the streets of Minneapolis and St. Paul, and the surge of close to 3,000 federal agents (reportedly more than the combined police forces of the twin cities), Trump [threatened](#) in a post on Trust Social to invoke the Insurrection Act. The post, in which Trump called on “the corrupt politicians of Minnesota [to] obey the law and stop the professional agitators and insurrectionist from attacking the patriots of I.C.E., who are only trying to do their job,” followed a second shooting when an ICE agent shot a Venezuelan man in the leg.

### *Third Shooting*

**Y2, Week One**, on Saturday, a third person was shot by federal officers, resulting in the second fatality in Minneapolis at the hands of Border Patrol officers. Alex Pretti, an American citizen who worked as an ICU nurse at a VA hospital, was shot and killed by a Border Patrol agent at the intersection of 26<sup>th</sup> Street and Nicolett Avenue in an incident filmed by a number of bystanders (*see* [Bellingcat](#) post). It appears that Pretti was shot multiple times (in all, at least ten shots were fired at point-blank range) while lying on the ground, and that before being pounced on by a gaggle of federal agents he was trying to assist a woman who had been pushed by an agent.

Once again with virtually no time for a forensic investigation, administration voices had fallen into line, jumping to conclusions and blaming the victim and the Democratic administration in the state.

DHS claimed that agent killed Pretti in self-defense; Gov. Tim Walz labelled the justification “nonsense” and lies.”

The Hennepin County Attorney’s Office and Minnesota BCA [sued](#) the administration<sup>19</sup> to prevent the tampering and destruction of evidence. At a press conference on Saturday, BCA Superintendent Drew Evans [said](#) that, while BCA has a

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<sup>19</sup> Kristi Noem, in her official capacity as DHS Secretary; John Condon, in his official capacity as Acting Executive Associate Director of HSI;; Todd Lyons, in his official capacity as Acting Director of ICE; Marcos Charles, in his official capacity as Acting Executive Associate Director, Enforcement and Removal Operations, ICE; Rodney Scott, in his official capacity as Commissioner of CBP; Gregory Bovino, in his official capacity as Commander of the Border Patrol; David Easterwood, in his official capacity as Acting Director, Saint Paul Field Office, ICE; Pamela Bondi, in her official capacity as Attorney General; and Kash Patel, in his official capacity as Director of the FBI.

history of working with the FBI, DHS has now taken over the case of the Pretti killing. Evans said that “others outside of the state” have blocked BCA from cooperating on the investigation. The superintendent said the BCA will continue to investigate the matter, but noted it will be difficult without federal cooperation. Late Saturday night, District Judge Eric C. Tostrud [granted](#) the motion for a temporary restraining order sought by the Hennepin County Attorney’s Office and Minnesota BCA enjoining the administration from destroying or altering evidence related to the fatal shooting (01/24/26). A hearing is scheduled for Monday. See [Court Listener](#) docket.

While federal officials appear to be stonewalling (including refusing to identify the agents involved in the shooting), local law enforcement has been doing its job, taking statements and collecting video evidence.

*MS NOW* reports that DHS is investigating the shooting, rather than the DoJ Civil Rights Division. This seems somewhat of a head-scratching move as DHS already [issued](#) a statement (displaying extraordinary forensic powers in issuing a verdict within two hours of the shooting) that has been widely derided (*see, e.g., New York Times* – videos on social media “appear to contradict” DHS account; [Justice Integrity Project](#)).

A second video refutes DHS claims that the Pretti had a handgun and “violently resisted” when agents sought to disarm him. CNN describes the scene as it unfolds on this second video:

- At the 12 second mark: Pretti is first seen holding his phone in one hand. He is wearing a black baseball hat, sunglasses and a brown jacket.
- From the 23 second mark to the 29 second mark: Pretti is seen holding what appears to be his phone, presumably recording federal agents while stepping closer to them.
- At the 35 second mark: after a federal agent pushes a bystander on the ground, Pretti goes towards the agent. The agent grabs Pretti and appears to spray him with a chemical irritant. Pretti then turns towards the bystander on the ground and grabs her. It’s assumed since he is trying to shield her.
- For the next few seconds: Pretti grabs on to the bystander on the ground as multiple agents grab on to him. The agents separate Pretti from the bystander. Multiple agents pile on top of Pretti, who is on the ground.
- One agent appears to reach towards Pretti’s waist and backs away, before Pretti was shot. Nine more shots were fired. Agents then walk away, making no attempt to preserve a crime scene.

See also [witness accounts](#).

Not unexpectedly, with the emerging narrative from the administration that carrying a gun at a protest could justify being shot, including a [post](#) by L.A. U.S. Attorney Essayli that “If you approach law enforcement with a gun, there is a high likelihood they will be legally justified in shooting you,” and Border Patrol commander Gergory Bovino saying that “This looks like a situation where an individual wanted to do maximum damage and massacre law enforcement” despite no evidence that Pretti was wielding a gun, the NRA [jumped](#) into the fray, calling for a full investigation before “making

generalizations and demonizing law-abiding citizens.” Let’s pause for a moment that that one of the most forceful statements of condemnation from conservative circles comes from two gun-rights advocacy groups.

As Tyler Austin Harper, writing in *The Atlantic* noted (“[Minneapolis Is a Second Amendment Wake-Up Call](#)”), it is not minorities who are having their rights trampled, but now white Americans are being targeted, and not only are First and Fourth Amendment rights on the line, but so are Second Amendment rights as well. For the record, Pretti is a lawful gun owner with a permit to carry a weapon and there is no evidence that he brandished his weapon at the time he was pepper sprayed, gang-tackled and murdered. See [New York Times](#) timeline.

See also [CNN](#) rolling coverage and [Newsweek](#) coverage of the condemnations.

Alex Pretti’s parents [issued](#) a statement, which I quote in its entirety:

“We are heartbroken but also very angry. Alex was a kindhearted soul who cared deeply for his family and friends and also the American veterans whom he cared for as an ICU nurse at the Minneapolis VA hospital. Alex wanted to make a difference in this world. Unfortunately, he will not be with us to see his impact. I do not throw around the 'hero' term lightly. However, his last thought and act was to protect a woman. The sickening lies told about our son by the administration are reprehensible and disgusting. Alex is clearly not holding a gun when attacked by Trump’s murdering and cowardly ICE thugs. He had his phone in his right hand and his empty left hand is raised above his head while trying to protect the woman ICE just pushed down, all while being pepper sprayed. Please get the truth out about our son. He was a good man. Thank you.”

On Sunday, [speaking](#) to CNN’s Dana Bash, Sen. Chris Murphy characterized Bash’s earlier interview with Gregory Bovino, in which he accused Alex Pretti of brandishing a weapon and impeding officers, as “bone chilling.” Murphy continued, “It should freak the American public out” that Bovino could so blatantly lie about facts that are plain to see. ICE and CBP are on the streets to “cause a conflict,” “to create mayhem.” This will only continue, if it is not stopped. “This is coming to your city as well.” Commenting on the administration’s accusations against Gov. Walz and Mayor Frey, and Bovino’s justification for shooting anyone witnessing or recording federal law enforcement operations, Murphy reminded us all that “everyone has the right to peacefully assemble and protest and everyone has the right to film law enforcement.” Murphy offers a dystopian view that this is all about setting the predicate for taking control of elections in swing states during the midterms.

My colleague Kenneth Harbaugh pulled together an ad on behalf of the Save America Movement featuring military veterans speaking out in response to the killing of Alex Pretti – available [here](#).

An increasing number of voices are calling on the American people to see what is happening before their very own eyes for what it is. David Gardner, writing for the Daily Beast (“[Trump Has Lost the Trust of the People With His ICE Lies](#)”), reminds us that Timothy McVeigh, who killed 168 people when he bombed the Alfred P. Murrah Federal Building in Oklahoma City in 1995 was a domestic terrorist. Patrick Wood Crusius, who killed 25 people in an El Paso, Texas Walmart in 2019 was a domestic terrorist. For the administration to label Renee Good and Alex Pretti as



“domestic terrorists” is at the very least an insult to the intelligence of the American people.

David Rothkopf, also writing in the Daily Beast ([“Trump’s Goons Are the Terrorists. This Is What We Must Do Now”](#)), issued his own call to arms:

“2026 is likely to be a year of dangerous unrest in America. But make no mistake, the danger would be greater if there were fewer or smaller examples of the public’s commitment to save our country. Make no mistake, the fear of future violence from Trump’s agents must not be allowed to produce silence or even hesitation from those who recognize the threat we are facing. ... In short, the future of this country depends on the fact that more people at every level of our society appreciate, respect, and emulate the courage and resolve of genuine heroes like Alex Pretti and Renee Nicole Good. We must demonstrate that they did not die in vain by showing we understand why they showed up and stood up when they did. These people died seeking to aid their neighbors and to defend not only their communities, but the idea of an America that is now more at risk than at any time in living memory.”

And it continues – see footage of the [tackling](#) by federal agents in Minneapolis of Matthew James Allen, another American citizen, as his wife pleads – “we were just running away from the gas.” [Heather Cox Richardson](#) quotes [Jess Piper](#), the ED of Blue Missouri, “We all know the poem; there is no shade of white that will save you from this murderous regime.” Jen Rubin in her Contrarian column [writes](#) “the ugly face of fascism cannot be ignored anymore.”

And to add insult to injury, on Saturday, the Attorney General [offered](#) to pull ICE out of Minnesota if Minnesota agrees to share Medicaid and Food and Nutrition Service programs with the federal government, repeals the sanctuary cities policies and allows the Civil Rights Division to access state voter rolls.

**Y2, Week Two**, In view of these recent developments, I have added an [Appendix B](#), which summarizes an analysis of the history of CBP and ICE.

Amidst growing public outrage and condemnations, federal officials continued to decline to provide details substantiating their near immediate claim that an agent shot Alex Pettri in self-defense, while the White House sought to distance Trump from the initial response of Noem and Miller, in particular, to the killing of Alex Pettri. Trump dispatched border czar Tom Homan to run the enforcement operation in Minneapolis and spoke with both Gov. Walz and Mayor Frey. It does not appear though that the subpoenas [served](#) on the offices of Gov. Walz and Mayor Frey, as well as Attorney General Keith Ellison, St. Paul Mayor Kaohly Her, and officials in Ramsey and Hennepin counties, as part of a DoJ investigation into obstructing or impeding law enforcement (likely the holding of a press conference, and reportedly on the basis of a conspiracy statute) have been withdrawn.

CNN reported DHS has suspended Bovino’s access to his social media accounts and *The Atlantic* [reported](#) that Bovino has been removed from his role as commander-at-

large of the Border Patrol and is leaving Minneapolis.<sup>20</sup> Let's pause on the reported suspension of Bovino's access to social media – he has been a prolific poster of taunting messages. Ironical that an administration obsessed with calling out “censorship” of conservative voices would muzzle Bovino.

The conservative opinion page of the *Wall Street Journal* captured the split in conservative circles, [writing](#) that the administration's spin on the killing of Alex Pettri “simply isn't believable.” “Either many ICE agents aren't properly trained, or they are so on edge as they face opposition in the streets that they are on a hair trigger. Either way, this calls for rethinking how ICE conducts itself, especially in Minneapolis as tensions build.” It concluded, “Mr. Miller's mass deportation methods are turning immigration, an issue Mr. Trump owned in 2024, into a political liability for Republicans in 2026. Americans don't want law enforcement shooting people in the street or arresting five-year-old boys. The President who said you have to have a heart in enforcement ought to show some.”

In a sign that tensions are rising in the GOP ranks, Chris Madel, a GOP candidate for governor of Minnesota [announced](#) he was pulling out of the race because he can no longer be part of the Republican “retribution” against his state. In a video he posted he said “I cannot support the national Republicans' stated retribution on the citizens of our state, nor can I count myself a member of a party that would do so,” He told CNN's Erin Burnett, “The president posted something on Truth Social saying that it was a time of reckoning and retribution on the citizens of my state, and I've seen that happen, and I cannot be a part of it, and I can't be a part of a party that's a part of that.” He added, “The idea of people walking around with their papers or photos of their passports because they are scared of being swept up by federal agents is ‘antithetical to everything our country is about.’”

In another sign of the crack in the GOP monolith, the Chair of the House Committee on Homeland Security [has requested](#) acting head of ICE Todd Lyons, CBP Commissioner Rodeny Scott and USCIS Director Joseph Edlow to testify before the Committee. That hearing is scheduled for February 10. Sen. Rand Paul, in his capacity as chair of the Homeland Security and Governmental Affairs committee, called on the

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<sup>20</sup> The *Washington Post* [carried](#) an article charting the rise and fall of commander-at-large Bovino, from a low-level Border Patrol chief overseeing a relatively small stretch of the border in California to the face of the ICE crackdown and eventually a political albatross for Trump. The *New York Times* [carried](#) a story reporting on allegations that the day before six career DoJ prosecutors resigned in protest over the department's handling of the Renee Good killing, in a call with Bovino, Bovino made derisive remarks about one of the prosecutors, an Orthodox Jew. The reporting notes that the comments could raise issues for government lawyers based on a Supreme Court case (*Giglio v. United States*), which requires prosecutors to disclose certain information to defense counsel that could call into question the integrity and character of a law enforcement officer who is involved in an arrest and called as a witness in a trial. During his deployment in Minneapolis, Bovino often was [photographed](#) in a greatcoat that drew [criticism](#) for its resemblance to greatcoats associated with the German military under Hitler.

heads of ICE, CBP and USCIS to testify before Congress as well. That hearing is scheduled for February 12. See [POLITICO](#) coverage.

A report prepared by CBP's Office of Professional Responsibility and sent to Congress is obtained by [CNN](#) and [CBS](#). It makes no mention of Pretti "brandishing" a gun or threatening officers, let alone as Bovino [had claimed](#) been prepared to "massacre" agents.

U.S. Cardinal Joseph W. Tobin, during a Faith in Action call, [urged](#) elected officials to vote against an upcoming congressional appropriations bill that includes funding for what he called a "lawless organization."

Adam Serwer, writing in *The Atlantic* ("[Minnesota Proved MAGA Wrong](#)"), poignantly describes how the resistance of Minnesotan citizens exposed a series of mistaken assumptions. He chronicles three categories of ordinary Americans who rose to meet the moment – protesters, those who provide supplies to families in hiding or help meet financial obligations like rent or mortgage payments, and those who comprise ICE Watch - whistle-wielding pedestrians and drivers calling themselves "observers" or "commuters" who patrol for federal agents and alert the neighborhood to their presence. Pretti and Good fit in this category.

Serwer notes that if this resistance "has an overarching ideology, you could call it "neighborism"—a commitment to protecting the people around you, no matter who they are or where they came from. The contrast with the philosophy guiding the Trump administration couldn't be more extreme."

Serwer then catalogues the mistaken assumptions: a belief that diverse communities aren't possible; that the left is insincere in its values, and that principles of inclusion and unity are superficial forms of virtue signalling (which may be true of certain elites, but it is not true of millions of ordinary Americans, who have poured into the streets in protest, spoken out against the administration, and, in Minnesota, resisted armed men in masks at the cost of their own life) and that "real men – Trump's men – are ... strong (federal agents' "skittishness and brutality are qualities associated with fear, not resolve. It takes far more courage to stare down the barrel of a gun while you're armed with only a whistle and a phone than it does to point a gun at an unarmed protester."

Charlie Warzel, writing in *The Atlantic* ("[Believe Your Eyes](#)"), reminds us of the courage of people risking their lives to document what is happening on the streets of Minneapolis and what the administration would have gotten away with had there not been an abundance of video evidence. He also points out the irony that, notwithstanding what we all saw, the administration's apologists tried to convince we were wrong.

And David Graham, also writing in *The Atlantic* ("[What the Administration Is Signaling to Federal Agents After Minnesota](#)"), reminds us that "Perhaps the most disturbing part of the Trump administration's immigration operation in Minnesota is not just that agents of the state are killing peacefully protesting citizens on the streets. It's that they're doing it with the expectation of impunity, backed by top government officials who are brazenly lying about what happened." He concludes, that after Trump has "spent years dehumanizing immigrants, exhorting law enforcement to treat

suspects [more roughly](#), and attacking the rule of law, [t]he killings in Minnesota aren't the collateral damage of Trump's approach to governance. They're a direct result."

**As Y2, Week Two** winds down, *CBS News* [reports](#) that the FBI has taken over from HSI to lead the investigation into the killing of Alex Pretti. HSI will still be involved in a support role. DoJ's Criminal Division will also be involved, though in announcing that involvement the Deputy Attorney General did not classify the investigation as a civil rights investigation. Apparently this will not extend to investigating the killing of Renee Good.

Mark Leibovich, writing in *The Atlantic* ("[Trump's New Method of Humiliation](#)"), charts the marginalization of Kristi Noem in the aftermath of the Minneapolis debacles. Leibovich writes that instead of firing out-of-favor enablers, as was the frequent spectacle in Trump 1.0, Trump lets them "twist very publicly in the wind... [preferring] now to prefer sowing public doubt and maximizing attention upon the ultimate decider of someone's fate: that person, of course, being himself." Note that Homan reports directly to Trump not Noem and in his first news conference Homan took a shot at Noem in saying "I didn't come to Minnesota for photo ops or headlines." And at Trump's Thursday Cabinet meeting with its North Korean style praise of the dear leader, Noem neither spoke nor was called upon by Trump to speak.

Democracy Defenders Funds [submitted](#) to DHS, CBP and ICE a FOIA request for communications related to Alex Pretti sent or received by a list of DHS, ICE and Border Patrol officials (01/28/26).

After a video emerged of Alex Pretti, 11 days before he was killed, kicking in the taillight of a government SUV, after which Pretti is tackled by agents, Trump called Pretti "an agitator and, perhaps, an insurrectionist."

\* \* \*

I offer the words of Amanda Gorman, "For Alex Jeffrey Pretti, linked [here](#).

### ***Maine***

**Y2, Week One**, it took Cumberland County (ME) Sheriff Kevin Joyce to [call out](#) ICE tactics after ICE agents detained a corrections officer in the middle street, pulling him from his car. Joyce confirmed that the individual passed the application process to qualify as a Cumberland County corrections officer and was cleared to work in the United States until April 2029. *See also* [Maine Morning Star](#) update.

### ***Portland***

Two people reportedly were shot and wounded by Border Patrol agents in Portland following a targeted vehicle stop. *See* [Oregon Public Broadcasting](#) coverage.

**Y2, Week Three**, District Judge Michael H. Simon [issued](#) a temporary restraining order enjoining, for a period of 14 days, the use of chemical or projectile munitions at or near the ICE facility in the South Waterfront neighborhood of Portland (02/03/26). The facility has been the focal point of immigration enforcement protests. The ruling cites examples of ICE targeting press, legal observers, medics as well as citizens at protests. In a press statement, Portland Mayor Keith Wilson (01/31/26) had [reported](#)

that “federal forces [that day had] deployed heavy waves of chemical munitions, impacting a peaceful daytime protest where the vast majority of those present violated no laws, made no threat, and posed no danger to federal forces.”

### ***A tragic national toll***

The Trace, which tracks gun violence in the United States, [reports](#) that, since the immigration crackdown began, there have been 15 incidents in which ICE agents shot someone and another 15 incidents in which ICE agents held someone at gunpoint. At least three people have been shot observing or documenting immigration raids, and five people have been shot while driving away from traffic stops or evading an enforcement action. Renee Good was one of four people who have been killed. Another five people have been injured.

Among the people who have been shot was a 30-year-old teaching assistant named Marimar Martinez. In October, she was driving around Chicago’s majority-Hispanic Brighton Park neighborhood warning people that agents were coming. A Border Patrol agent pulled up behind her, aimed an assault rifle at her and shouted “do something, bitch” before opening fire, video of the incident [shows](#). Martinez was hit five times and survived. Border Patrol agents claimed she rammed their car and arrested her. Martinez’s counsel found body cam video footage that contradicted the agents’ claim, [showing](#) agents ramming *her* car, and prosecutors [dropped](#) the charges. Discovery yielded text messages from the agent who shot Martinez, [bragging](#) about his actions: “I fired 5 rounds and she had 7 holes. Put that in your book boys.”

### **Forced Entry without Warrants**

**Y2, Week One**, Whistleblower Aid [revealed](#) (01/21/26) that two of its clients had provided the Senate with evidence that DHS had authorized, and even trained, ICE agents to forcible enter homes with consent or a judicial warrant, in violation of the Fourth Amendment. The announcement notes that a May 2025 memorandum issued by Acting ICE Director Todd Lyons “authorizes ICE agents to rely on a Form I-205, an administrative warrant of removal/deportation to forcibly enter someone’s home. This “policy” flies in the face of longstanding federal law enforcement training material and policies, all rooted in constitutional assessments. In other words: the Form I-205 does not authorize ICE agents to enter a home. Training new recruits, many of whom have zero prior law enforcement training or experience, to seemingly disregard the Fourth Amendment, should be of grave concern to everyone.”

The Associated Press [posted](#) the anonymous whistleblower [disclosure](#). *See also* [New York Times](#) coverage, which notes that a 2025 DHS training manual states, “Entering a home to arrest a person without a warrant or an exception to the warrant requirement is typically a violation of the Fourth Amendment, regardless of whether the officer has probable cause to arrest the suspect.”

**Y2, Week Three**, in a New York Times op-ed, six former (bipartisan) senior DHS attorneys (Stevan Bunnell, Gus Coldebella, Ivan Fong, Kara Lynam, Jonathan Meyer and John Mitnick) criticized DHS’s embrace of administrative warrants, at the expense of the Fourth Amendment, and the endorsement of that position [published](#) by the

current General Counsel of DHS, James Percival ([“We Were Top Homeland Security Lawyers. You Can’t Wish Away the Fourth Amendment”](#)). They write:

“We disagree not only with Mr. Percival’s position but also with his characterization of lawyers at the Department of Homeland Security and elsewhere who seek to uphold the rule of law. It is not the so-called deep state that has restrained ICE from entering homes using only administrative warrants. It is the Fourth Amendment to the Constitution — and the lawyers who took an oath to support and defend it.”

They conclude their op-ed by urging DHA “to adhere to the Constitution and end the practice of conducting forcible entry into homes without judicial warrants.”

### **The Surveillance State**

**Y2, Week Three**, in the context of the immigration enforcement crackdown and the massive increase in the funds available to ICE, making it the largest law enforcement agency in the United States, there has been an increasing media and civil society focus on the tools available to ICE and other federal components.

Eva Dou, Artur Galocha and Kevin Schaul, writing in the *Washington Post* ([“The powerful tools in ICE’s arsenal to track suspects — and protesters”](#)), outline some of the tools being deployed, which include, among others, facial recognition technology (including the Mobile Fortify app), license plate readers, cell phone location technology (including cell-site simulators that trick nearby cell phones into connecting to the faux tower, thereby allowing for real-time tracking), digital forensic tools (if phones are in the possession of authorities) and drones. DHS is expanding the operational scope of AI, facial recognition and other technology.

As *MS NOW*’s Ali Velshi [noted](#) in his recent YouTube report, while the Supreme Court ruled in *Carpenter v. United States* that federal authorities must obtain a warrant to obtain phone location data from a phone company, but are free to purchase that same data from commercial data brokers that scrape the data from weather apps, online games and the like.

Last January, DHS [published](#) a privacy impact assessment for the Intelligence Reporting System-Next Generation, which lists a vast array of searchable databases that feed into the reporting system.

**Y2, Week Four**, the *New York Times* [reports](#) DHS has sent Google, Meta, Reddit, Discord and other platforms subpoenas for information on accounts that track or criticize on ICE.

The New York Times [also carries](#) a story of an unprecedented projection of surveillance power at scale. In a case [brought](#) by the ACLU (as well as Law Offices of Kevin C. Riach, Forsgren Fisher McCalmont DeMarea Tysver, and Ciresi Conlin) on behalf of individual residents of Minnesota as well as NewsGuild-Communications Workers of America and Status Coup News, close to 100 sworn statements have been filed as part of the amended complaint (02/13/26) reporting that federal agents in Minneapolis have singled out peaceful protesters, tracked down their home addresses and shown up at those addresses. *See also* [ACLU press release, “In Minneapolis, a Pattern of Misconduct Toward Protesters”](#) and [“ICE Agents Menaced Minnesota Protesters at Their Homes, Filings Say.”](#)



A Marine Corps combat veteran says that, less than an hour after Alex Pretti was killed, he went to the sight of the killing and federal agents unlawfully sampled his DNA, scanned his face, and cloned his phone after detaining and holding him for six hours. All without a warrant. See [Democracy Now](#) coverage and [Intercept](#) coverage. (Note that in [Riley v. California](#), the Supreme Court held that law enforcement authorities generally are not allowed to search an arrested person's cell phone without a specific warrant, even if the arrest is lawful. In other words, the search incident to arrest exception to the warrant requirement does not apply to cell phones.<sup>21</sup>)

Meanwhile back on Capitol Hill, DoJ has acknowledged that it has logged the search histories of people viewing the Epstein files, including members of Congress. DoJ claims it is doing so to protect against “the release of victim information.” Really? The monitoring has prompted outrage on both sides of the aisle, including by Speaker Johnson. Rep. Pramila Jayapal, the revelation of which during Bondi's testimony, [called](#) out the “totally inappropriate” violation of separation of powers. Rep. Robert Garcia [put](#) out a press release calling for Bondi to resign.

### **Assaults on a Free Press, A Catalogue of...**

**Y2, Week Four**, while it is reasonable to say that the First Amendment is still holding up, the issue is that the institutions of a free press are under attack and the record of fighting back is mixed. When the Associated Press sued the administration no other news outlet showed up in solidarity. When journalists are attacked by federal agents, there is little collective response. The business side of news outlets tends to win out and there is broad fear of losing access (the response to the DoD loyalty tests was an exception). Journalists are taking off their by-lines for fear of sanction. The ultimate casualty of this is the public's right to know, and people should care.

A partial list of what we have seen so far:

- [Cutting off](#) access of the Associated Press
- [Loyalty tests](#) for journalists covering the Pentagon
- [Arrests](#) of Don Lemon and Georgia Fort
- [FBI raid](#) on the home of Washington Post reporter Hannah Natanson
- Lawsuits by Trump against [CBS and ABC](#), and pre-emptive settlements
- Lawsuits by Trump against the [New York Times](#) and the [BBC](#)
- [Actions taken](#) against Jimmy Kimmel
- [Defunding](#) of public radio
- [Shutting down](#) VOA, RFE/RL and RFA

At a convening on the subject of the state of the free press in the United States that included participants from authoritarian regimes, those participants outlined the playbook that is coming our way, if it is not already here:

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<sup>21</sup> For a future discussion, see the arguments raised in the following law review article, [“Digital Border Searches After Riley v. California.”](#)

- Legal attacks on media – spurious investigations and lawsuits, including Strategic Litigation Against Public Participation (SLAPP) against journalists
- Regulatory actions threatened or taken against media – threatened revocation of broadcast licenses; tax audits
- Digital surveillance of journalists
- Online harassment of journalists – particular targeting women journalists
- Physical threats against journalists
- Psychosocial threats – triggering fear of being targeted and trauma

### **Bondi's Theatrics and the Evisceration of the DoJ**

Writing in the *New Yorker*, Ruth Marcus [captured](#) perfectly the pugilistic performance of Pam Bondi before the House Judiciary Committee, largely aimed at Democrats. Bondi, firing back at:

- *Jamie Raskin*, “You don’t tell me anything, you washed-up loser lawyer. Not even a lawyer.”
- *Dan Goldman*, “You’re about as good of a lawyer today as you were when you tried to impeach President Trump.”
- *Hank Johnson*, “Your time is up.”
- *Mary Gay Scanlon*, “You don’t get anything regarding public safety, nothing.”
- *Pramila Jaypal*, when asked if Bondi would apologize to the survivors, “I’m not going to get in the gutter for her theatrics.”

Marcus notes that the focus of the Democrats on Epstein distracts from the broader implications of her leadership of DoJ, problems “that go to the core of its mission and that threaten its ability to operate even after Trump leaves office. Most alarming is Trump and Bondi’s overt weaponization of the department to pursue Trump’s political enemies” – James Comey, Letitia James and Adam Schiff, for starters. Raskin, in his opening remarks, put it this way: “Trump orders up prosecutions like pizza and you deliver every time. ... Nothing in American history comes close to this complete corruption of the justice function and contamination of federal law enforcement.”

Otherwise, Bondi got a free pass. No one raised:

- the threatened indictment of Fed chair Jerome Powell,
- the rejection by a federal grand jury of the proposed indictments of the two Democratic Senators and four House members for the Don’t Give Up the Ship! video,
- DoJ’s refusal to investigate the murder of Renee Good, or the reported resignation of six DoJ prosecutors after they reportedly were directed to investigate Good’s partner;
- the raid on the home of Hannah Natanson; the seizure of voting records in Fulton County and the presence on-site of Tulsi Gabbard;
- the gutting of the Civil Rights Division; or
- the vacancies in U.S. Attorneys office.



# THE WEAPONIZATION OF FREE SPEECH TO STIFLE FREE SPEECH

## Online Content Moderation and Free Speech

Conservatives have, particularly since the pandemic, sought to curb content moderation by the social media platforms by tying federal government coordination efforts to content moderation decisions of the platforms, claiming that these efforts were part of a broad “censorship industrial complex” aimed at “conservative free speech. To have a cognizable censorship claim at law, claimants need an action on the part of the government, as the First Amendment only applies to government constraints on speech. Rep. Jim Jordan’s government oversight committee hearings as well as lawsuits sought to curb civil society, academic and government efforts aimed at combatting disinformation. (See my prior briefing notes summarizing the content moderation issues, available [here](#) (11/11/24), [here](#) (12/04/23) and [here](#) (10/25/23).)

The [Restoring Freedom of Speech and Ending Federal Censorship](#) EO describes federal government efforts, “under the guise of combatting ‘misinformation,’ ‘disinformation’ and ‘malinformation,’” as infringing on the First Amendment, when in fact the Supreme Court, in a case brought by two state attorneys general against a number of departments of the Federal Government (*Missouri v. Biden*, also known as “*Murthy v. Missouri*” when the Biden administration’s appeal reached the Supreme Court) relating to alleged “suppression of conservative free speech” in respect of vaccines and elections (based on undue and unconstitutional pressure on the platforms), declined to reach that conclusion on standing grounds. The Justices appeared sceptical that they would reach a different conclusion on the merits.

The “free speech” policy of the new administration is to include:

- securing the right of Americans to engage in constitutionally protected speech;
- ensuring that no officer, employee or agent of the federal government engages in or facilitates any conduct that “would unconstitutionally abridge the free speech of any American citizen”;
- ensuring that no taxpayer resources are used to engage in or facilitate conduct that would “unconstitutionally abridge the free speech of any American citizen”; and
- identifying action to correct past misconduct related to censorship of protected speech.

The Attorney General is tasked with investigating the Biden administration’s activities in this area over the past four years that are inconsistent with the policy and with preparing recommendations for remedial action. This could be the precursor for the removal of federal employees involved in addressing a range of online disinformation threats.

The impact of this EO will take some time to unpack as it flips the free speech issues around. The First Amendment proscribes what the government can do. It is unclear how the policies of “securing free speech rights” underpinning this EO will add anything to the [caselaw](#) on so-called “jawboning” efforts that limit federal government

restrictions, direct or indirect, on free speech. Said another way, the federal government is already barred from restricting free speech and there is plenty of caselaw on how this applies in indirect circumstances. There is one final irony in that, as Professor David Kaye (quoted in [Reuters](#)) noted, it is tough to square securing free speech rights with Trump's repeated attacks on the media as the "enemy of the people."

What the EO does mean though is that federal government efforts to combat disinformation will be rolled back further. One of the first clear casualties of this new reality is the State Department's Global Engagement Center (GEC), which in 2016 was tasked with countering foreign disinformation and propaganda and coordinating related interagency efforts, and was [shut down](#) in December after Republicans cut its funding. One need only consider the surge of conspiracy theories around the LA fires and last summer's devastating hurricanes to appreciate the dangers of chilling efforts to combat the scourge of online misinformation and disinformation.

If ever we needed an example of the hypocrisy around the free speech crusade of Trump, Vance, Musk and others who rail against the "censorship industrial complex" of the Left, consider the words and phrases that are disappearing from federal government agency websites and documentation. *See* the [compilation](#) prepared by the *New York Times*. Note by the way that while the terms "women" and "female" are on the list the term "men" is not, and while the terms "Black" and "Native American" are on the list, the term "white" is not. By the way, not sure how one teaches English if one cannot use the word "pronouns."

**Y1, Week Fifteen**, various media outlets (*see, e.g.,* [the Atlantic](#)) picked up on a story broken by Eileen Guo [writing](#) in the MIT Technology Review. Guo reported that [acting Undersecretary of State Beattie](#) circulated in March a memorandum to the then-staff of the Counter Foreign Information Manipulation and Interference Hub, known as R/FIMI, an office that once "tracked and countered foreign disinformation campaigns," and has since been [shut down](#). R/FIMI was the [successor](#) unit to the GEC. Beattie wanted all "staff emails and other records with or about a host of individuals and organizations that track or write about foreign disinformation," as well as "all staff communications that merely reference Trump or people in his orbit."

**Y1, Week Thirty-Six**, Sens. Shaheen and Murphy [announced](#) they had [sent](#) a letter to the Secretary of State requesting assurance that personally identifiable information of government employees (largely current and former State Department staff that had rotated through GEC) and GEC implementing partners would not be published as part of Beattie's threatened release of information as part of his "transparency efforts" around what he has labelled GEC efforts to "censor conservative speech."

**Y1, Week Nineteen**, Secretary of State Rubio announced that the State Department would ban visas for foreign nationals engaged in censoring free speech protected in the United States. In his statement, he says "It is similarly unacceptable for foreign officials to demand that American tech platforms adopt global content moderation policies or engage in censorship activity that reaches beyond their authority and into the United States." He accuses foreign officials of taking "flagrant censorship actions against U.S. tech companies and U.S. citizens and residents when they have no

authority to do so.” See [Reuters](#) coverage. Rubio is purporting to be championing free speech while at the same time fighting to deport students from this country for exercising free speech rights guaranteed by the Constitution and at the same time that plaintiffs in a significant numbers of the lawsuits against Trump and his administration advance compelling arguments that the plaintiffs, including the law firms challenging the EOs against them, have been denied their First Amendment rights guaranteed under the Constitution.

### ***Target: Europe***

This latest salvo needs to be understood for what it really is – an extension of the right-wing attack on efforts to curb online hate speech and disinformation (see [Content Moderation and Free Speech](#), above), by taking the fight overseas, and in particular to Europe. The target is the EU Digital Services Act (DSA), which is intended to place greater onus on the social media platforms to address harmful content, but which the platforms and Trump official have labelled “censorship” legislation, and in particular censorship of populist and other right-wing speech. (See my August 2023 briefing note on the DSA, available [here](#).) See generally [Targeting Regulation with Extraterritorial Effect](#).

Recall, as noted above, that Rubio shut down R/FIMI and the GEC had been shut down in December. Vance has also been a standard bearer in the effort, citing censorship, for example, during his vice-presidential debate and labelling content moderation as “authoritarian censorship” when speaking in Paris in February.

An equally troubling prong of this effort was a recent post by Samuel Samson, the senior advisor to State Department’s Bureau for Democracy, Human Rights, and Labor (DRL) entitled “[The Need for Civilizational Allies in Europe](#).” Riffing on Vance’s MSC address in which the Vice President said, “What I worry about is the threat from within, the retreat of Europe from some of its most fundamental values—values shared with the United States of America,” Samson accuses the Europeans of undertaking an “aggressive campaign against Western civilization itself. Across Europe, governments have weaponized political institutions against their own citizens and against our shared heritage. Far from strengthening democratic principles, Europe has devolved into a hotbed of digital censorship, mass migration, restrictions on religious freedom, and numerous other assaults on democratic self-governance.” He zeroes in on the DSA, accusing EU officials of using it “to silence dissident voices through Orwellian content moderation.”

He also cynically accuses “this environment” as “restricting” elections in Europe, citing the labelling of “the popular” Alternative für Deutschland party as an “extremist” organization by German intelligence, the embezzlement charges brought against “leading” French presidential candidate Marine LePen, and “restrictions” in Poland and Romania “against select political parties or politicians. Simultaneously, Christian nations like Hungary are unjustly labelled as authoritarians and human rights abusers.” And to drive the point home, he laments, “a similar strategy of censorship, demonization, and bureaucratic weaponization was utilized against President Trump and his supporters. What this reveals is that the global liberal project is not enabling



the flourishing of democracy. Rather, it is trampling democracy, and Western heritage along with it, in the name of a decadent governing class afraid of its own people.”

I note that European Commission Executive Vice-President for Tech Sovereignty, Security and Democracy, Henna Virkkunen, has pushed back, [citing](#) data that show that far more content is removed in the United States under the platforms’ own terms of service than in the European Union. She notes that only 1% of the recorded removals of content in the European Union were triggered by “trusted flaggers” (organizations vetted under the “to flag illegal online content to national authorities”) and just 0.001% of the cases identified by trusted flaggers led to a decision by national authorities to remove content.

**Y1, Week Twenty-Seven**, the Staff of the House Committee on the Judiciary [issued](#) an interim report regarding its investigation into “how and to what extent foreign laws, regulations, and judicial orders compel, coerce, or influence companies to censor speech in the United States.” The principal target is the DSA.

**Y1, Week Thirty-Two**, Trump was [back on the warpath](#) in support of American tech companies, putting countries with digital taxes, legislation, rules and regulations in place on notice that, unless the “discriminatory actions are removed,” tariffs and export restrictions on chips and technology will follow. ... Show respect to America and our amazing Tech Companies or, consider the consequences.!”

As *POLITICO* [reports](#), this latest salvo again is aimed at the DSA, the European Union’s flagship regulation of social media platform. The administration and some of its allies in the tech sector have repeatedly attacked the DSA, [calling](#) it “Orwellian” and [accusing](#) the European Union of “censoring” American speech. The administration also claims that aspects of the DSA would impose costs on U.S. tech companies. *Reuters* [reports](#) the State Department has been considering visa restrictions on EU or EU member state officials responsible for the DSA, which would be unprecedented. *Reuters* also [reports](#) that the State Department has ordered embassies in the European Union to engage with governments and digital services regulators to convey U.S. concerns about the DSA.

**Y1, Week Thirty-Two**, FTC Chair [sent](#) letters to Akamai, Alphabet, Amazon, Apple, Cloudflare, Discord, GoDaddy, Meta, Microsoft, Reddit, Signal, Snap, Slack and X firing another shot across the bow of the European Commission regarding the DSA and British government regarding the UK Online Safety Act.

The letters reminded the platforms “of their obligations to protect the privacy and data security of American consumers despite pressure from foreign governments to weaken such protections.” Ferguson also warned the platforms that censoring Americans at the behest of foreign powers might violate the law.

The letters repeat the allegation that not only have the platforms censored and expelled from the platforms Americans that “utter opinions and beliefs that were not shared by a small Silicon Valley elite, but the previous administration actively worked to encourage such censorship” (quoting the House Subcommittee on Weaponization of Government).

See [National CIO Review](#) coverage and [Wired](#) coverage.

**Y1, Week Thirty-Five**, not related directly to the DSA controversy but very much relevant to it was the [rally](#) in central London by between [100,000-150,000](#) anti-immigration protesters, reflecting the growing appeal of MAGA and the influence of the U.S. right-wing across Europe. The “Unite the Kingdom” rally was organized by far-right activist and founder of the English Defence League Tommy Robinson (real name Stephen Yaxley-Lennon), and featured speeches by Musk (via video link), former co-deputy leader of Reform UK and now chairman of the far-right Advance UK (one of the sponsors of the event) Ben Habib, the French far-right politician Éric Zemmour, Rebel News’ Ezra Levant and politicians and activists from Germany, Poland, Holland, Ireland, Spain, Belgium and New Zealand.

As anti-racism group Hope not hate noted, anti-Islam attacks featured prominently among the speeches. Hope not hate called the rally the largest far-right protest in British history. Similar to the Unite the Right rally in Charlottesville, speakers on Saturday including Robinson paid homage to the “great replacement theory.”

While the rally had been planned for months, Robinson said it would double as an exercise in free speech in memory of Charlie Kirk. Robinson called out the GOP, JD Vance and Donald Trump as the only champions of free speech.

See generally *The Guardian*’s coverage, available [here](#) and [here](#).

**Y1, Week Thirty-Nine**, Dean Jackson, writing in *Tech Policy Press* (“[Trump’s State Department Wants to Use Tech Policy to Remake Europe In Its Image](#)”), lays out how the administration is weaponizing tech policy and culture wars on content moderation as part of a strategy to reframe its alliances with Europe to support the emergence of far right political movements.

**Y1, Week Forty-Nine**, just before Christmas and likely timed for maximum effect on the persons targeted, the State Department [announced](#) that it was sanctioning five individuals who allegedly “led organized efforts to coerce American platforms to censor, demonetize, and suppress American viewpoints they oppose” and “advanced censorship crackdowns by foreign states – in each case targeting American speakers and American companies.” As to these five, the Secretary of State “determined that their entry, presence, or activities in the United States have potentially serious adverse foreign policy consequences for the United States” and, accordingly, are barred from entering the United States. In addition, the determination enables DHS to initiate removal proceedings under [section 237\(a\)\(4\)\(C\)](#) of the INA (the same basis invoked in the unsuccessful [attempt](#) to deport Mahmoud Khalil, as well as Rumeysa Öztürk and Badar Khan Suri).

The five sanctioned individuals, all European, are:

- former EU Commissioner **Thierry Breton**, who played a role in the adoption of the DSA;
- chief executive of the Centre for Countering Digital Hate (CCDH) **Imran Ahmed**, a British citizen and a green card holder currently residing in the United States, as well as a close friend of Morgan McSweeney, Keir Starmer’s chief of staff;

- **Josephine Ballon** and **Anna-Lena von Hodenberg**, German citizens who lead HateAid, which describes itself as an NGO that aims to combat online “hate, violence and systematic disinformation”; and
- **Clare Melford**, a UK-based British citizen who runs the Global Disinformation Index which describes itself as seeking to strengthen “the systems that make the internet safer by working with governments, industry, and civil society.”

Breton [responded](#) that all 27 EU members and 90% of the European Parliament voted for the DSA. “To our American friends: ‘Censorship isn't where you think it is.’”

French President Emmanuel Macron, in a statement [posted](#) on X, said that the sanctions “amount to intimidation and coercion aimed at undermining European digital sovereignty.” French Foreign Minister Jean-Noël Barrot, in his statement on X, [said](#) France “strongly condemns” the visa restrictions and pointed out that the DSA was adopted to ensure that “what is illegal offline is also illegal online. It has absolutely no extraterritorial reach and in no way affects the United States. The peoples of Europe are free and sovereign and cannot let the rules governing their digital space be imposed by others upon them.”

Breton successor, Stéphane Séjourné, [expressed](#) support for Breton on X: “No sanction will silence the sovereignty of the European peoples. Total solidarity with him and all the people of Europe affected by this.”

The European Commission [issued](#) a statement that read in part:

The European Commission strongly condemns the U.S. decision to impose travel restrictions on five European individuals, including former European Commissioner Thierry Breton. Freedom of expression is a fundamental right in Europe and a shared core value with the United States across the democratic world. The EU is an open, rules-based single market, with the sovereign right to regulate economic activity in line with our democratic values and international commitments. Our digital rules ensure a safe, fair, and level playing field for all companies, applied fairly and without discrimination.

A British government spokesperson [said](#), “While every country has the right to set its own visa rules, we support the laws and institutions which are working to keep the internet free from the most harmful content.” Note there was no condemnation of the targeting of two British citizens.

On Christmas Day, District Judge Vernon S. Broderick [issued](#) a temporary restraining order enjoining any action against Imran Ahmed. The [complaint](#) was filed the day before (12/24/25). Ahmed is represented by Kaplan Martin, Clark, Smith Villazor and Democracy Defenders Fund.

Ahmed issued a statement, “My life’s work is to protect children from the dangers of unregulated social media and AI and fight the spread of antisemitism online. That mission has pitted me against big tech executives – and Elon Musk in particular – multiple times.” Ahmed’s lead legal counsel, Roberta Kaplan, [added](#) “The State Department’s actions here are unjustified and blatantly unconstitutional. Imran is proud to call the United States his home. Instead of spending Christmas with his wife and child, he has been forced to spend the holiday fighting to prevent his unlawful deportation. It is hard to think of anything more un-American than that.”

See coverage by *The Guardian* available [here](#) and [here](#).

In an *MS NOW* op-ed (“[Marco Rubio is using real censorship to fight fake censorship](#)”), Mike Masnick properly frames what these sanctions represent: “Marco Rubio is using real censorship to fight fake censorship.” The government is punishing the five for their speech, “which is precisely the kind of government suppression of speech that the First Amendment exists to prevent.” Masnick notes that Under Secretary of State Sarah Rogers [accused](#) the five of engaging in “Murthy-style” suppression and reminds us that she (and presumable her boss) completely misunderstand “Murthy.”

In *Murthy*, the Supreme Court [dismissed](#) the [jawboning claims](#) against Biden administration agencies (6-3) on standing grounds, but in a footnote Justice Barrett wrote that the lower court’s finding that there was censorship was based on a “clearly erroneous” reading of the evidence.

**Y1, Week Fifty**, Ahmed [appeared](#) on Morning Joe, noting that CCDH had worked with the Trump administration to combat antisemitism. Ahmed believes he has been sanctioned because of his [outspoken criticism](#) against hate speech and disinformation on social media platforms such as X. He added that “No one should be deported for being an advocate” and no one “should be cancelled for saying things that the government doesn’t like, whether it’s Jimmy Kimmel, Stephen Colbert or, and I don’t put myself in that vaunted company, but me.”

Ahmed points out the hypocrisy of the Marco Rubio accusing him and the other four targets of censorship while trying to silence those who disagree with the Trump administration. Moreover, he points out what should be obvious to anyone who purports to understand the First Amendment – neither NGOs, nor academics, or internet researchers or any other individual can engage in censorship – only governments can, as they have the leverage, which is why the First Amendment protects all from actions by the government. Free speech means the freedom to speak without government silencing that speech.

The sanctioning of the five Europeans needs to be seen not only in the context of the administration’s targeting of content moderation efforts, but also as part of its obsession with the European Union, evidenced most directly by the Vice President’s harangue of Europe at the Munich Security Conference and then in the 2025 NSS. Daniel Michaels, writing in the *Wall Street Journal* (“[Trump's broadside at Europe also swipes at a US legacy](#)”), argues that the administration’s attacks on the European Union represent an attack on the structure created, with substantial U.S. backing, following WWII to ensure peace on the European continent. The integration of Europe began with the formation of the European Coal & Steel Community in 1951 – it eventually morphed from that six-member endeavor to the 27-member European Union that exists today.

Daniels cites the sanctioning of the five Europeans as well as the threat earlier this month by the U.S. Trade Representative Jamieson Greer that the United States would take trade action, including tariff hikes, if the European Commission failed to stop imposing fines on U.S. tech companies, following the assessment of a €120 million

fine [against](#) X (12/04/25). The fine was assessed for breach of the DSA’s transparency obligations, including deceptive design of X’s “blue checkmark,” the lack of transparency of X’s advertising repository, and the failure by X to provide access to researchers to the platform’s public data.

### **Target: Brazil**

Europe is not the only target. Last year, Brazil took on X and won. The pushback was spearheaded by Supreme Court Justice Alexandre de Moraes, a champion of the fight against online disinformation, who [threatened](#) to ban X in Brazil unless it complied with his ruling to take down certain accounts. (Judge Moraes is also the lead judge in the [federal criminal trial](#) of former President Jair Bolsonaro over his efforts to cling to power in 2022.). (See also [Guardian](#) coverage.) Now the administration is threatening to impose sanctions on Moraes reportedly following a ruling directing Rumble to remove an account linked to a specific user. To show how far this administration has fallen, Rubio, during a congressional hearing on May 21, suggested it was possible that Judge Moraes could be sanctioned under the Global Magnitsky Act, which subjects foreign officials engaged in serious human rights abuses and corruption to sanction. See [Financial Times](#) coverage and [New York Times](#) coverage.

Fringe theories have now entered the mainstream and are being articulated at the highest levels of the U.S. government.

**Y1, Week Twenty-Eight**, Trump has ramped up his attacks on Brazil and Justice Moraes via an EO, [Addressing Threats to the United States by the Government of Brazil](#). The trigger for this attack is content moderation and investigation of former president Bolsonaro. This really is head-scratching:

“Recent policies, practices, and actions of the Government of Brazil threaten the national security, foreign policy, and economy of the United States. Members of the Government of Brazil have taken actions that interfere with the economy of the United States, infringe the free expression rights of United States persons, violate human rights, and undermine the interest the United States has in protecting its citizens and companies.

“Members of the Government of Brazil are also politically persecuting a former President of Brazil, which is contributing to the deliberate breakdown in the rule of law in Brazil, to politically motivated intimidation in that country, and to human rights abuses.”

The sanction – an additional *ad valorem* customs duty of 40%. In July, the Secretary of State reportedly stripped eight of 11 justices on the Brazilian Supreme Court, including Moraes, of their U.S. visas in the midst of the trial before the Supreme Court of Bolsonaro for his alleged attempt to seize power through a military coup in 2022. Bolsonaro faces a sentence of up to 43 years in prison. On July 30, the Secretary of State posted, “Let this be a warning to those who would trample on the fundamental rights of their countrymen,” as the State Department [imposed](#) sanctions on Moraes under the Global Magnitsky Act, freezing assets in his U.S. accounts and barring him from entering the United States – his crime: “serious human rights abuse, including arbitrary detention involving flagrant denials of fair trial guarantees and violations of the freedom of expression.”



As the Guardian [reported](#), the pressure from the United States appears to have backfired, with President Lula able to present himself as a nationalist defender of Brazilian interests and enjoy a bounce in the polls ahead of next year's election. (See also "[A family of traitors': Trump's Brazil tariffs ultimatum backfires on Bolsonaro.](#)")

Moraes was undeterred, calling the tariffs and "spurious" sanctions targeting him and his fellow Supreme Court justices part of an "illegal and immoral" ruse to obstruct justice. He vowed that the trial would continue, despite the "ham-fisted" attempts at coercion. The Guardian [quotes](#) Harvard University political scientist Steven Levitsky saying that "Right now, Brazil is more democratic than the United States," for "holding an authoritarian leader accountable." "Brazil's democracy is flawed. It's got problems. It's polarized. But it's a real functioning democracy and of course many Brazilians are pissed off that the Trump administration is trying to use trade policy to undermine the legal process there."

**We should step back and understand what is happening here.** The Economist did not mince words ("[Trump's astonishing battering of Brazil](#)") leading off its analysis, "Rarely since the end of the cold war has the United States interfered so deeply with a Latin American country." Levitsky [recalls](#) the U.S. track record of interfering in the affairs of a number of countries in Latin America, from CIA-backed coups to military interventions, and remarks that trade policy has never been weaponized as Trump now has done. Referring to work over 40 years to restore democracy after two decades of dictatorship - "Brazilians have worked now for generations to build the strongest, most democratic system they've ever had ... and this sort of reckless, casual assault on democratic institutions pains me."

While some see Trump's assault on the democratic institutions and democratically elected government of Brazil, now labelled by Trump as a threat to "the national security, foreign policy, and economy of the United States," together with his support of Bukele, as driven by a desire to expand populist, right-wing governments in Latin America starting with returning Bolsonaro to power, others see the hand of the tech platforms scrambling to avoid global regulation. Brazil is the fifth largest online market in the world.

And we should also pause on the use of the Global Magnitsky Act against a Supreme Court justice of another country who is overseeing a trial that no credible source has labelled corrupt.<sup>22</sup> Under the Global Magnitsky Act, foreign officials can be [sanctioned](#) for "extrajudicial killings, torture, or other gross violations of internationally recognized human rights." As The Economist [noted](#), sanctions under the Act have

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<sup>22</sup> The Magnitsky Act was passed in 2012, thanks in large part to the efforts of Bill Browder and Senator John McCain, to impose sanctions on a list of Russians believed to have been responsible for the death of Sergei Magnitsky, a tax lawyer retained by Browder who, in 2009, was tortured, denied medical attention, and found dead in his Moscow jail cell, having been targeted by Russian authorities for his role in exposing a massive tax fraud scheme allegedly involving high-level Russian government officials. In 2016, building on the Magnitsky Act, Congress passed the Global Magnitsky Act.



been imposed on genocidal Burmese generals and Russian officials accused of murdering political dissidents. “Targeting a sitting judge in a functioning democracy is unprecedented.” Treasury Secretary Bessent reportedly claims that Moraes, in leading the prosecution of Bolsonaro is undertaking “an unlawful witch-hunt against US and Brazilian citizens and companies.”

**Y1, Week Thirty-Five**, a panel of the Brazilian Supreme Court (4-1) [convicted](#) Bolsonaro and seven other defendants. Bolsonaro was sentenced to 27 years and three months in prison. The counts include participating in an armed criminal organization, attempted violent abolition of the democratic rule of law, damage qualified by violence and deterioration of listed heritage. The Secretary of State [responded](#), “The political persecutions by sanctioned human rights abuser Alexandre de Moraes continue, as he and others on Brazil’s supreme court have unjustly ruled to imprison former President Jair Bolsonaro. The United States will respond accordingly to this witch hunt.”

### **... and the Weaponization of Antisemitism**

I cite above (see [Deportations & Detentions](#)) worrying trends with a common anchor – the use of antisemitism as a basis for arresting and seeking to deport protesters and attacks on university funding, a central prong of which has been to characterize pro-Palestinian protesters as supporters of Hamas and the atrocities they perpetrated on October 7. *Axios* [reports](#) that these tactics were foreshadowed in a plan developed by the authors of Project 2025 dubbed “Project Esther” to counter what the plan argues is a “virulently anti-Israel, anti-Zionist and anti-American ‘pro-Palestinian movement’” that supports Hamas (03/25/25). It calls for firing of pro-Palestinian professors at universities and using anti-racketeering laws to suppress pro-Palestinian or other groups. The article also notes that while the administration is focusing on antisemitism from the left, it appears to be ignoring antisemitism from the right, as to which it also [reports](#) there is a growing divide (03/12/25). This is a cover for cracking down on free speech and lawful immigration.

Timothy Snyder captures the essence of this concern in his Substack post “‘[Antisemitism](#)’ and [Antisemitism](#),” in which he warns that antisemitism is being weaponized by Trump and his enablers to further the administration’s attack on higher education and freedom of expression. Americans, he notes, are being trained to see antisemitism as a concept other than the oppression of Jews. In short, “The abuse of the word ‘antisemitism’ is meant to generate a sense of plausibility, confuse opposition, and create more space for the actual phenomenon of antisemitism. And this misdirection is an integral part of the effort to replace a constitutional order with an authoritarian one.” Snyder continues, “As the word ‘antisemitism’ becomes the cover for aggression, we lose the concept. And then, when actual antisemitism manifests itself, there will be no way to describe it, since ‘antisemitism’ will have come to mean something like ‘the power of arbitrary rulers to suppress freedom of assembly and freedom of speech under cover of disinformation and propaganda.’”

Michael Roth, President of Wesleyan University, in his op-ed [Trump Is Selling Jews a Dangerous Lie](#) (04/07/25) makes a similar point, “today’s anti-antisemitism isn’t a legitimate effort to fight it. It’s a cover for a wide range of agendas that have nothing to

do with the welfare of Jewish people.” The Trump agenda, he warns, “from dismantling basic government functions to crushing the independence of cultural and educational organizations to criminalizing political speech to legitimating petty presidential vendettas” poses not only a threat to the principles and institutions on which the country is built but also poses “a direct threat to the very people they purport to help. Jews who applaud the administration’s crackdown will soon find that they do so at their peril.” Jews are all too familiar with abductions by government agents, detentions without any basis, targeting of allegedly dangerous sentiments and beliefs, enemies lists, “official proclamations full of bluster and bile, all of which degrade the rule of law, and protection of freedom of thought and freedom of expression. As Roth notes, these are essential safeguards for marginalized communities (and by this he means those who do not align with the mainstream).

**Y1, Week Twelve**, DHS [announced](#) that it would screen the social media posts of those seeking lawful permanent resident status, foreign students and non-Americans “affiliated with educational institutions linked to antisemitic activity.” According to the statement, “USCIS will consider social media content that indicates an alien endorsing, espousing, promoting, or supporting antisemitic terrorism, antisemitic terrorist organizations, or other antisemitic activity as a negative factor in any USCIS discretionary analysis when adjudicating immigration benefit requests.” The statement refers back to Consistent with President Trump’s executive orders on [Combating Anti-Semitism](#), [Additional Measures to Combat Anti-Semitism](#) and [Protecting the United States from Foreign Terrorists and Other National Security and Public Safety Threats](#).

As Ali Bianco, writing in *POLITICO*, [noted](#), the DHS statement, coming on the heels of efforts to deport various student protesters “raised immediate concerns, including how the U.S. would define what constitutes the support of antisemitic activity and whether any criticism of Israel or its conduct of the war in Gaza would be enough to bar someone from the country. It also raised broader questions about free speech and civil liberties.”

Surveillance of social media by immigration and other authorities is not new. *See* this comprehensive 2022 [report](#) prepared by the Brennan Center.

Also **Y1, Week Twelve**, in the case brought by Mahmoud Khalil, when pressed for evidence supporting their move to deport Khalil, the government responded with a [two-page memo](#) (signed by Secretary of State Rubio), obtained and published by the Associated Press, to the effect that Khalil could be deported for his beliefs that “have serious foreign policy consequences” that “would compromise a compelling foreign policy interest.” This is based on [8 U.S. Code § 1227\(a\)\(4\)\(C\)\(i\)](#) (INA Section 237(a)(4)(C)).

Michael Anton was appointed in January to head the prestigious Policy Planning Staff at the State Department and in April was [tasked](#) with leading the technical talks with Iran over its nuclear program. In September 2020, Ed Luce, writing in *The Financial Times*, [reported](#) that Anton had posted a piece warning of a Democratic coup to upend the 2020 election based a conspiracy theory that tied George Soros to the effort by

twisting a tenuous connection with a set of tabletop exercises conducted in the summer of 2020.

**Y1, Week Thirty-Seven**, as we ponder the continued fallout from the Kimmel firing, which I cover at length above given the hypocrisy that the saga exposes, let us not forget that the administration is still trying to punish for exercising free speech rights one of the first casualties of the weaponization of free speech to crush free speech, namely [Mahmoud Khalil](#), whose saga I also have covered at length. I raise this because with few exceptions, the plight of Khalil barely registered or registers. The same goes for Tufts graduate student [Rümeysa Öztürk](#).

It was little surprise, but shocking nonetheless, that few were willing to take up the cause of these students, little surprise because of the ease with which the administration is able to wield accusations of antisemitism by merely mentioning pro-Palestine demonstrations and few dare to wade into the debate. Supporters of the rule of law should have called out the assault on free speech but did not – and we are now seeing the consequences of that failure.

### **Free Speech and the INA**

The publishing company behind *The Stanford Daily* and various plaintiffs proceeding under pseudonyms [challenged](#) (08/06/25) two provisions of INA that they posit censor lawfully present noncitizens – one that allows the Secretary of State to render a noncitizen deportable if he “personally determines” their *lawful* “beliefs, statements, or associations” “compromise a compelling United States foreign policy interest” (8 U.S. Code §§ 1182(a)(3)(C)(iii) and 1227(a)(4)(C)(i)) and one that allows the Secretary of State to “at any time, in his discretion, revoke” a “visa or other documentation.” (8 U.S. Code § 1201(i)). The plaintiffs, represented by Van Der Hout and the Foundation for Individual Rights and Expression, [moved](#) for a preliminary injunction. See [Court Listener](#) docket.

**Y1, Week Forty-Six**, Reuters [reports](#) that the State Department has put into place new vetting protocols, outlined in a cable sent to all U.S. missions directing consular officials to review resumes and LinkedIn profiles of applicants for H-1B visas, and family members that will be travelling with them, to determine whether any of them have worked in areas such as misinformation, disinformation, content moderation, fact-checking, compliance and online safety, among others. The cable reportedly goes on to state that. “If you uncover evidence an applicant was responsible for, or complicit in, censorship or attempted censorship of protected expression in the United States, you should pursue a finding that the applicant is ineligible,” under the INA.

While all visa applicants are subject to this policy, the heightened review for H-1B applicants is based, per the cable, on the perceived increased likelihood that tech workers were associated with “social media or financial services companies involved in the suppression of protected expression.” The vetting applies to new and repeat visa applications.

**Y1, Week Forty-Seven**, CBP has submitting a rulemaking proposal that would [require](#) as part of an ESTA application (for visitors under the visa waiver program) submission

of “social media” for five years (without specifying what that means) as well the following information:

- Telephone numbers used in the last five years;
- Email addresses used in the last ten years;
- IP addresses and metadata from electronically submitted photos;
- Family member names (parents, spouse, siblings, children);
- Family member telephone numbers used in the last five years;
- Family member dates of birth;
- Family member places of birth;
- Family member residencies;
- Biometrics—face, fingerprint, DNA, and iris;
- Business telephone numbers used in the last five years; and
- Business email addresses used in the last ten years.

See [Fragomen](#) client alert and [BBC](#) coverage.

**Y1, Week Forty-Eight**, Charlotte Willner and David Sullivan in their op-ed (“[State Dep’t. Visa Misstep Will Aid Predators, Scammers and Traffickers](#)”) point out how counter-productive the administration’s obsession with content moderation and free speech issues has become. The authors note that trust and safety professionals combatting child exploitation, human trafficking, online extremism, and online scams and fraud are at risk of being unable to obtain work visas because of recent direction to flag content moderation as a disqualifying criterion. Much needed expertise in state-of-the-art technology and experience could be lost.

### **Jimmy Kimmel**

**Y1, Week Thirty-Six**, during his Monday night monologue, Jimmy Kimmel had this to say about Charlie Kirk, “hit some new lows over the weekend [when the] MAGA gang desperately tried to characterize this kid who killed Charlie Kirk as anything other than one of them, and doing everything they can to score political points from it.” This prompted FCC Chair Carr on a [podcast](#) with conservative commentator Benny Johnson to warn that “[t]hese companies can find ways to take action on Kimmel or there is going to be additional work for the FCC ahead.” “We can do this the easy way or the hard way.”

Nexstar Media Group, the owner of affiliate stations across dozens of U.S. markets, announced that its affiliates would pre-empt *Jimmy Kimmel Live!* due to the remarks. Sinclair, another broadcaster, followed. ABC then announced that it was [suspending](#) Kimmel’s show “indefinitely,” a decision reportedly made by Disney CEO Bob Iger and the head of Disney Entertainment. See [Los Angeles](#) coverage. As *Washington Post* reporter Adam Liptak noted (“[In Pressuring ABC Over Kimmel, Trump May Have Crossed a Constitutional Line](#)”), Carr appeared to threaten both the network and its affiliates with regulatory action, although the FCC’s power is mostly over the licenses of local stations.

While in Britain, Trump criticized Kimmel for having “bad ratings” and said ABC “should have fired him a long time ago.” On Air Force One, he [said](#) “I would think

maybe their license should be taken away,” presumably referring to the affiliated stations (as the networks themselves do not have licenses). He added: “When you have a network and you have evening shows and all they do is hit Trump, that’s all they do – that license, they’re not allowed to do that. They’re an arm of the Democrat Party.”

Note Kimmel, the longest-serving late-night host on air, was not fired. As for Nexstar, it is in the process of closing [a \\$6.2 billion merger](#) with a rival operator, Tegna. The acquisition would create a network of 265 television stations in 44 states and requires approval from FCC.

Recall also Trump sued ABC last year, which paid \$16 million to settle the defamation case. This summer, the FCC approved a merger involving CBS’s owner, Paramount, days after CBS agreed to pay \$16 million to settle a separate lawsuit filed by the president. Then, in July, CBS [cancelled](#) the most-watched show in late night, “The Late Show With Stephen Colbert,” and ending a franchise that had lasted more than three decades.

To be clear, Kimmel probably erred in his implication that the assassin was a Trump supporter. Although he is a comedian and not a journalist, he probably should have corrected the record. But he had no obligation to – and in fact Fox News is replete with examples of falsities that are never corrected. But that is what the First Amendment protects – speech, no matter how abhorrent to the listener, unless there is a direct incitement to violence, is protected.

That is the lesson of [New York Times Co. v. Sullivan](#). As Justice Arthur Goldberg noted in his concurrence, with whom Justice William Douglas concurred, in the context of a libel action that established the standard that to prove libel a public official must show malice (namely that the statement was made with knowledge of, or reckless disregard for, its falsity), “The theory of our Constitution is that every citizen may speak his mind and every newspaper express its view on matters of public concern, and may not be barred from speaking or publishing because those in control of government think that what is said or written is unwise, unfair, false, or malicious.”

Recall, as set out under “Content Moderation,” that for years now the right-wing has attacked those fighting against disinformation as engaged in censorship of free speech. Allegations that government pressure on the platforms constituted impermissible “[jawboning](#)” were rejected by the Supreme Court. The recent accusations and pressure targeting Kimmel are the very jawboning actions that Republicans levelled against the Biden administration, without merit. What is happening now is very much jawboning, which is a violation of the First Amendment. And to restate the obvious, if ABC or its affiliate stations decided on their own merit to fire Kimmel there would be no First Amendment issue – as it does not reach private conduct. It is the pressure from Carr that creates the potential cause of action.

Two other cases addressing impermissible government pressure rising to a First Amendment violation are [Bantam Books v. Sullivan](#) (commission’s “thinly veiled threats” to report book distributors to the Rhode Island attorney general for potential violations of state obscenity laws ruled a violation of the First Amendment) and [NRA](#)



*v. Vullo* (which reaffirmed *Bantam*). Justice Sotomayor, writing from a unanimous court wrote,

“Ultimately, Bantam Books stands for the principle that a government official cannot do indirectly what she is barred from doing directly: A government official cannot coerce a private party to punish or suppress disfavored speech on her behalf. ... A government official can share her views freely and criticize particular beliefs, and she can do so forcefully in the hopes of persuading others to follow her lead. In doing so, she can rely on the merits and force of her ideas, the strength of her convictions and her ability to inspire others. What she cannot do, however, is use the power of the state to punish or suppress disfavored expression.”

I commend the podcast “[Free Speech is the Enemy of Free Speech, Apparently](#)” in which Dahlia Litvak interviews First Amendment professor of law Mary Anne Franks. The administration’s reaction to Kirk assassination has exposed all the contradictions that have taken hold in the war on free speech in the guise of protecting free speech.<sup>23</sup> We are in a moment when it is OK to praise Kirk, an avatar of free speech, but you can be targeted by the administration if you criticize him. And in doing so, the administration is wrapping its crusade against free speech as a crusade to vindicate the First Amendment. That is jawboning.

As for the inflection point this presents, as Adam Serwer concluded in this piece (“[The Constitution Protects Jimmy Kimmel’s Mistake](#)”):

“What happened to Jimmy Kimmel is not about one comedian who said something he should not have said. The Trump administration and its enforcers want to control your speech, your behavior, even your public expressions of mourning. You are not allowed to criticize the president’s associates. You do not even retain the right to remain silent; you must make public expressions of emotions demanded by the administration and its allies or incur its disfavor, which can threaten your livelihood. This is the road to totalitarianism, and it does not end with one man losing his television show.”

The fallout continues. On Friday, Sen. Cruz characterized FCC Chair Carr’s threat to punish ABC “as dangerous as hell [that] “will end up bad for conservatives.” Former counsel to Trump Ty Cobb, in an [interview](#) with Kristen Welker, called out Trump for

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<sup>23</sup> The Attorney General [threatened](#) to target those using “hate speech” – no, hate speech [generally is free speech](#). Bondi said, “There’s free speech and then there’s hate speech. And there is no place, especially now, especially after what happened to Charlie.” And on another podcast [said](#) “If you want to go in and print posters with Charlie’s pictures on them for a vigil, you have to let them do that. We can prosecute you for that.” Both utterances are flat out wrong. As David French noted in his op-ed (“[Charlie Kirk, Jimmy Kimmel and the Future of Free Speech in America](#)”), there is no First Amendment exception for hate speech (see *RAV v. City of St. Paul*) and businesses are not required to create expressive content that is inconsistent with their values (see [303 Creative LLC v. Elenis](#)).

Deputy Attorney General Blanche [defended](#) Trump’s suggestion that protestors who interrupted his dinner at Joe’s Steakhouse in D.C. could be prosecuted under RICO. The Vice President and Stephen Miller encouraged the public to call the employers of any person expressing views the government disagrees with.



“waging war on people who offend him” and likened pressure by the FCC and the administration on ABC of Putin, which banned critical media outlets, and Nazi Party Propaganda Minister Joseph Goebbels, who [banned](#) five comedians from broadcasting in February 1939 for “displaying a lack of any positive attitude toward National Socialism and therewith caused grave annoyance in public and especially to party comrades.”

Coincidentally, David French in his op-ed closes with a warning from Justice Robert Jackson, who would go on to serve as prosecutor in the Nuremberg trials. Writing the majority opinion in a case that struck down a West Virginia school board rule requiring students to salute the American flag ([West Virginia State Board of Education v. Barnette](#)), he warned, “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion, or force citizens to confess by word or act their faith therein.”

Trump never backs down – he now says that critical coverage of him by the media is “[really illegal](#).” This came the day after he suggested that protesters who called him Hitler at a D.C. seafood restaurant should be put in jail. His rationale for his extreme position is that “97% of the stories” about him are negative. “That’s no longer free speech. That’s just cheating. And they cheat.”

**Y1, Week Thirty-Seven**, Kimmel is back on the air after being reinstated by Disney. His contract runs to May 2026. An open letter [prepared](#) by the ACLU in support of Kimmel and in defense of free speech garnered over 400 signatories from the creative, artistic and journalism communities. At the Concordia Summit in New York City on Monday, Carr [tried to walk back](#) his threats, denying his comments were intended as threats to revoke licenses.

Nexstar and Sinclair declined to carry the reinstated show. Four Democratic Senators [raised](#) a series of a questions in a letter addressed to both broadcasters. Reps. Robert Garcia and Max Frost, in a letter addressed to Sinclair, [requested](#) documents bearing on engagements between Sinclair and the FCC, DOJ and Disney.

End of **Y1, Week Thirty-Seven**, Nexstar and Sinclair announce the end of their pre-emption of the *Jimmy Kimmel Live!* show. See [NPR](#) coverage.

*New York Times* columnist Peter Baker highlights another instance of Trump saying the quiet part out loud. Baker [posits](#) that for Trump, his crusade against “hate speech” in fact is a crusade against speech *he* hates. Baker quotes Trump [speaking](#) to reporters, “They’ll take a great story and they’ll make it bad,” referring to network newscasts. “See, I think that’s really illegal.” In yet another instance where he undercuts his enablers (and his lawyers), Trump managed to undermine the position taken by Carr when he made clear the threats to ABC had nothing to do with the falsity of Kimmel’s statements but rather he had it in for those who speak out against him. Here is Trump on Truth Social, “That leaves Jimmy [Fallon] and Seth [Meyers], two total losers on Fake News NBC! Their ratings are also horrible. Do it NBC!!!”

**“Media Bias” Tracker**

**Y1, Week Forty-Five**, on Friday, the White House announced the launch on the official White House website of a “[media bias](#)” tracker highlighting news publications that it has accused of “offenses” against the current administration. Per the White House, the site is meant to be a “record of the media’s false and misleading stories flagged by The White House.” The site includes an “offender hall of shame” and list of publications with articles considered to be mistruths by the White House’s standards, including The Washington Post MS NOW, CBS News and CNN.

## **USAID**

**Y1, Week Forty-Seven**, sadly, little did I think that I would be writing about USAID at this point, but sure enough there is another nugget. Isaac Stanley Becker, writing in *The Atlantic* (“[USAID Hired the Right-Wing Influencer Responsible for Its Decimation](#)”) reported that right-wing influencer Mike Benz is heading to USAID, or what is left of it. Benz [popularized](#) the idea that Taylor Swift is a secret NATO asset and reportedly [once wrote](#), under the pseudonym “[Frame Game](#),” “I want white identity politics to grow like wildfire.” As for USAID, Benz claimed the agency was a terrorist organization or a spy operation, or both. Reportedly, Benz now is going to delve into agency archives to substantiate his allegations about its role in foreign regime change, its promotion of “state-sponsored hit pieces” and its suppression of free speech.

## **Connecting the Dots**

Renée DiResta, in her Lawfare op-ed (“[Speech, Coercion, and the Myth of the Censorship Regime](#)”), does a terrific job of connecting the dots, showing how accusations of censorship have been weaponized with allegations based on misrepresentations and fabrications continuing to this day. DiResta walks us through how FCC Chair Carr’s threats against ABC over Jimmy Kimmel constituted classic jawboning, and then points out that a [letter](#) submitted by Google to Jim Jordan, touted by Jordan as further evidence of the censorship industrial complex actually undermines their case. DiResta notes that Google’s letter refers to government pressure, but it also evidences its own resistance. It states Google maintained policy independence (it “continued to develop and enforce its policies independently”); it faced no retaliation for refusing government requests. In contrast, ABC initially capitulated.

## **Hypocrisy**

Two individuals, represented by the Foundation for Individual Rights and Expression, [sued](#) the Attorney General and the DHS Secretary. One created a Facebook group “ICE Sightings – Chicagoland” and the second created an app Eyes Up, each of which hosted video footage of ICE operations. The complaint alleges the group was taken down by Facebook and the app was taken down by Apple at the direction of the government, which the Attorney General acknowledged. See [statement to Fox News](#) and [statement on X](#).

## WEAPONIZATION OF THE MILITARY – DEPLOYMENT IN AMERICAN CITIES

- [Los Angeles](#)
- [Washington, DC](#)
- [Boston](#)
- [Chicago, New York](#)
- [Memphis](#)
- [Portland](#)
- [San Francisco](#)
- [New Orleans](#)
- [Minneapolis](#)
- [Red States Step Up](#)
- [Broader Implications](#)
- [Congressional pushback](#)
- [Retired military officers speak out](#)
- [Trump withdraws Guard from three cities](#)

### Tracking Developments

See Lawfare’s tracker, available [here](#).

### Los Angeles

President Trump federalized at least 4,000 members of the California National Guard (initially 2,000, augmented by an additional 2,000) and caused the deployment of active-duty Marines in America’s second-largest city, Los Angeles, without the consent, and over the objections, of California’s governor. Former LAPD [Chief Michael R. Moore](#), in his op-ed (“[I Ran the LAPD. I Know What Happens When Troops Are Sent to American Cities](#)”), noted that there are now more military troops on the streets of Los Angeles than are stationed in Iraq (where reportedly there are 2,500) and Syria (where reportedly there are 1,500).

This deployment represents the first time since 1965 that a president has deployed federal or federalized troops in a state absent a request by that state (via its governor) for assistance. (In 1965, President Lyndon Johnson [called into federal service](#) members of the Alabama National Guard to supervise the march from Selma to Montgomery over the objection of Governor George Wallace.) This deployment also represents the first time a statutory provision has been used to deploy National Guard without a concurrent invocation of the Insurrection Act. To be clear, Trump has not invoked the Insurrection Act<sup>24</sup>, at least not yet. That said, there are plenty of reasons

<sup>24</sup> See discussion of the Insurrection Act (“[Imagine An America with a Praetorian Guard Enforcing the Edicts of an Autocratic Leader](#)” and “[Living Under Authoritarian Rule – Taking Donald Trump At His Word](#)”). The Secretary of Defense and the Secretary of Homeland Security were directed in a Day One Executive Order to report on conditions at the border and any recommendations regarding additional action at the border, including whether to invoke the Insurrection Act. The recommendation in April was to not invoke the Insurrection Act. Experts generally agree that there is little that would

to be concerned. At the very least, this move is illegal (as one would be hard pressed to conclude that the statutory predicate for the deployment exists) and is clearly intended to provoke a disturbance and create panic and fear in communities. Former LAPD Chief Moore added another warning, the U.S. military “is not the right tool for this mission and without first exhausting the substantial civilian resources already in place. .... Deploying federal troops undermines” California’s emergency response infrastructure and mutual aid plan (among the most advanced in the country).

### ***LA - The Presidential Memorandum***

The deployment is based on a Presidential Memorandum, [Department of Defense Security for the Protection of Department of Homeland Security Functions](#) (06/07/25), which cites alleged “numerous instances of violence and disorder” and the threat of further violence and disorder in response to ICE and other government personnel implementing federal immigration laws. The Presidential Memorandum characterizes the protests and violence as a “form of rebellion.”

The Presidential Memorandum calls for the deployment of California National Guard units under [10 U.S. Code § 12406](#) to “*temporarily protect* ICE and other government personnel performing federal functions, and to *protect federal property* at locations where protests are occurring or are likely to occur based on current threat assessments and planned operations.”<sup>25</sup> The Secretary of Defense is directed to coordinate with state governors. The Secretary is also authorized to employ any other members of the active duty military “as necessary to augment and support the protection of Federal functions and property.”

### ***LA - The Statutory Basis***

The predicate for invoking § 12406 is an “invasion” from a foreign nation (prong one), a “rebellion or danger of a rebellion” against the authority of the U.S. government (prong two) or when “the President is unable with regular forces to execute the laws of the United States” (prong three). Presumably, Trump is relying on the second prong of the provision (having made reference to a “rebellion”), or perhaps the third prong.

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stop Trump from invoking the Insurrection Act. After all, he invoked the Alien Enemies Act on far more shaky statutory grounds.

The Associated Press has listed the instances over time that the National Guard has been called out, available [here](#).

<sup>25</sup> Chris Mirasola, writing in Lawfare (“[The National Guard in Los Angeles](#)”), cites an April 29, 1971 memorandum from the DoJ Office of Legal Counsel (OLC) that [reiterated](#) the longstanding executive branch view that the president has “inherent authority to use troops for the protection of federal property and federal functions.” This is based on Article II authority under the [Take Care Clause](#) as well as Supreme Court dicta from [In re Neagle](#) and [In re Debs](#), asserting what the OLC calls “the President’s inherent powers to use troops to protect federal property and functions.”

The second sentence of § 12406 provides that the orders are to be “issued through the governors of the States... .”<sup>26</sup>

Elizabeth Goitein of the Brennan Center for Justice (quoted in [“Trump charts new territory in bypassing Newsom to deploy National Guard”](#)) characterizes Trump’s use of § 12406 as “unprecedented” and “untested.” She notes that § 12406 typically has been invoked in conjunction with the Insurrection Act, which allows the president to deploy active-duty military or National Guard domestically, enabling them to perform law enforcement activities that otherwise would be prohibited by the Posse Comitatus Act. The Posse Comitatus Act bars the use of federal troops for civilian law enforcement, and once National Guard units are federalized, they too become subject to the Posse Comitatus Act. The Posse Comitatus Act has an exception – in effect a congressional override, and that override is the Insurrection Act. Acting under the Insurrection Act obviates the need for the President to get a state governor’s consent.

Goitein in her *Just Security* explainer ([“‘The Insurrection Act’ by Any Other Name: Unpacking Trump’s Memorandum Authorizing Domestic Deployment of the Military”](#)) describes § 12406 as “the technical call-up authority that accompanies the Insurrection Act’s substantive grant of power.” The last use of § 12406 was in conjunction with the Insurrection Act during the Rodney King riots in Los Angeles, at the request of the California governor.

As Professor Steve Vladeck noted ([“One First, 156: Federalizing the California National Guard”](#)), since Trump has not invoked the Insurrection Act, the National Guard units that have been called out will not have the authority to engage in ordinary law enforcement activities without violating PCA. Those units will be able to provide some form of force protection and other logistical support to ICE agents, but what that means may well be open to interpretation on the ground. There is nothing that National Guard units will be able to do that ICE agents cannot do, but there is much the Guard units cannot do that ICE agents or state/local law enforcement can do. Note too that, as Professor VanLandingham pointed out, National Guard units under state control have broader law enforcement authorities than National Guard units under federal control (as will be the case for those deployed under the Presidential Memorandum).

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<sup>26</sup> In his February 2024 post in *Just Security* ([“Biden Can, But Shouldn’t, Federalize the Texas National Guard”](#)), Joseph Nunn noted, in the context of how then President Biden should respond to Governor Greg Abbott’s Operation Lone Star, Biden would have likely needed to invoke the Insurrection Act to federalize the Texas National Guard. Nunn referred to § 12406 as a “troubling ambiguous statute,” pointing to the second sentence (working through governors) and suggesting that if, the provision was intended to grant unilateral authority to the President, then the second sentence is an “odd choice of words.” The 1903 predecessor provision to § 12406 made no reference to state governors and granted the President unambiguous authority. The provision was amended in 1956 as part of the Armed Forces Act – no explanation is available as to why the additional language was added. That the provision has only been used as an adjunct to the Insurrection Act then makes more sense.

## *LA - Situation on the Ground & in the Courts*

### *Deployment of National Guard and Marines*

So, in short, National Guard units have been deployed to protect ICE agents (as of Sunday night, 300 members of the California National Guard reportedly had been deployed), yet there is no reason to believe that state and local law enforcement are unable to do this, and neither state nor local law enforcement components have requested federal assistance. While the Presidential Memorandum was silent as to which state's National Guard units would be called up, we quickly knew the answer. And incidentally, although Gov. Newsom spoke by telephone with Trump the day before the Presidential Memorandum was issued, [according](#) to the Governor, Trump never raised federalizing the Governor's National Guard, and then lied by saying he had.

Rather than call for calm, the administration very publicly is gearing up for a fight. The Secretary of Defense alluded to calling out Marines stationed at Camp Pendleton if the violence continues. A US Northern Command (USNORTHCOM) press release [released](#) Sunday evening refers to 500 Marines that are in prepared to deploy status "should they be necessary to augment and support the DoD's protection of federal property and personnel efforts." It is unclear under what authority those Marines could be deployed, as § 12406 only authorizes deployment of National Guard units.

"Border Czar" Tom Homan threatened to arrest Gov. Newsom and LA Mayor Karen Bass if they interfere with federal immigration enforcement. Trump doubled down on Monday by [endorsing](#) Homan's call to arrest Governor Newsom, prompting a [response](#) from the Governor, calling Trump's threat "an unmistakable step towards authoritarianism." Incidentally, as Josh Marshall pointed out in his Talking Points Memo ("[Why is Tom Homan Going Full Fidel](#)"), Homan is not part of ICE, or part of federal police or law enforcement; he works for the White House as an advisor in a civilian capacity. So, to state the obvious, Homan has no formal authority to arrest anyone.

CNN reports that Senator Ted Cruz shared a video clip of an LAPD vehicle on fire – the only problem is that the video clip was from 2020.

Monday, USNORTHCOM [confirmed](#) that 700 active-duty Marines are integrating with the National Guard units deployed under Title 10 over the weekend (forming part of Task Force 51). The Guardian reported that National Guard units as well as ICE and DHS personnel were largely not in evidence on Monday. City officials participated in a protest to demand the release of David Huerta, a leader of the SEIU, who was arrested on Friday while monitoring an immigration raid. Huerta was later released on bond after being [charged](#) with "conspiracy to impede an officer." A video [posted online](#) by a California assemblyman showed Huerta being shoved to the ground. Another [video of the arrest](#) posted by US Attorney Bill Essayli shows the same incident.

The Guardian [reported](#) that an official speaking Monday on the condition of anonymity about the Marine deployment said "for now, the Insurrection Act is not expected to be invoked." Trump [stopped short](#) of calling the protests in LA an insurrection, but says



“it could have led to one,” though as the Guardian points out less than an hour earlier he [had called](#) the protesters “insurrectionists” as he [had](#) the day before.

Hina Shamsi, Director of the National Security Project at the American Civil Liberties Union, [responding](#) to the Marine deployment [wrote](#) “Every move President Trump has made since Saturday night has been escalatory and inflammatory. The idea that these Marines have anywhere near the kind of training required to police protests while respecting people’s constitutional rights would be laughable if the situation weren’t so alarming.”

Late Monday, it was widely reported that Trump had authorized the deployment of an additional 2,000 members of the California National Guard.

Around 200 Marines were deployed to protect the Wilshire Federal Building in Westwood. Major General Scott Sherman, the commander of Task Force 51 who oversees by then 4,700 troops mobilized in Los Angeles, said that the active-duty Marines had now completed civil disturbance training and would take over duties from National Guard units, which will instead focus on protecting federal law enforcement personnel. *Reuters* first [reported](#) that Marines temporarily detained a civilian, pending arrival of law enforcement, who turned out to be a US citizen and an Army veteran on his way to the Department of Veterans Affairs.

As of the weekend, the Insurrection Act still has not been invoked, meaning that the federalized National Guard units and the active-duty Marines deployed in Los Angeles may not engage in law enforcement activities.

*“Police State Exhibit Closed Today Due to the Police State.”* This was posted by Nadya Tolokonnikova, co-founder of Pussy Riot, after the Museum of Contemporary Art in Los Angeles quickly closed its doors with police helicopters hovering above and a heavy police presence at the doorstep. At that time, Nadya was sitting in a replica Russian prison cell in the museum as part of her “durational” performance piece, Police State. The prison cell is a replica of the cell in which she was incarcerated for two years following her conviction of “hooliganism motivated by racial hatred” for staging an anti-Putin protest in a cathedral in Moscow in 2012. The museum announced that the performance would be postponed indefinitely due to “ongoing demonstrations and military activity. Nadya’s post continues ... “Every single event I did in Russia was shut down by the cops and now it’s starting to feel a lot like Russia.” See [Guardian](#) coverage. The banner (It’s beginning to look a lot like Russia) is visible in this No Kings [video clip](#) (see the LA segment).

### **The Pushback**

In a letter to the Secretary of Defense (06/08/25), the Office of Governor [requested](#) that the order federalizing 2,000 members of the National Guard be rescinded and that those members be returned to the control of the State of California.

Democratic governors [issued](#) a statement Sunday evening calling the deployment “an alarming abuse of power” and standing with Gov. Newsom. It went on to say that the threat of sending in the Marines undermines the mission of active-duty military, “erodes the public trust and shows the Trump administration does not trust local law enforcement.”

As expected, Gov. Newsom and California Attorney General [sued](#) Trump and the Secretary of Defense, calling on the court to declare the order federalizing elements of the California National Guard unlawful (06/09/25). The complaint argues that the federalization of the Guard deprives California of resources to protect California residents, § 12406 requires the Governor's consent which the Governor was not given the opportunity to do, and the order infringes on the Governor's role as commander-in-chief of the California National Guard in the absence of lawful invocation of federal power (the Insurrection Act). See [Court Listener](#) docket.

On Tuesday, Gov. Newsom and the State of California [sought](#) a temporary restraining order. Plaintiffs sought circumscribed emergency relief to prevent the use of federalized National Guard and active-duty Marines for law enforcement purposes on the streets of Los Angeles. Tuesday afternoon, that request was [denied](#), to give the government an additional 24 hours to respond. The motion (relying on claims that the deployment is *ultra vires* and violates the Tenth Amendment) was heard on Thursday before Judge Charles R. Breyer.

*Amicus* briefs were filed in support of both sides. The States of Iowa, Oklahoma, and South Carolina, Iowa, Oklahoma, South Carolina, Alabama, Arkansas, Florida, Georgia, Guam, Idaho, Indiana, Kansas, Louisiana, Missouri, Montana, Nebraska, North Dakota, South Dakota, Tennessee, Texas, and Utah through their Attorneys General [filed](#) a brief in support of the defendants. A group of former Army and Navy Secretaries and retired four-star admirals and generals (collectively having served under every presidents from JFK to Obama), supported by Hecker Fink and Protect Democracy, [filed](#) a brief in support of the plaintiffs. The Court granted motions of the States of Washington, Delaware, Arizona, Colorado, Connecticut, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Vermont, Wisconsin, Rhode Island and the Office of the Governor of Kansas to file briefs as well.

On Thursday (06/12/25), Judge Breyer [granted](#) the motion for a temporary restraining order, enjoining the defendants from deploying members of the California National Guard in Los Angeles and ordering the return of control of the Guard to the Governor. The order was stayed until noon on Friday to give defendants the chance to appeal.

In determining the likelihood of success on the merits, the Court considered whether the statutory bases for federalizing the National Guard were met, and found that the statutory conditions were not met:

- *First*, the Court concluded that the “rebellion” prong was not met. The Court was troubled by the implications inherent in the defendants’ assertion that “protest against the federal government, a core civil liberty protected by the First Amendment, can justify a finding of rebellion.” The Court noted that courts have repeatedly reaffirmed that “peaceful protest does not lose its protection merely because some isolated individuals act violently outside the protections of the First Amendment.” The Court also took issue with the defendants’ argument that “a *danger* of rebellion” would satisfy § 12406, citing concern that “the federal executive could unilaterally exercise military force in a domestic context and then be allowed to backfill justifications for doing so,

especially considering how wary courts are of after-the-fact justifications even where the stakes are lower.”

- *Second*, as for the inability of the President to execute the laws of the United States, the Court found that § 12406 “does not allow for the federalizing of the National Guard when the President faces obstacles that cause him to underperform in executing the laws. Nor does the statute allow for the federalizing of the National Guard when the President faces some risk in executing the laws, though of course federal employees should never have to fear danger when performing their jobs. The statute requires that the President be ‘unable’ to execute the laws of the United States. That did not happen here.”
- *Third*, as to the procedural requirement of acting through Governor Newsom, the Court declined to address what would have happened if the Secretary of Defense had attempted to issue his order through the Governor and the Governor had refused. The Court was satisfied that the procedural requirement was not met because the Secretary of Defense did not issue orders through the Governor. The fact that the orders were labelled “Through the Governor” was insufficient. “To interpret § 12406 to allow merely typing the phrase on a document never sent to the Governor “strains credibility, especially given that Congress specifically amended the statute to add the requirement that orders ‘shall be issued through the governors.’”
- Having determined that the defendants exceeded their authority by violating § 12406, the Court did not need to reach the question of whether Trump violated the Posse Comitatus Act by federalizing the National Guard for an unlawful purpose.

The defendants immediately [filed](#) a notice of appeal with the Ninth Circuit. The Ninth Circuit late Thursday evening [granted](#) (2-1) the defendants’ emergency motion for a stay of the District Court order pending appeal, which will be heard Thursday, June 17. There is no reason to believe this was a decision on the merits. As Y1, Week Twenty-Two looms, the National Guard and the Marines remain deployed in Los Angeles.

**Y1, Week Twenty-Two**, for the time being the National Guard and the Marines may remain in Los Angeles, as the Ninth Circuit (3-0) [granted](#) an administrative stay of the District Court order, pending appeal (06/19/25). Note that this stay only applies to the District Court’s temporary restraining order, and not the underlying case in the District Court. It also only applies to states within the Ninth Circuit.

The Ninth Circuit, in according deference to Presidential action (citing caselaw going back to 1827, *Martin v. Mott*), concluded that Trump acted within his authority in federalizing the National Guard under the [third prong](#) of 10 U.S. Code § 12406. In doing so, the Ninth Circuit ignored the second prong relied upon by the District Court and found its own basis – characterizing the nominal violence as sufficient to satisfy that third prong. Moreover, the Ninth Circuit was not persuaded by the procedural arguments that the failure to issue the order through the Governor was dispositive. There is a certain irony that the Ninth Circuit acknowledged that “*Martin* does not compel us to accept the federal government’s position that the President could

federalize the National Guard based on no evidence whatsoever, and that courts would be unable to review a decision that was obviously absurd or made in bad faith,” yet then proceeded to ignore the obvious.

In a setback for Trump, the Court did reject the government’s contention that courts have no role in reviewing the federalization of the National Guard (“we disagree with Defendants’ contention that § 12406 completely precludes judicial review of the President’s determination that a statutory precondition exists).

Governor Newsom has the option of appealing to the full Ninth Circuit or to the Supreme Court. Judge Breyer is still considering whether to issue a preliminary injunction in respect of the National Guard and the active-duty Marines. He has yet to rule on the issue of deployment to protect federal buildings and the issue of National Guard and the Marines accompanying ICE on raids (in particular whether these troops are undertaking domestic law enforcement in violation of the [Posse Comitatus Act](#).

### **Congress/State Officials?**

As for Article I, Heather Cox Richardson reminds us that last weekend, despite having the legal authority to enter ICE detention facilities to conduct oversight, Reps. Adriano Espaillat and Nydia Velázquez say they were prevented from checking on the well-being of those detained in New York, and in California, Reps. Maxine Waters, Jimmy Gomez, and Norma Torres were prevented from entering the Metropolitan Detention Center in downtown Los Angeles.

See also [Arrests/Detentions](#), below.

### **Other Voices**

The Los Angeles Area Chamber of Commerce [released](#) a statement (06/09/25) urging calm and de-escalation, characterizing the government’s actions as undermining public safety, harming affected communities and destabilizing the city’s economy.

### **LA - Reasons for Concern**

While the deployment technically is highly circumscribed by reason of the statutory authority relied upon by Trump, as Professor Vladeck notes, there are reasons to be concerned:

- first, deployed National Guard units may end up using force in response to actual or perceived threats of violence against ICE agents or themselves;
- second, the deployment may lead to a more aggressive response to anti-immigration policy protests, possibly leading to the invocation of the Insurrection Act (at which point National Guard units and active-duty units that are called up will have law enforcement authority – *e.g.*, to make arrests or conduct their own immigration raids); and
- third, the deployment has the potential to be corrosive to morale of the National Guard and potentially active-duty military; strain relationships between the local/state government and the federal government (and between state governments and the military); and create a chasm between the military and civil society.

Moreover, the Presidential Memorandum is not limited to California or Los Angeles. National Guard units could be activated in other cities.

### ***LA - A Historical Perspective***

Harold Meyerson, writing in the Financial Times (“[Trump is provoking LA to fire up his base](#)”), makes an interesting observation. In the decade leading up the Civil War, Southern lawmakers pushed through the Fugitive Slave Act, which allowed slave owners to capture runaway enslaved people and return them to their owners, even if they were found in free states. The Act compelled northerners to cooperate with civilians and federal troops trying to capture escaped enslaved people. Several northern states passed legislation forbidding such recaptures in their states.

### ***LA - From the Authoritarian Playbook***

As often is the case with actions by Trump and his enablers, there is a split screen – fact and fiction. NYU history professor and expert on fascist and authoritarian movement, characterizes the rhetoric from the White House and Trump’s enablers as a classic authoritarian move. The authoritarian creates fear that anarchy is spreading and then brings the full force of the state to counter the crisis that he created. Some examples:

- Trump on [Truth Social](#): “looking really bad in LA. Bring in the troops!” “I can inform the rest of the country that when they do it, if they do it, they’re going to be met with equal or greater force than we met right here.” [Friday, on Truth Social](#): “The Appeals Court ruled last night that I can use the National Guard to keep our cities, in this case Los Angeles, safe. If I didn’t send the Military into Los Angeles, that city would be burning to the ground right now. We saved L.A. Thank you for the Decision!!!”
- Both [Trump](#) and DHS Secretary [Noem](#) have referred to the need to “liberate” Los Angeles.
- Stephen Miller: [calls](#) LA “occupied territory.” “[T]his is a fight to save civilization.” [Thereafter](#), “Simply put, the government of the State of California aided, abetted and conspired to facilitate the invasion of the United States.”
- Attorney General Bondi [to reporters](#), when asked about a double standard in light of the January 6<sup>th</sup> pardons: “Well, this is very different. These are people out there hurting people in California right now. This is ongoing.”
- FBI Director Patel [on X](#): “LA is under siege by marauding criminals.”
- Secretary of Defense Hegseth [on X](#): “The violent mob assaults on ICE and Federal Law Enforcement are designed to prevent the removal of Criminal Illegal Aliens from our soil. A dangerous invasion facilitated by criminal cartels (aka Foreign Terrorist Organizations) and a huge national security risk.”
- DHS Assistant Secretary for Public Affairs Tricia McLaughlin [on NPR](#): “There’s some activity on the ground that it seems that is highly coordinated and that there might be a financial backer that could be even a foreign adversary,

Not to be outdone, the right-wing media echo chamber is fully engaged, [calling](#) for the arrests of Gov. Newsom and Mayor Bass. Acting U.S. Attorney Essayli [claimed](#) the protestors were well-funded and the protestors were “organized and orchestrated.” Karoline Leavitt, when [asked](#) about Trump’s claims that protesters are “paid insurrectionists,” said this is “common sense,” then alluded to “boxes and boxes of very professionalised masks and rioting equipment being dropped off for these protesters” and asked “about who is funding these insurrectionists.”

### **LA - Questions**

The deployment raises a host of questions.

- Why now? From what is Trump trying to detract attention? Joyce Vance raises the possibility that the deployment is intended as an intimidation tactic to reduce the likelihood of protests on Trump’s birthday. Or is this, as David Frum warns (“[For Trump, This Is a Dress Rehearsal](#)”), a possible precursor to/roadmap for shutting down the 2026 mid-term elections?
- How does this deployment tie to the request by DHS in mid-May for 20,000 National Guard troops. See NPR’s “[DHS memo details how National Guard troops will be used for immigration enforcement](#).”
- Why did Trump not invoke the Insurrection Act, given the alacrity with which he invoked the Alien Enemies Act, notwithstanding no declared war and no basis for concluding there has been an “invasion” or “predatory incursion” and he has relied on “emergency declarations” including under the International Emergency Economic Powers Act (IEEPA) as a basis for his Liberation Day tariffs? In other words, what are we missing? Is this in fact a steppingstone for the Insurrection Act, particularly if troops will already be on the ground? Or this a reflection of growing unease in the MAGA base with some of the more extreme actions?
- Is this the beginning of a more concerted effort at challenging Blue state governors?
- Will additional authorities be needed? How is the deployment being funded? It is widely reported that a senior DoD official, the Pentagon Comptroller, testified before Congress that the estimated cost of deploying the National Guard and the Marines is roughly \$134 million.
- What are the Standing Rules for the Use of Force (the domestic equivalent of Rules of Engagement)?

What support realistically can be provided if the troops cannot engage in law enforcement (so long as the Insurrection Act is not invoked) – see the DoD’s [Instruction on Defense Support of Civilian Law Enforcement Agencies](#) (which arguably governs operations when the Insurrection Act has not been invoked)? The situation appears chaotic as news reports [detail](#) training for Marines in Standing Rules for the Use of Force and use of non-lethal weapons (how effective can that be?). One spokesperson reportedly said that Marines could detain, leaving it to law enforcement to arrest.



- How applicable is the training that National Guard units undergo for these deployments? How easy will it be for National Guard troops to work with law enforcement components, since they have not received much training to do so.
- Not for today, but under the [Emergency Management Assistance Compact](#), could National Guard units of one state be deployed to another state (without the consent of the host governor)? Goitein [believes](#) they can because, once federalized, a state National Guard temporarily becomes part of the federal armed forces. They in effect become fungible.

### **LA - Messaging**

- [California does not need help](#). In 2023, there were over 76,000 sworn law enforcement officers with arrest powers in the state and at the end of 2024, the Los Angeles Police Department had 8,800 uniformed officers. And if California needs help, the Governor can activate *his* National Guard.
- [Elements of the California National Guard, typically under the control of the Governor of California, were federalized without the consent, and over the objection, of the Governor](#). The deployment is unlawful (as there is no rebellion and there is no inability to use state/local law enforcement) just as the invocation of the Alien Enemies Act is unlawful (as there is no foreign war or invasion).
- [Trump is creating panic and chaos to create a justification for targeting and scapegoating immigrants and for unleashing violence in our cities and our communities](#). He is doing this to distract us all from the reality that the cost of living has not come down as he promised, the economy is tanking, and his “Big Beautiful Bill” will devastate working class American families while giving tax breaks to the rich.
- [Do not be confused or distracted by noise about immigration](#). In his own words, Trump sent federalized National Guard and Marines to “liberate” Los Angeles from the violence of protesters – violence he alone incited. Trump is politicizing the military, and the Secretary of Defense is enabling it – the deployment of troops to quash protests and intimidate protestors on American streets, when policing protests can be handled by state and local law enforcement. This unnecessary and unlawful assertion of federal power sweeps aside the protection of states’ rights and represents an assault on First Amendment rights of (a) free speech and (b) the right of people peaceably to assemble and to petition the government for a redress of grievances.
- [This is a performative move, the escalation of which followed using ICE raids to bait protesters](#). To be clear this is not a riot, and the protestors are not “insurrections” or engaged in a “rebellion.” The violence in Watts in 1965 constituted a riot. The violence and unrest unleashed on the streets of Los Angeles in 1992 following the acquittals in the Rodney King case constituted a riot. The attack on the Capitol on January 6<sup>th</sup> was an insurrection. Protests largely have been peaceful and reportedly have been limited to a five-block area in a stretch in downtown LA. No one has died. Yes, there have been

incidents of vandalism, and some cars have been set on fire, but no homes or buildings have burned.

- [Trump falsely repeatedly claims that his immigration crackdown targets criminals.](#) On Friday, ICE agents deployed in Los Angeles' fashion district, where the immigrant workforce is composed largely of seamstresses. On Saturday, ICE agents raided a Home Depot store in a Latino working-class suburb, targeting immigrant day laborers seeking construction jobs.
- [The Trump administration is targeting any immigrant ICE agents can find,](#) including hard-working, tax-paying long-time productive residents of our communities. Parents, students, workers, people with legal status and even American citizens are getting caught up in the sweeps. In the meantime, the presence of heavily armed federal authorities is creating panic and fear, and is destabilizing communities, businesses and families across a city of 4 million people.
- [Trump's actions have all of the makings of turning units of the U.S. armed forces into a praetorian guard for the President,](#) answerable only to him, not the Constitution, which he can deploy on a whim to confront his personal enemies and thereby target the very people our armed forces have sworn an oath to protect.
- [Our armed forces signed up to protect the homeland.](#) Neither active-duty troops nor National Guard troops signed up to police, let alone confront and use force against, fellow Americans, and as National Guard units are local, they risk confronting fellow members of their communities. The military remains in many circles a trusted institution – taking sides against Americans will destroy that trust quickly. I commend to you the article written by Maj. Gen. (ret.) Randy Manner ([“Using the military to intimidate Americans is 100% wrong”](#)).
- [Troops operating overseas are subject to a different legal regime; operating on American streets deployed units will be subject to domestic law where Constitutional protections technically still apply.](#) As LAPD Chief Moore spelled out,

“Police officers are trained to protect constitutional rights, use measured force and remain accountable to civilian oversight. They operate within a legal framework grounded in probable cause and community trust. The military, by contrast, is designed for combat operations under a chain of command that originates in Washington. Military training, equipment and tactics are optimized for warfare – not for safeguarding civil liberties or managing peaceful protest. History reminds us of the dangers of blurring these lines. The tragedy at Kent State, where unarmed student protesters were gunned down by National Guard troops, offers a stark warning.”
- [We should not be comforted by legal distinctions between what troops can do today versus what they could do if the Insurrection Act were invoked](#) – simply being on the streets while law enforcement operations are under way could

- easily wipe out any difference in the eyes of Americans and tar the military as agents of a repressive regime.
- When the country faced a real riot at our Capitol on January 6<sup>th</sup> and the National Guard needed to be called out, Trump let the insurrection on Capitol Hill play out while he watched it on television, and when he first got the chance, he pardoned all of the insurrectionists who had been convicted or had pleaded guilty for their actions that day.
  - Deploying the military domestically diverts already stretched units from the tasks they should be focused on. At a time when we face heightened national security threats from a range of volatile situations overseas – Russia-Ukraine, the Middle East and the attacks by Israel and Iran against each other, and emboldened adversaries, particularly China, we should not be deploying troops domestically to confront and intimidate citizens on the streets of America.
  - Unleashing the National Guard and the military risks casting the government of the United States of America as illegitimate. As Professor Barbara F. Walters notes in her op-ed “[Trump’s Flawed Message to Los Angeles](#),” counter-insurgency experts have long understood that using disproportionate force against civilians is a surefire way to radicalize the population – “heavy-handed state violence doesn’t pacify dissent; it inflames it.” Mohandas Gandhi, Nelson Mandela and Martin Luther King Jr. understood this. Remember Ruby Ridge and Waco, and the lessons of counter-insurgency operations in Iraq? Rather than conveying strength, brute force against peaceful civilians reveals fear and weakness, and drives resistance.
  - As the Presidential Memorandum has a forward-looking component to it and no geographic or temporal limitations, [this move has the potential to engulf the entire country, wherever there are or may be protests against ICE](#). The Presidential Memorandum does not limit deployment to protests that are illegal, or violent or that only involve vandalism, and as Goitein [points out](#) can be deployed pre-emptively before protests have broken out.

### ***LA - Concluding Thoughts***

David Dayden of the American Prospect [captured](#) well the overall moment:

“Trump’s escalation of federal forces may yet produce the violence he so eagerly seeks. But it’s just as important to note that these federal forces are not really doing anything, confined to the perimeter of the federal building and nowhere else. It’s unclear what Marines will do other than line up behind them. The front lines are manned by LAPD, armed with flash-bang grenades and less-lethal munitions and a gallery of other weaponry. The idea that anyone must be deployed to defend heavily armed officers from “increased threats,” as Defense Secretary Pete Hegseth [squawked](#) Monday night, could not be more ludicrous, unless you identify threats as teenagers holding signs.”

I am again reminded of an article published February 1 by columnist Garrett Graff ( “[Musk’s Junta Establishes Him as Head of Government](#)”) on how the U.S. government (at any time other than under Trump) would respond to events unfolding in the United States were they happening elsewhere. That reminder: an Australian journalist

covering the protest live on television, Lauren Tomasi, [was shot](#) at close range by a non-lethal round clearly aimed at her. A British news photographer, Nick Stern, [reported](#) he too was likely hit by a non-lethal round while covering the protests.

We have seen this movie many times before. Trump's more outlandish moves tend to follow setbacks for him and his agenda of the moment. We can take our pick – setbacks across federal courts, particularly over tariffs, resistance in the Senate to his Big Beautiful Bill, stubbornly high prices, further [declines](#) in his net favorability rating following his falling out with Musk (he is at a net -9, with 44% favorable/53% unfavorable, and the share of voters who have heard something positive about Trump minus the share who have heard something negative about him having reached a second-term low).

The looming question though is whether this will fade away or escalate beyond control. Recall the country faced a similar moment, as we later realized as the backstory came into focus – on June 1, 2020, peaceful protesters were cleared from Lafayette Square and Trump had wanted to invoke the Insurrection Act and deploy active-duty military units that had staged across the Potomac. The trigger? Accusations by right-wing media commentators that Trump was weak for allowing himself to be escorted into the secure bunker below the White House when protesters got too close to the White House fence earlier that Y1, Week. The crisis failed to spiral out of control thanks to adults in the room.

As I noted above, the Presidential Proclamation is not limited to California or Los Angeles. He could choose to federalize National Guard elements in other states, and perhaps federalize National Guard in red states and deploy them in Blue states. Note too that the House version of the Big Beautiful Bill [appropriates](#) \$185 million for immigration enforcement.

### ***LA – Postscript***

Over the weekend, Trump seemed to ease up on his deportation edict, following complaints about the impact on farms, hotels and restaurants. He directed ICE “hold on all work site enforcement investigations/ operations on agriculture (including aquaculture and meat packing plants), restaurants and operating hotels.” This pause does not cover other targets such as the garment industry, which triggered mass protests in LA, or construction sites, for example. (See [New York Times](#) coverage.) None of this should come as a surprise (*see* my January briefing note, available [here](#)). The immigration hardliners reportedly are not pleased, but for the moment maintaining crucial support in Trump's influential donor base won out.

That was short-lived. On his way to the G-7, Trump directed ICE to expand efforts in a [blatant, partisan attack](#) on Democrats.

“In order to achieve this, we must expand efforts to detain and deport Illegal Aliens in America's largest Cities, such as Los Angeles, Chicago, and New York, where Millions upon Millions of Illegal Aliens reside. These, and other such Cities, are the core of the Democrat Power Center, where they use Illegal Aliens to expand their Voter Base, cheat in Elections, and grow the Welfare State, robbing good paying Jobs and Benefits from Hardworking American Citizens. These Radical Left Democrats are sick of mind, hate our Country, and actually want to destroy our Inner Cities — And they are doing a good job of

it! There is something wrong with them. That is why they believe in Open Borders, Transgender for Everybody, and Men playing in Women's Sports – And that is why I want ICE, Border Patrol, and our Great and Patriotic Law Enforcement Officers, to FOCUS on our crime ridden and deadly Inner Cities, and those places where Sanctuary Cities play such a big role. You don't hear about Sanctuary Cities in our Heartland!"

**Y1, Week Twenty-Two**, while the protests have diminished considerably, the arrests have not, and tensions continue to flare between the Latino community and ICE on the streets, particularly as U.S. citizens get caught up in the sweeps. See [Los Angeles Times](#) coverage.

**Y1, Week Twenty-Five**, District Judge Maame Ewusi-Mensah Frimpong [issued](#) temporary restraining orders enjoining ICE from conducting “detentive stops” without reasonable suspicion that the person being stopped is in the United States illegally and mandating that those arrested have immediate access to legal counsel (07/11/25). One lawyer for the plaintiffs was quoted as saying that the temporary restraining orders are a “complete repudiation of the racial profiling tactics and the denial of access to lawyers that the administration has utilized, and it means that the rule of law is back in Los Angeles.”

The class action lawsuit was [brought](#) by individual plaintiffs that had been detained as well as the Los Angeles Worker Center Network, the United Farm Workers, the Coalition For Humane Immigrant Rights and the Immigrant Defenders Law Center (07/02/25). The plaintiffs are represented by the ACLU Foundation of Southern California, the Law Offices of Stacy Tolchin, UC Irvine School of Law Immigrant and Racial Justice Solidarity Clinic, Public Counsel, National Day Laborer Organizing Network, ACLU Foundations of Northern California and San Diego & Imperial Counties, Hecker Fink LLP, the Coalition for Humane Immigrant Rights (CHIRLA), the Immigrant Defenders Law Center and Martinez Aguila-socho Law Inc.

**Y1, Week Twenty-Seven**, moments after LA Mayor Karen Bass called for an end to the deployment of National Guard and Marines to LA, the Pentagon announced that the 700 Marines would be de-activated and leave LA County. See [NBC Los Angeles](#) coverage. *New York Times* reporting [chronicles](#) low morale and the related impact on retention among some National Guard troops as the goodwill showed by community members to National Guard units when they were deployed in response to the wild fires seven months ago has largely evaporated.

**Y1, Week Twenty-Eight**, the Ninth Circuit denied the government's motion to stay District Judge Frimpong's temporary restraining order, finding that the government was unlikely to succeed on the merits of their challenge, except as to the narrow, technical claim regarding vagueness of the phrase “except to the extent permitted by law.” The Court agreed with the District Court that, “in the context of the Central District of California, the four enumerated factors at issue – apparent race or ethnicity, speaking Spanish or speaking English with an accent, particular location, and type of work, even when considered together – describe only a broad profile and ‘do not demonstrate reasonable suspicion for any particular stop.’”

**Y1, Week Thirty**, Judge Breyer has yet to issue his decision following a three-day trial (which started coincidentally on the same day Trump deployed National Guard in

D.C.) to determine whether the administration violated the Posse Comitatus Act in deploying National Guard and Marines to LA.

The government's sole witness, Major General Sherman, who commanded Task Force 51, suggested that there were four exceptions to the Posse Comitatus Act – by characterizing the protests as a “rebellion,” Trump was empowered to deploy troops to undertake security patrols, traffic control, crowd control and riot control. California Deputy Attorney General Megan Strong argued that no such exceptions exist and that the deployment meets the three prongs needed to establish a violation of the Posse Comitatus Act: direct, active use of military personnel to execute the law; military conduct pervaded the conduct of law enforcement; and military personnel subjected citizens to regulatory, prescriptive, and compulsory power.

NBC reported that the judge appeared to bristle on multiple occasions, at one point arguing with both Sherman and DoJ counsel about whether federal forces can intervene any time people protest any law they dislike. The judge also appeared sceptical of the claim that there were four exceptions to the Posse Comitatus Act. None appear in the Act or in subsequent legislation. *See generally* [ABC7 News](#) coverage.

**Y1, Week Thirty-Four**, Judge Breyer [rules](#) that the deployment of the National Guard in LA violated the Posse Comitatus Act. The Judge enjoined the government from deploying, ordering, instructing, training or using the National Guard currently deployed in California to execute the laws including but not limited to engaging in arrests, apprehensions, searches, seizures, security patrols, traffic control, crowd control, riot control, evidence collection, interrogation, or acting as informants, unless and until Defendants satisfy the requirements of a valid constitutional or statutory exception, as defined herein, to the Posse Comitatus Act. The Court stayed its injunction until 12:00 noon on Friday, September 12.

At the outset of his ruling, the Judge was clear: “The evidence at trial established that Defendants systematically used armed soldiers (whose identity was often obscured by protective armor) and military vehicles to set up protective perimeters and traffic blockades, engage in crowd control, and otherwise demonstrate a military presence in and around Los Angeles.

In short, Defendants violated the Posse Comitatus Act. The Court, not surprisingly, rejected the excuse, communicated to the troops from the highest levels of the Pentagon, that there were four so-called “constitutional exceptions” to the Posse Comitatus Act (security patrols, traffic control, crowd control, and riot control). The Court also rejected the excuse that 10 U.S.C § 12406(3) represented an exception to the Posse Comitatus Act. “The Court therefore concludes that § 12406(3) is not an exception to the Posse Comitatus Act.” “If the President wants to avoid the [Posse Comitatus] Act’s restrictions, he must invoke a valid exception – like the Insurrection Act, along with its requisite showing that state and local law enforcement are unable or unwilling to act.” The Court took note of the fact that a Task Force slide listed 12 activities that were prohibited by the Posse Comitatus Act but troops were orally advised that four on the list were exempt.



In a footnote, the Court noted that Chief Bovino of the Department of Homeland Security had criticized Task Force Sherman for his opposition to the initial DHS plan, questioning Sherman's loyalty to the country. "This is relevant because Chief Bovino's accusations of disloyalty go to the state of mind of decisionmakers who are tasked with ensuring that the Posse Comitatus Act is followed."

Note that the ruling applies only to the deployment in California, and does not require that the National Guard withdraw from LA. Rather it requires that the operations of the Guard follow the constraints imposed by the Posse Comitatus Act, including, for example, protecting federal property. Said another way, the troops must adhere to the prohibitions set out in the Task Force slide deck.

On Thursday, the Ninth Circuit [granted](#) an administrative stay requested by the government. The order says this is not intended to address the merits but to give the government more time to rule on the merits.

**Y1, Week Thirty-Five**, in another curt shadow docket ruling (a one-paragraph opinion), the Supreme Court [granted](#) (6-3, with a concurrence by Justice Kavanaugh and a dissenting opinion authored by Justice Sotomayor) the government's application for a stay pending the disposition of the appeal in the Ninth Circuit in the case involving the roving "detentive stops" that had been enjoined by District Judge Frimpong's temporary restraining order. Recall that, in **Y1, Week Twenty-Eight**, the Ninth Circuit had declined to lift the temporary restraining order.

In his concurrence, Justice Kavanaugh advanced the idea that common sense would support use of the government's four factors – apparent race or ethnicity, speaking Spanish or English with an accent, location, and type of work – as constituting reasonable suspicion of illegal presence. He goes on to state, in what has become known as "Kavanaugh stops," that "reasonable suspicion means only that immigration officers may briefly stop the individual and inquire about immigration status" and that immigrants in the country legally would be "free to go after the brief encounter."

In her dissent, Justice Sotomayor reminds us all that the "Fourth Amendment 'prohibits exactly what the Government is attempting to do here: seize individuals based solely on a set of facts that 'describe[s] a very large category of presumably innocent' people" (citing [Reid v. Georgia](#)). She reiterates the lower court finding that "the four factors ... are 'no more indicative of illegal presence in the country than of legal presence.'" Moreover, "the factors also in no way reflect the kind of individualized inquiry the Fourth Amendment demands" (citing [Terry v. Ohio](#)). "Allowing the seizure of any Latino speaking Spanish at a car wash in Los Angeles tramples the constitutional requirement that officers 'must have a particularized and objective basis for suspecting the particular person stopped of criminal activity' (citing [U.S. v. Cortez](#)). She concludes: "The Fourth Amendment protects every individual's constitutional right to be 'free from arbitrary interference by law officers (citing [U.S. v. Brignoni-Ponce](#)). After today, that may no longer be true for those who happen to look a certain way, speak a certain way, and appear to work a certain type of legitimate job that pays very little."

Justice Sotomayor also takes issue with the shadow docket, noting that the Supreme Court's willingness to circumvent the traditional appellate practice via unsigned opinions has "grown exponentially" (citing *Trump v. J.G.G.*, *Trump v. Wilcox*, *Noem v. Doe*, *U.S. v. Shilling* and *Trump v. Boyle*).

Note that the [temporary restraining order](#) issued by Judge Breyer based on a finding that control of the National Guard should be returned to Gov. Newsom was [paused](#) by the Ninth Circuit, and Judge Breyer's decision finding that the deployment of National Guard and Marines [violated](#) the Posse Comitatus Act remains on appeal.

### **Washington, D.C.**

**Y1, Week Thirty**, painting a dystopian picture of Washington, D.C. and claiming that the nation's capital was overrun by "bloodthirsty criminals" and "roving mobs of wild youth," Trump announced he was taking temporary control of the Metropolitan Police Department (MPD) and would deploy 800 D.C. National Guard troops. Trump set a maximum of 30 days for the federalization of the MPD; there is no time limit on the National Guard deployment.

The Guard deployment was announced via Presidential Memorandum ([Restoring Law and Order in The District of Columbia](#)) and the federalization of MPD was set out in a [letter](#) to the House Committee on Oversight and Government Responsibility, as required by Section 740 of the [District of Columbia Home Rule Act](#). Section 740 allows the President to direct the DC Mayor to provide him with the services of the MPD as he deems necessary and appropriate when he determines that "special conditions of an emergency nature exist which require the use of the Metropolitan Police force for Federal purposes."

Trump's letter cites the need for the MPD to be federalized including the maintain law and order, protect federal buildings, national monuments and other federal property, and "ensure conditions necessary of the orderly functioning of the Federal Government." Federalization means that the Attorney General would control MPD and the FBI will be patrolling with MPD. Last I checked the principal impediment to the orderly functioning of the government has been DOGE and the massive cuts and RIFs.

Rep. Jamie Raskin, whose district just across the D.C. line includes D.C. suburbs, announced he would introduce a resolution to "reverse this plainly ridiculous state of local emergency" and restore local control to D.C.'s elected government. Rep. Eleanor Holmes Norton, D.C.'s nonvoting delegate in the House, and Sen. Chris Van Hollen said they would reintroduce bills that would repeal the President's authority to take temporary control of the MPD and give the D.C. mayor authority over the D.C. National Guard (as is the case for governors of each of the 50 states). Without control of the House, Democrats are unlikely to be able to push any of these through.

Experts generally agree that the federalization of MPD is lawful under the Home Rule Act. Federalization of MPD is unprecedented as is deploying FBI agents to patrol streets alongside uniformed police officers.

As for the National Guard deployment, while the initial deployment is expected to be local National Guard, Trump left open the possibility of deploying units from other

states (*see* the EO and [DoD statement](#)). Army Secretary Daniel Driscoll has been placed in charge of the National Guard operation. Apparently only 100-200 National Guard troops will be deployed at any one time and are to be used in a supporting role only.

As Chris Mirasola set out in his article in Lawfare (“[Deploying the D.C. National Guard](#)”), D.C. presents unique issues insofar as its National Guard is concerned. Unlike the National Guard of the states and territories, the president, [by law](#), is commander in chief of the D.C. National Guard *in its militia status*. (National Guard units can operate under three types of status: as militias of their states and territories; as members of the federal armed forces, when mobilized into federal service; and in a hybrid duty status under [32 U.S. Code § 502\(f\)](#) where they conduct a federal mission with federal funds but remain members of their respective militias.)

As noted above, the Posse Comitatus Act prohibits using the military for domestic law enforcement functions except when expressly authorized by statute or the Constitution, and this prohibition only applies to the National Guard when it is operating in federal service. It does not apply to the National Guard in either its state militia status or in a Title 32 duty status. While the president can use the National Guard under Title 32 without being subject to the Posse Comitatus Act, governors have the right to consent to their National Guards being used for federal purposes. As D.C. has no governor, there is no requirement for local consent for the D.C. National Guard. In other words, the D.C. National Guard is the only military force available to the president for military duty that is not subject to the constraints of the Posse Comitatus Act. This does change if the Insurrection Act is invoked. The deployment in D.C. is under Title 32, Code § 502(f).

If this can happen in D.C., the next logical places would be Chicago and NYC; Trump did single out NYC, LA, Baltimore, Chicago and Oakland (all led by Democratic mayors, incidentally) as cities that might see federal presence on their streets.

For the record, crime in D.C. has hit a 30-year low, according to D.C. officials. According to [MPD](#) data, total violent crime is down 26%, homicide is down 12% and robbery is down 28% year-on-year. The FBI’s [2024 crime statistics](#) show violent crime down 4.5% versus 2023, with murder and non-negligent manslaughter down 14.9%.

As DC Free called out, if Trump cared about safety in D.C., he would stop the mass firings that have had a disproportionate impact on the city where 13% of all jobs are with the federal government, he would stop the ICE raids that are ripping apart peaceful communities, and he would reverse the cuts to Medicaid, public schools and SNAP.

Carrie Lee, of the German Marshall Fund and formerly a professor of Civ-Mil at the Army War College, had this to say ([quoted](#) in the *Wall Street Journal*): “The most benign interpretation is that this is an attempt to gain a public-relations victory by claiming credit for the already historically low crime rates in D.C. The worst-case interpretation is that it is a test run for more legally dubious uses of military forces in other American cities.”

Recall that in June 2020 Trump called out the National Guard and deployed agents of an array of federal agencies at [Lafayette Square](#); he had wanted to deploy active-duty troops, but thanks to the intervention of the Secretary of Defense and CJCS they remained across the Potomac. Over 5,000 National Guard troops were deployed, many without much training and many certainly without training in crowd control. Now he is doing it again, prompted by the attempted hijacking and beating of Edward “Big Balls” Coristine. On Truth Social, reposting a photo of a bloodied Coristine, Trump [threatened](#) to “FEDERALIZE the City,” which he then did. By the way, how ironic that he has now discovered the powers that somehow eluded him on January 6<sup>th</sup>.

Historians have long urged us to look for historical antecedents when trying to understand why Trumps acts. Seen this movie before? The references to “roving mobs of wild youth” is eerily similar to the false accusations against five innocent young black men accused of an attack in Central Park for which Trump, in a full-page ad in the New York Daily News, demanded the death penalty and “bring back our police.” The men were exonerated; Trump never apologized.

*Axios* [reports](#) that Trump has floated the idea of extending the federalization of the police beyond the 30-day period, presumably by seeking approval of Congress or somehow fitting into legislation designed to address “emergencies.” (“If it’s a national emergency we can do it without Congress, but we expect to be before Congress very quickly.”) Trump said. *Axios* also [reports](#) that Trump has mused about pushing for a crime bill that would apply initially to D.C. but would serve as a roadmap for other cities. As of the end of Y1, Week Thirty-Four, House leaders reportedly were not planning to vote to extend the 30-day period before it expires September 10.

National Guard units will now be patrolling around the clock rather than only at night. There are now 19 federal agencies operating across D.C.

As **Y1, Week Thirty** ended, the D.C. Chief of Police was still in charge of her department. Under pressure from District Judge Ana C. Reyes, who threatened to intervene unless the administration retracted its move to place the Administrator of DEA, [Terry Cole](#), as the head of the MPD (with the title “emergency police commissioner”), DoJ agreed to rescind that part of its order federalizing the MPD. The modified order from the Attorney General is available [here](#).

Judge Reyes had made clear that she believed the administration had gone well beyond the authorities that Congress had intended when granting D.C. “limited self-governance” under the Home Rule Act. This matter is far from over as the modified order still empowers Cole to “direct” the D.C. Mayor to provide MPD officers for federal priorities. A key sticking point is the Attorney General’s [stated intention](#) to override MPD policies of not cooperating with federal authorities on immigration matters and in clearing homeless encampments.

Judge Reyes had convened an emergency hearing in response to a [complaint](#) filed by Brian L Schwalb, the D.C. Attorney General, seeking a [temporary restraining order](#) (08/15/25). As [reported](#) by Joyce Vance, Judge Reyes made clear at the outset that she was not holding an evidentiary hearing and would not get into issues that would require development of the facts, for example whether there actually was an “emergency” or

a legitimate federal purpose justifying Trump's actions. On Friday, the Court would assume, for the moment, that Trump was justified on those points, leaving those presumably to next week.

Meanwhile, West Virginia Gov. Patrick Morrisey announced that, in response to a request from the White House, he would deploy 300-400 National Guard troops from his state to assist the federal takeover of D.C. Joining the bandwagon, South Carolina Gov. Henry McMaster announced that he authorized the deployment of 200 National Guard troops to help "restore law and order" in D.C. and Ohio Gov. Mike DeWine is dispatching 150 National Guard. In the second wave, the governors of Mississippi (whose governor exclaimed, "crime is out of control there, and it's clear something needs to be done to combat it"), Louisiana and Tennessee agreed to send National Guard units as well. You would have thought we faced an invasion worthy of a Hollywood blockbuster. Vermont Gov. Phil Scott reportedly "politely declined" Trump's request to deploy the Vermont National Guard.

*Wall Street Journal* reporter Vera Bergengruen [writes](#) that more National Guard troops are heading to D.C. and they are preparing to start carrying weapons in the coming days. Pentagon officials previously had said the 800 National Guard soldiers initially deployed in D.C. would not be armed and would not have weapons in their vehicles. "Weapons are available if needed but will remain in the armory," the U.S. Army said in a press release Thursday. **Y1, Week Thirty-Two**, NBC reports "the majority" of guard members will be carrying [M17 handguns](#) and "a small number" will be armed with [M4 assault rifles](#). See [Washington Post](#) coverage and [D.C. National Guard](#) post. It remains unclear how many troops will be armed.

*Axios* [reported](#) some interesting statistics on crime rates across the country, including in Red states. It found that eight of the top 10 cities with the highest murder rates and populations of at least 100,000 were in Red states, Mississippi, Alabama, Missouri, Tennessee, Ohio and Louisiana. Six of the next 10 cities with the highest homicide rates were in Republican-run Georgia, Ohio, Indiana and Alabama, along with Virginia and Kentucky, whose state governments are politically divided. D.C.'s homicide rate in 2024 ranked 11<sup>th</sup> in the country.

**Y1, Week Thirty-One**, Speaking of crime statistics, the *Washington Post* [reports](#) that DoJ is investigating whether MPD faked some of its crime data.

**Y1, Week Thirty-Two**, the *New York Times* [reports](#) on low level crime being elevated to get defendants and their cases into federal court. "They were appearing before a magistrate judge on charges that would typically be handled at the local court level, if they were filed at all."

D.C. Delegate Eleanor Holmes Norton has introduced a bill in the House to require National Guard soldiers deployed in D.C. to wear body cameras.

**Y1, Week Thirty-Three**, D.C. grand juries have not been cowed. U.S. Attorney for D.C. Piro is having a tough time getting indictments – predicates for charging federal crimes. A grand jury [refused](#) to indict the Sandwich Guy for felony assault against a federal officer, after a separate grand jury failed, three times, to indict a woman accused of injuring an FBI agent during a protest against ICE at a local jail.



A federal magistrate dismissed charges against a man arrested at a Trader Joe's on Fourth Amendment grounds (unlawful search and seizure), [complaining](#) that "Lawlessness cannot come from the government. We're pushing the boundaries here. We're beyond the boundaries and something is going to have to break." The man was searched because according to officers his knapsack looked heavy – not exactly probably cause where the rule of law still holds. The *New York Times* [reported](#) that there was unease among prosecutors in pursuing the case, but Pirro insisted on moving forward.

In a fourth case, the judge criticized prosecutors and corrections officials for having allowed a woman to remain in jail for six days for allegedly spitting on a National Zoo police officers.

Defense lawyers will tell you that it is exceedingly rare for grand juries to fail to indict.

**Y1, Week Thirty-Four**, with at least seven instances of grand juries refusing to issue an indictment, Gregory Poe, writing in the *Bulwark* ("[Grand Juries Aren't Nullifying Anything](#)") takes issue with the characterization by some of the refusal to indict as "nullification." "Nullification," he notes, describes the decision of a trial or "petit" jury to [reject](#) the application of law altogether. He cites [refusals](#) of American colonial juries to convict defendants under English law; [refusals](#) of juries to convict persons accused of violating the Fugitive Slave Act in the 1850s; and [refusals](#) to convict activists and protestors during the Vietnam War.

The refusals today are of a very different type – the consensus among the jurors that probable cause does not exist.

- The refusal to indict the person who was videotaping ICE agents outside of the D.C. jail, in which the officer's affidavit [itself](#) shows that law enforcement officers initiated physical contact, may have been because the grand jurors reasonably rejected the version of events it heard.
- For "Sandwich Guy," the grand jury may have rejected the charge for any number of reasons, for example, that the defendant did not commit an act "forcibly," as the [criminal statute](#) at issue requires.

Poe concludes "These recent grand jury decisions appear to reflect the type of vigilant deliberation that grand juries are supposed to provide. Let's take a moment to celebrate that at least one part of the system is working."

Meanwhile, Federal Magistrate Judge Zia M. Faruqui, a former D.C. federal prosecutor, condemned Pirro's office for having tarnished its reputation with how they are handling the deluge of cases. He said her office is routinely bringing cases that do not belong in federal court and needlessly keeping people in jail for days while they evaluate charges. "It's not fair to say they're losing credibility. We're past that now," Faruqui said. He later added, "There's no credibility left." Officials were "playing cops and robbers" on the streets of D.C. while "the rule of law is being flushed down the toilet." See [Washington Post](#) coverage.

**Y1, Week Thirty-Four**, the District of Columbia [filed](#) a lawsuit challenging the deployment of DC National Guard and out-of-state National Guard (from Ohio, South



Carolina, West Virginia, Mississippi, Tennessee, Louisiana and South Dakota) and seeking declaratory and injunctive relief (09/04/25). Essentially, D.C. argues that while Trump could have deployed D.C. National Guard in Title 32 status, allowing them to engage in law enforcement operations without violating the Posse Comitatus Act, the combined deployment of D.C. and out-of-state National Guard under the command and control of the Pentagon is effectively a Title 10 deployment, meaning that their law enforcement operations put them squarely in violation of the Posse Comitatus Act. The complaint also cites the deputization of National Guard troops as U.S. Marshals reinforcing the claim that they are engaged in law enforcement. The out-of-state National Guard present an easier case in that, by deploying them outside the command and control of their respective governors, they should have been federalized, placing them in Title 10 status and subjecting them to the Posse Comitatus Act.

The complaint also cites the [Emergency Management Assistance Compact](#) that grants the D.C. mayor, rather than the President, the right to request National Guard support from other states.

**Y1, Week Thirty-Five**, the District of Columbia [filed](#) its memorandum in support of its motion for a preliminary injunction challenging the deployment in D.C. of the National Guard (09/09/25).

**Y1, Week Thirty-Six**, Trump [threatened](#) to declare a national emergency and retake control of MPD if MPD stops cooperating with ICE. Mayor Bowser has welcomed federal support for law enforcement, but said the presence of masked ICE agents is “not working.”

**Y1, Week Forty-Four**, District Judge Jia M. Cobb [granted](#) the District of Columbia’s motion for a preliminary injunction, though it is stayed for 21 days to permit an appeal (11/20/25). The Court addressed two of D.C.’s statutory arguments under the Administrative Procedures Act and finds that it is likely to succeed on the merits of both.

The Court noted that the President can exercise command over the D.C. National Guard in two circumstances. Pursuant to an act of Congress, the President is the commander in chief of the D.C. National Guard when it is operating in militia status (D.C. Code § 49-409). The President can also federalize the D.C. National Guard under Title 10 and act in his capacity as commander in chief of the armed forces. In this instance the D.C. National Guard is operating under Title 32 status (in a state-commanded, federally funded mission with the President acting in a position analogous to a state governor).

In its ruling, the Court found that the defendants exceeded the bounds of their authority under Title 49 of the D.C. Code, and thus acted contrary to law, in deploying the D.C. National Guard for non-military, crime-deterrence missions in the absence of a request from D.C.’s civil authorities. The defendants also lack statutory authority under 32 U.S. Code § 502(f) to support their request for assistance from out-of-state National Guards and their actions in calling those National Guards to D.C. On the first point, the Court noted that none of the three statutory bases support the deployment of the

D.C. National Guard for crime deterrence purposes. Moreover, the President does not have an Article II power that can override Congress's statutory scheme governing D.C. Specifically, the Court rejected the defendants' "fly-by assertion of constitutional power, finding that such a broad reading of the President's Article II authority would erase Congress's role in governing the District and its National Guard." Accordingly, the Court finds no statutory authority supporting the defendants' actions.

Separately, District Judge Boasberg [ruled](#) that DOJ could prosecute a man in federal court using a D.C. (city) grand jury, allowing prosecutors to potentially by-pass federal grand juries. These grand juries are typically used for more serious crimes, and have repeatedly refused to approve indictments amidst Trump's law enforcement crackdown.

**Y1, Week Forty-Five**, following the shooting of two West Virginia National Guard troops, the Secretary of Defense, at Trump's [direction](#), added 500 additional troops to the deployment in D.C. Recall that the ruling enjoining the deployments in D.C. was stayed until December 11 to permit the administration to appeal the D.C. Circuit ruling. The administration [has filed](#) its notice of appeal (11/25/25).

In her piece in *The Atlantic* ("[A Terrible and Avoidable Tragedy in D.C.](#)") former homeland security official Juliette Kayyem noted that military commanders, in a memorandum included in litigation challenging the D.C. deployment, [warned](#) that National Guard troops were an easy "target of opportunity" for grievance-based political violence. DoJ responded that the risk was merely "speculative." Speculative risks have a habit of coming to fruition.

Kayyem notes that the military is very much aware of the lack of support for the deployment among both the D.C. public and among the troops. The National Guard has been sending out news releases describing its progress, with updates such as: "[cleared 906 bags](#) of trash, spread 744 cubic yards of mulch, removed five truckloads of plant waste, cleared 3.2 miles of roadway and painted 270 feet of fencing." As she notes, not exactly what the Guard signed up for.

Kayyem also makes the point that deploying more troops on American streets as force protection represents an "Afghanistan-style military error" – an irrational reflex to invest more in a flawed strategy as a way to try to justify the initial bad decision to embark on the flawed strategy.<sup>27</sup> National Guard units are now being paired with MPD.

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<sup>27</sup> The suspected shooter's motives remain unknown. He was part of a CIA trained and equipped paramilitary unit called a "Zero Unit" (formerly known as Counterterrorism Pursuit Teams) trained to conduct nighttime raids and clandestine missions during the Afghan war. See [Human Rights Watch](#) report and [New York Times](#) coverage. By the time the United States withdrew from Afghanistan, the units had been incorporated within Afghan intelligence. He came to the United States as part of Operation Allies Welcome, admitted for assisting U.S. forces and reportedly was granted asylum in April following vetting under the Trump administration. Experts [suggest](#), in contrast to statements for example from FBI Director Patel, that the suspect was likely vetted multiple times,

At this point, there [reportedly](#) are 2,200 Guard troops in D.C., the largest contingent (close to 1,000) comprised of D.C. Guard troops, with the balance from Louisiana, Mississippi, Ohio, South Carolina, Georgia, Alabama and West Virginia.

**Y1, Week Forty-Six**, the D.C. Circuit [granted](#) the government's motion for a stay of the District Court order, pending appeal (12/04/25).

**Y1, Week Forty-Eight**, the D.C. Circuit (3-0) [dissolved](#) its prior administrative stay and granted a new administrative stay, extending authority for the Guard to remain on D.C. streets. While finding that the government was likely to prevail on the merits due to the unique status of D.C. (allowing deployment under 32 U.S.C. § 502(f)) as well as provisions of the D.C. Code, the Court acknowledged that its assessment of the merits was done in a "hurried" manner and should not bind the merits panel (yet to be assigned) when it delves into a fuller assessment of the issues (12/17/25). The Court declined to reach the question of whether the Guard is engaged in "law enforcement" activities in violation of the Posse Comitatus Act and whether the government is improperly exercising federal command and control over Guard units from other states (now including South Carolina, West Virginia, Mississippi, Louisiana, Tennessee, Ohio, Georgia, Alabama, and South Dakota). It did so because the District Court had not addressed these issues.

The deployment is scheduled to end at the end of February, although DoJ attorneys have stated in court that the deadline may be extended to the summer for the "America 250" celebrations in July.

**Y2, Week One**, CNN was the first report that the National Guard deployment in D.C. would extend through the end of 2026. Task & Purpose [reports](#) that there currently are 2,673 National Guard troops assigned to Joint Task Force-DC, with 714 from the D.C. National Guard, and the rest from 11 states. Their contingents range from as high as 307 from South Carolina to the two from Louisiana. Recall that back in September the Washington Post [reported](#) that internal National Guard assessments found dissatisfaction with Guard troops patrolling D.C. streets.

### **Upping the Ante – New EOs**

**Y1, Week Thirty-Two**, Trump issued two EOs relating to D.C., [Additional Measures to Address the Crime Emergency in Washington, D.C.](#) and [Measures to End Cashless Bail and Enforce the Law in D.C.](#) Trump issued a separate broader EO [Taking Steps to End Cashless Bail to Protect Americans](#).

The **Additional Measures EO** calls, among other things, for:

- the Director of the National Park Service to hire more U.S. Park Police and for Park Police to do more maintain public safety and order through enforcement of laws within its jurisdiction;
- the U.S.A for the District of Columbia to hire additional prosecutors to focus on prosecuting violent and property crimes;
- each law enforcement agency that is a member of the D.C. Safe and Beautiful Task Force (*see* [Safe & Beautiful EO](#)), as well as other relevant components of DoJ as the Attorney General determines, to create and begin training, manning,

hiring and equipping a specialized unit dedicated to ensuring public safety and order in D.C. “that can be deployed whenever the circumstances necessitate, and that could be deployed, subject to applicable law, in other cities where public safety and order has been lost”;

- the Secretary of Defense to create and begin training, manning, hiring and equipping a “specialized unit” within the D.C. National Guard, subject to activation under Title 32, dedicated to ensuring public safety and order in D.C., whose members shall be deputized to enforce federal law; and
- the Secretary of Defense to ensure that each state’s Army National Guard and Air National Guard are resourced, trained, organized and available to assist federal, state and local law enforcement in quelling civil disturbances and ensuring the public safety and order *whenever the circumstances necessitate*, as appropriate under law, and to ensure the availability of a standing National Guard quick reaction force that shall be resourced, trained, and available for *rapid nationwide deployment* (emphasis added).

As Janessa Goldbeck warns in her 08/25/25 [Substack](#), the last two items above effectively could represent an end-run around the Insurrection Act. Goldbeck reminds us that, typically, a President will “federalize” the National Guard under Title 10, placing them under the control of the President, but subject to the limitations under the Posse Comitatus Act on engaging in law enforcement activities. Those limitations fall away if the Insurrection Act is invoked. Troops deployed under Title 32 remain under the control of a state’s governor, so are not “federalized” and, therefore, are not subject to the Posse Comitatus Act limitations. In other words, they can engage in law enforcement activities (and the President does not need to invoke the Insurrection Act). And recall too that D.C. is a unique case.

The threat is that, under the last of the points above, governors could be convinced to deploy their National Guard units in other states – namely Red state Guard in Blue state cities, without the consent of the Blue state governor. Goldbeck notes that never before has National Guard been deployed at the direction of one governor into another state absent an invitation from the governor of that other state. A nightmare scenario: Trump cites another emergency in major cities in California around election time and calls on the governors of Texas, Ohio and South Carolina to deploy their Guard under Title 32 to California, where they carry out law enforcement activities, including arrests and seizure of ballot boxes, over the objection of Gov. Newsom. Concurrently, Trump federalizes the California National Guard under Title 10, depriving Gov. Newsom of the ability to use those troops, so they stand down, as Texas, Ohio and South Carolina Guard patrol the streets.

The **Cashless Bail – DC EO** sets forth various directives to end cashless bail policies and ensure the pretrial detention of criminal suspects who threatens public safety. Relevant law enforcement agencies are to seek detention of arrestees in federal custody and pursue federal charges and pretrial detention for such arrestees whenever possible. If the Attorney General determines that D.C. continues to prohibit cash bail, the head of each executive department or agency (agency), in coordination with the Director of

OMB, are to identify appropriate actions to press the D.C. to change its policies with respect to cashless bail, including denial of federal funds or federal services.

## **Boston**

**Y1, Week Thirty-One**, Boston Mayor Michelle Wu hit back at threats from the Attorney General to prosecute city officials and withhold funds due to its sanctuary city policy. Her message, “Stop attacking our cities to hide your administration’s failures. Unlike the administration, Boston follows the law. Boston will not back down from what we stand for and who we are.” The Mayor’s written response to the Attorney General is [available here](#).

## **“Chicago, New York, Detroit and It’s All on the Same Street”**

To continue with the lyrics, “What a long, strange trip it’s been.”

As **Y1, Week Thirty-One** ends, the *Washington Post* [reports](#) that plans have been in the works for some time to deploy National Guard units in Chicago. And New York could follow, though some worry that the New York City deployment could take place around the November mayoral election. This is more than mere conjecture as Trump had said on Friday, “I think Chicago will be our next, and then we’ll help with New York.”

Illinois Gov. JB Pritzker and [Chicago Mayor Brandon Johnson](#), both Democrats, hit back, with Pritzker accusing Trump of attempting to “create chaos.” “Trump’s goal,” he continued “is to incite fear in our communities and destabilize existing public safety efforts, all to create a justification to further abuse his power.” He added that there is “no emergency that warrants the President of the United States federalizing the Illinois National Guard, deploying the National Guard from other states, or sending active-duty military within our own borders.”

**Y1, Week Thirty-Two**, Trump doubles down on Pritzker, [calling](#) Chicago a “disaster” and a “killing field.” Watch to see what authorities Trump invokes – Title 10 or the Insurrection Act?

**Y1, Week Thirty-Four**, in a fundraising email, Trump [claimed](#) he would liberate Chicago.

Trump then [pivoted](#) to threatening to send National Guard units to New Orleans, claiming it would take two weeks to “straighten out” the city. Trump’s narrative suggests he will deploy in states where the governor is acquiescent. Louisiana has a Republican governor, who welcomed Trump’s announcement. Recall that District Judge Charles Breyer’s ruling places significant constraints on what National Guard troops can do unless Trump invokes the Insurrection Act. See [NPR](#) coverage. Trump’s comments came during a visit by Polish president Karol Nawrocki, whom he welcomed with an unusual fly-over by F-16 and F-35 fighter jets. See [POLITICO](#) coverage.

Later in the week, Trump evokes the film “Apocalypse Now” in a [post](#) threatening to unleash the Department of War on Chicago. The governor and the mayor have urged demonstrators to avoid violent confrontations with ICE agents that could give Trump an excuse to occupy the city.

As The Guardian [called out](#), there is a clear pattern to Trump's threats – Chicago, Philadelphia, D.C. and Baltimore. But not Jackson, Birmingham, St Louis or Memphis. The article summarizes crime trends over the last four years as showing that:

- violent crime rates in America's big cities have been falling over the last two years, and at an even greater rate over the last six months. The decrease in violence in America is unprecedented; and
- crime in large cities in the aggregate is lower in states with Democratic leadership.

But Trump focuses his ire almost exclusively on large urban Blue cities in Blue states, avoiding conflict with Red state governors.

Back to Apocalypse Now and variation on the words spoken by the Robert Duvall character, Lt. Col. Bill Gilmore – I love the smell of napalm – purloined by Trump. Joyce Vance [reminds us](#) that the original quote is about the absurdity of war. She goes on to note that the film is about an officer driven insane by war. “Trump,” she says, “intentionally has invoked just the right image for what is to come.”

As **Y1, Week Thirty-Eight** winds down, Gov. Pritzker [said](#) he was informed by the administration that DoD intends to federalize 300 Illinois National Guard troops and deploy them in Chicago.

**Y1, Week Thirty-Nine**, the State of Illinois and the City of Chicago [sued](#) to halt the deployment of the Texas National Guard to Chicago. This is the fourth legal challenge brought against the administration challenging deployment of National Guard on American streets (the others being the challenges by California, the District of Columbia and Oregon).

The complaint seeks declaratory relief that the federalization of any state National guard or deployment of active-duty military, including under 10 U.S. Code § 12406, is unconstitutional and/or unlawful because it: is *ultra vires*; violates the Administrative Procedures Act; and is contrary to the Constitution. Over the weekend, Trump had authorized the deployment of 300 members of the Illinois National Guard to Chicago to “protect federal officers and assets,” and 400 members of the Texas National Guard have been sent north with the cooperation of Gov. Greg Abbott. Abbott announced on X that he “fully authorized the President to call up 400 members of the Texas National Guard to ensure safety for federal officials. You can either fully enforce protection for federal employees or get out of the way and let Texas Guard do it.” Hegseth's [order](#) calls for deployments to “perform federal protection missions *where needed*, including in the cities of Portland and Chicago.”

The complaint notes that “ICE has no detention facilities in Illinois, according to its own website. It has one “processing” center, in Broadview. Otherwise, its only ‘facilities’ in the state of Illinois are three office locations. DHS’s claim that the request for military intervention is made because of ‘lawless riots’ or its claim that the request is to ‘protect federal facilities’ suggest that it could be relying on the existence of protests outside the single ICE processing facility in Broadview. However, far from lawless riots, the Broadview protests have been small, primarily peaceful, and



unfortunately escalated by DHS's own conduct, seemingly for the goal of using them as a pretext for the Chicago troop deployment that was announced by Trump long ago."

District Court Judge April Perry declined to issue the temporary restraining order sought by Illinois and Chicago, but scheduled a full hearing on Thursday. As Joyce Vance [notes](#), this is hardly a victory for Trump, Judge Perry is building the record. By Monday, there were around 500 National Guard troops in the greater Chicago area, 300 from the Illinois National Guard and 200 from the Texas National Guard.

Judge Perry did [grant](#) the temporary restraining order (10/09/25) and her opinion the following day (09/10/25). In doing so, the Court enjoined the administration from federalizing and deploying the National Guard in Illinois. Upon review of the factual record, the Court found that neither of the predicate conditions for federalization proffered by the administration was present: There was insufficient evidence of "rebellion" or a "danger of a rebellion" under § 12406(2), and there was insufficient evidence that the President was unable with the regular forces to execute the laws of the United States for purposes § 12406(3). Having found that the plaintiffs were likely to prevail on the *ultra vires* claim, the Court also concluded that the plaintiffs would likely prevail on the Tenth Amendment claim, and it did not need to address the Posse Comitatus Act claim, at this time.

The Court incidentally found the three declarations submitted in support of the administration to be unreliable.

The administration appealed and moved for a stay of the order pending appeal.

On Monday, the ACLU [sued](#) the administration on behalf of various plaintiffs, including a Presbyterian minister allegedly shot in the head with a pepper ball by ICE agents while praying in front of an ICE facility in the Broadview suburb of Chicago. The complaint cites First Amendment rights to peacefully protest and to exercise their religion under the Religious Freedom Restoration Act. It also includes claims under the Fourth Amendment and the Administrative Procedures Act. Other plaintiffs include journalists as well as protesters.

On Wednesday, in a Trust Social post, Trump [called](#) for the jailing of Chicago Mayor Johnson and Gov. Pritzker for "failing to protect Ice Officers." Pritzker [responded](#) in a street interview, referring to Trump: "This guy is unhinged. He's insecure. He's a wannabe dictator. And there's one thing I really want to say to Donald Trump. If you come for my people, you come through me. So come and get me." Pritzker now reports from the ground in [war-torn](#) Chicago.

In a surprise development, in an [interview](#) with the *New York Times*, Gov. Kevin Stitt of Oklahoma, a Republican and the Chair of the National Governors Association (NGA), criticized the deployment of Texas National Guard troops to Illinois as a violation of his beliefs in federalism and "states' rights." He worries about the precedent and added, "Oklahomans would lose their mind if Pritzker in Illinois sent troops down to Oklahoma during the Biden administration." Govs. Newsom and Pritzker have threatened to leave the NGA if it did not come out against the deployment of Texas National Guard to Blue states. So far, the NGA has been silent on the issue.

**Y1, Week Thirty-Eight**, the Seventh Circuit [concluded](#) (3:0) that Judge Perry’s “factual findings at this preliminary stage were not clearly erroneous, and that the facts do not justify the President’s actions in Illinois under § 12406, even giving substantial deference to his assertions, we deny the administration’s motion for a stay pending appeal except to the extent we continue our stay of the portion of the order enjoining the federalization of the Guard” (10/16/25) “At this stage, we cannot say the administration is likely to succeed in demonstrating that the President lawfully federalized the Guard under either § 12406(2) or § 12406(3).” And like the lower court, the Seventh Circuit concluded that the Tenth Amendment claim would succeed or not succeed based on the conclusions in respect of §§ 12406(2) and 12406(3).

In other words, the appellate court declined to disturb the status quo set by Judge Perry – the temporary restraining order remains in place and, although the administration is able to *federalize* the National Guard in Illinois, it may not *deploy* the National Guard in Illinois. (Since the Guard could *not be deployed* there was “no harm” – for purposes of supporting an injunction in allowing the Guard to be federalized.) Incidentally, the Court noted the lower court’s findings that all three of administration’s declarations “from those with firsthand knowledge were unreliable to the extent they omitted material information or were undermined by independent, objective evidence.” Sounds familiar.

On Friday, the administration [appealed](#), on an emergency basis, to the Supreme Court seeking an administrative stay of Judge Perry’s order (10/17/25). This motion represents the first time the administration has asked the Supreme Court to allow it to deploy National Guard ostensibly in support of immigration enforcement. At this point, three lower courts have blocked deployments of National Guard. See [POLITICO](#) coverage.

**Y1, Week Forty-One**, the administration’s emergency appeal to the Supreme Court has hit some headwinds.

Justice Amy Coney Barrett referred to the Court the question of whether the term “regular forces” refers to the regular forces of the U.S. military and, if so, how that interpretation affects § 12406(3) (10/29/25). Briefs are due by November 10 and reply briefs are due by November 17, which means the injunction on the deployment in Chicago still stands. As legal experts have noted (see, e.g., [Democracy Docket](#)), the issue raised by Justice Barrett was unexpected as neither side has raised the question of whether the reference in § 12406(3) (when the president is unable to execute laws with “regular forces”). The question may have been prompted by an *amicus* brief [submitted](#) by Georgetown Law Center Professor Martin Lederman in support of the State of Illinois and City of Chicago.

In his *amicus* brief, Professor Lederman argues that the administration is unlikely to succeed on the merits. He argues that “regular forces” refers to “persons serving within the standing U.S. military, particularly the army.” He concludes that

“Because President Trump has not used regular military forces to assist or protect ICE in the Chicago area, he cannot – and he has not – determined [*sic*] that the Executive Branch would be ‘unable’ to execute any federal laws with the aid of such regular military forces. Moreover, on any plausible understanding of what it means to be ‘unable’ to execute

federal laws, it is difficult to imagine that the President would be ‘unable’ to ensure faithful execution of those laws if he were to first deploy regular military forces to assist ICE, assuming a sufficient number of such forces were available to perform that function.”

Lederman goes on to argue note that in offering his argument about regular forces he does not mean to imply that Trump has legal authority to direct regular military forces to execute federal law in Illinois. He notes that Trump’s authority is uncertain because of the Posse Comitatus Act, which then brings us (and him) to the Insurrection Act and in particular 10 U.S. Code § 253(2), which provides that the President may, even without a request from state or local authorities, use “the militia or the armed forces, or both,” to “take such measures as he considers necessary to suppress, in a State, any insurrection, domestic violence, unlawful combination, or conspiracy, if it ... opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws.”

Lederman then cites language in a memorandum issued in 1964 by Deputy Attorney General Nicholas Katzenbach stating that Section 253(2), together with Section 252, is “designed to deal with situations where state and local law enforcement have completely broken down, either because local officials are themselves opposing and obstructing federal law or because they are unable or unwilling to control private groups that are in command of the situation.” Although those provisions might “appear on their face to confer broad authority to use troops to enforce federal law generally, whenever the President deems it necessary, they are “limited ... by the Constitution and by tradition.”

Finally, he concluded that if neither § 253(2) nor any other legal authority is available that does not mean that Trump can rely on § 12406(3) to deploy the National Guard. “It is difficult to imagine that Congress intended to afford the President the ability to use the National Guard for law-execution purposes in situations where he is ‘unable’ to deploy the regular forces to do so only in the sense that Congress has denied the President the authority to make such use of the regular military.”

Admittedly only an *amicus* brief, but it apparently caught Justice Barrett’s attention, and could be the basis for shutting down many of the deployments.

**Y1, Week Forty-Three**, District Judge Jeffrey Cummings ordered the release of hundreds of people from ICE detention centers who are believed to have been arrested without probable cause or warrants, in violation of a 2022 [consent decree](#) (*Castañón Nava v. DHS*). Judge Cummings ordered ICE to release 13 people by Friday who the administration has agreed were unlawfully arrested, and to place up to 615 others on alternatives to detention monitoring programs starting no later than November 21 until the Court makes a final determination about whether their arrests violated the consent decree.

Judge Cummings also ordered ICE to stay deportation and voluntary departure proceedings for individuals pending release on alternatives to detention. Initial documentation provided by the Trump administration suggests as many as 1,100 people out of 1,852 arrested by ICE in the Chicago area prior to October 7 may have already been deported without due process or left the United States via voluntary departure. That figure does not include people arrested after October 7, or anyone

arrested by Border Patrol making arrests on behalf of ICE as part of Operation Midway Blitz.

Last month, Judge Cummings [had ruled](#) that the 2022 consent decree would be extended until February 2, 2026 (10/07/25). The NIJC and Roger Baldwin Foundation of ACLU had [filed](#) motions to enforce the consent decree on behalf of 26 individuals [detained](#) by ICE without warrants or probable cause during the early Y1, Weeks of the second Trump administration (03/26/25).

**Y1, Week Forty-Nine**, the Supreme Court [handed](#) Trump his first major SCOTUS setback when it ruled that the deployment of federalized National Guard troops in Chicago was unlawful and denied the government's application for a stay (12/23/25). The 6-3 majority held that § 12406(3) required that Trump first send in the regular U.S. military to execute the laws, and that the National Guard can be deployed only if the president remains "unable with the regular forces to execute the laws of the United States."

The Court noted that § 12406(3) likely only applies where the military could legally execute the laws and that in turn would only apply in "exceptional circumstances." The Court then went on to reference the Posse Comitatus Act, and concluded, "before the President can federalize the Guard..., he likely must have "statutory or constitutional authority to execute the laws with the regular military and must be 'unable' with those forces to perform that function. At this preliminary stage, the Government has failed to identify a source of authority that would allow the military to execute the laws in Illinois. The President has not invoked a statute that provides an exception to the Posse Comitatus Act."

Heather Cox Richardson [called](#) attention to the fact that, in a concurring opinion, Justice Brett Kavanaugh added a footnote walking back what have become known as "[Kavanaugh stops](#)." These stops in effect allow ICE to engage in racial profiling. Specifically, Kavanaugh wrote that when individuals legally in the United States are stopped and questioned, "the questioning in those circumstances is typically brief, and those individuals may promptly go free after making clear to immigration officers that they are U.S. citizens or otherwise legally in the U.S." But media reporting suggests that American citizens have been detained for far longer.

In his concurrence, Kavanaugh wrote: "The basic constitutional rules governing that dispute are longstanding and clear: The Fourth Amendment requires that immigration stops must be based on reasonable suspicion of illegal presence, stops must be brief, arrests must be based on probable cause, and officers must not employ excessive force. Moreover, the officers must not make interior immigration stops or arrests based on race or ethnicity."

There is a growing concern that the administration may provoke a violent incident against ICE or Border Patrol agents as a pretext for invoking the Insurrection Act.

On a positive note, it is noteworthy that it may well have been the *amicus* brief submitted by Professor [Lederman](#) that compelled the Supreme Court to rule against Trump on the Chicago deployments.

Elizabeth Goitein, in her Just Security article ([“Trump v. Illinois: A Narrow Supreme Court Decision with Broad Implications”](#)) advances a very interesting theory. Goitein notes that the Supreme Court decision leave open two paths for Trump to re-deploy federal forces on American streets. He could deploy active-duty troops in reliance on inherent constitutional authority or he could invoke the Insurrection Act to deploy either active-duty or federalized National Guard units. She then argues that while the majority opinion does not expressly prevent Trump from pursuing either of these options, the majority’s rationale creates significant constraints for both of them. She concludes by referencing the question posed by Justice Gorsuch in his dissent, “when, if ever, may the federal government deploy the professional military for domestic law enforcement purposes consistent with the Constitution?,” and then notes that, “For more than two centuries, the Court has managed to avoid confronting that question. If Trump continues to abuse the military to police protests in U.S. cities, the Court might finally be induced to answer it.”

**Y1, Week Forty-Nine**, DoJ [sued](#) Gov. Pritzker and Illinois Attorney General Kwame Raoul, challenging newly enacted [H.B. 1312](#) (12/03/25) designed to limit the scope of federal immigration action and protect people against unconstitutional conduct by agents during civil immigration enforcement (12/22/25). In particular, DoJ challenges the enactment of the Illinois Bivens Act and the Court Access, Safety, and Participation Act as an “unconstitutional attempt to regulate federal law enforcement officers.” The Illinois Bivens Act allows for civil legal action against any law enforcement officer who knowingly violates the Illinois Constitution or the U.S. Constitution. The Court Access, Safety, and Participation Act prohibits the civil arrest of anyone in and around courthouses who are attending certain state court proceedings, and allows for civil damages for false imprisonment, including statutory damages of \$10,000, if the person knew or should have known the person arrested was attending a state court proceeding.

**Y1, Week Fifty-Two**, the State of Illinois and City of Chicago [brought](#) an action (01/12/26) to:

- enjoin CBP from conducting civil immigration enforcement in Illinois;
- declare that roving patrols, biometric scanning, warrantless arrest, tear gas, arbitrary enforcement, conceal plates, and private trespass policies violate the APA as set forth above;
- declare that the government had violated the Tenth Amendment; and
- vacate and enjoin CBP from implementing the roving patrol, biometric scanning, warrantless arrest, tear gas, arbitrary enforcement, conceal plates, and private trespass policies.

The complaint begins,

“The Trump administration has unleashed an organized bombardment on the State of Illinois and the City of Chicago, causing turmoil and imposing a climate of fear. Though Defendants describe this assault as “immigration enforcement,” the reality is that uniformed, military-trained personnel, carrying semi-automatic firearms and military-grade weaponry, have rampaged for months through Chicago and surrounding areas,

lawlessly stopping, interrogating, and arresting residents, and attacking them with chemical weapons.”

## Memphis

**Y1, Week Thirty-Five**, it looks like the resistance to deployments in Chicago proved effective. So next target, Memphis or Louisiana, and potentially other Blue cities in Red states. The *Washington Post* [reports](#) that the administration has drafted plan to activate 1,000 Louisiana National Guard in a law enforcement mission targeting “urban centers.” The plan envisions governor support, which would allow the Louisiana Guard units acting under Title 32 to engage in law enforcement operations. The *Washington Post* reports that Under-Secretary of Defense For Policy, Elbridge Colby, is behind the Louisiana plan, which if accurate would seem highly unusual given his national security and foreign policy background. It is unclear whether Gov. Landry has acquiesced to the plan. The *Washington Post* quotes a retired Army two-star general and former acting vice chief of the National Guard Randy Manner, who noted that “[t]he governor is supposed to request this, not the president or the secretary of defense.” The move is “absolutely nothing more than a political grab of power. I’ve never heard of this kind of thing happening before this administration – not in my 35 years” of military service.

**Y1, Week Thirty-Six**, Trump [creates](#) a Memphis Safe Task Force. He was flanked by Tennessee Gov. Lee and Sens. Marsha Blackburn and Bill Hagerty when he announced the formation. He threatened that Chicago would be next.

**Y1, Week Forty-Four**, following the [filing](#) of a challenge by various elected officials in Shelby County and Memphis, as well as members of the Tennessee General Assembly, to the deployment of Tennessee National Guard in Memphis by Gov. Bill Lee (10/17/25), Davidson County Chancellor Patricia Head Moskal [granted](#) a preliminary injunction (11/17/25) enjoining the activation and deployment of the Tennessee Guard, based not on [state constitutional grounds](#), but rather on state statutory grounds ([Tennessee’s Military Code](#), which authorizes the governor to “order into active service of the state” all, or any part, of the National Guard “in cases of invasion, disaster, insurrection, riot, attack, or combination to oppose the enforcement of the law by force or violence, or imminent danger thereof, or other grave emergency.”)

Plaintiffs were represented by Democracy Forward Foundation, the National Immigration Law Center and Sherrard Roe Voigt & Harbison.

## Portland

**Y1, Week Thirty-Seven**, Trump on Saturday [posted](#) that he had directed the Secretary of Defense to deploy troops deploy in “war-ravaged” Portland, Oregon and that he had authorized troops to use “full force” to quell protests at ICE facilities, whatever that means. Gov. Tina Kotek said she had told Trump and DHS Secretary Noem in separate calls to stay out of Portland and that she would not authorize the use of her state’s National Guard. It is unclear what authorities he is relying on for the order. The order [reportedly](#) came as a surprise to many at the Pentagon. Sen. Ron Wyden accused Trump on X of seeking to provoke conflict and incite violence in his hometown.



Recall that during the Black Lives Matter rallies, Trump deployed Border Patrol, Marshals Service, Federal Protective Service and DHS agents in Portland to protect federal buildings. Recall too that less than a week ago, Trump had designated “antifa” as a “terror organization.”

The deployment is for 60 days.

**Y1, Week Thirty-Eight**, the State of Oregon and the City of Portland [filed](#) a motion seeking declaratory and injunctive relief to block the federalization and deployment of the Oregon National Guard (09/29/25). See [Court Listener](#) docket. The complaint sets out four claims:

- that there is no legal basis for federalization. Under 10 U.S. Code §12406, the Guard may only be federalized in cases of invasion, rebellion, or when federal laws cannot otherwise be executed. None of those conditions exist in Oregon;
- violation of the Posse Comitatus Act and 10 U.S. Code §275 in that federalized National Guard troops may not be used for civilian law enforcement;
- infringement of the Tenth Amendment in that states hold the constitutional authority to oversee public safety; and
- singling out Portland is political retaliation.

Earlier Sunday, the Secretary of Defense, relying on Trump’s deployment order of June 7 and thus relying on the same authority used for the LA deployment, 10 U.S.C § 12406, [had called](#) into federal service 200 members of the Ohio National Guard, to protect ICE and other government personnel performing federal functions and to protect federal property, “at locations where protests against these functions are occurring or are likely to occur based on current threat assessments and planned operations.” This then means that the 200 National Guard troops are under the command and control of the Commander, USNORTHCOM, representing the second time that Trump has activated National Guard out from under, and despite the vehement objection of, a Blue state governor. See [The Oregonian](#) coverage. Title 10 activation precludes the Guard from engaging in law enforcement activities.

On Saturday, District Judge Karin J. Immergut delivered another of those opinions for the ages – a scathing [rebutal](#) of the administration as she granted plaintiffs’ motion for a temporary restraining order (10/04/25). The case was assigned to Judge Immergut after the first judge assigned the case recused himself because his wife, Rep. Suzanne Bonamici, had publicly opposed the deployment. The order lapses on October 14, though it could be extended as the trial on the merits is scheduled for October 29.

The first paragraph of the opinion left little doubt as to where the Court would end up:

“This case involves the intersection of three of the most fundamental principles in our constitutional democracy. The first concerns the relationship between the federal government and the states. The second concerns the relationship between the United States armed forces and domestic law enforcement. The third concerns the proper role of the judicial branch in ensuring that the executive branch complies with the laws and limitations imposed by the legislative branch. Whether we choose to follow what the Constitution mandates with respect to these three relationships goes to the heart of what it means to live under the rule of law in the United States.”

The Court found that plaintiffs are likely to succeed on their claim that the federalization of the Oregon National Guard exceeded Trump's statutory authority under 10 U.S. Code [§ 12406](#) and was *ultra vires*. In addition, because § 12406 defines the scope of Congress' constitutional delegation to the President to federalize the National Guard, the plaintiffs are likely to succeed on their claim that the President exceeded his constitutional authority and violated the Tenth Amendment. Having reached these two conclusions, the Court decided it did not need to address the other two claims.

The Court acknowledged that the President is certainly entitled "a great level of deference" (citing the Ninth Circuit in the LA deployment case), in his determination that he "is unable with the regular forces to execute the laws of the United States." But "'a great level of deference' is not equivalent to ignoring the facts on the ground. As the Ninth Circuit articulated, courts must 'review the President's determination to ensure that it reflects a colorable assessment of the facts and law. Here, this Court concludes that the President did not have a 'colorable basis' to invoke § 12406(3) to federalize the National Guard because the situation on the ground belied an inability of federal law enforcement officers to execute federal law. The President's determination was simply untethered to the facts.'" The Court, moreover, found that there was no "rebellion" or "danger of rebellion" in Portland to justify deployments under the second (alternative) prong of § 12406.

In its discussion of balancing the equities, the Court noted that the United States "has a longstanding and foundational tradition of resistance to government overreach, especially in the form of military intrusion into civil affairs. ... This historical tradition boils down to a simple proposition: this is a nation of Constitutional law, not martial law. Defendants have made a range of arguments that, if accepted, risk blurring the line between civil and military federal power—to the detriment of this nation."

On Sunday, in response to a motion [filed](#) by Oregon and California, Judge Immergut [issued](#) a second temporary restraining order to prevent an end-run around her first temporary restraining order, namely the deployment to Portland of National Guard from other states (10/05/25). According to [POLITICO](#), during a late-night hearing conducted by phone, Judge Immergut said she was troubled to learn that the Trump administration had already sent [200 California National Guard](#) members to Oregon and that Texas National Guard members were now [authorized](#) by the Secretary of Defense to be deployed to Oregon. According, to [POLITICO](#), within hours of the issuance of the first temporary restraining order, the Secretary of Defense had ordered National Guard to deploy to Portland from California and had reached agreement with Texas to deploy their National Guard to Chicago, Portland and other cities. See [video update](#) Sunday evening from the Oregon Attorney General.

**Y1, Week Thirty-Nine**, media reports indicate that Trump is weighing invoking the Insurrection Act in order to circumvent the District Court's temporary restraining order and the likely ruling, at least at the District Court level, that the deployment is unlawful (see, e.g., [The Hill](#) coverage). Trump has described the pushback in the courts over the Portland deployment as a "criminal insurrection." The threats extend to both Portland and Chicago.

While President Trump on Sunday described Portland as a city “burning to the ground,” with “insurrectionists all over the place,” the reality belies that description. The demonstrations have rarely expanded beyond a one-block radius of the ICE facility that sits on the edge of a waterfront neighborhood, about two miles from Portland’s downtown. The *New York Times* [reports](#) that demonstrations at the ICE facility began in early June and have rarely numbered more than two dozen people. Clashes between federal agents and the protesters intensified following Trump’s comments. Two people were arrested on Sunday night.

On Monday, the Ninth Circuit [granted](#) the administration’s motion for a stay of Judge Immergut’s first order (blocking the federalization of the Oregon National Guard) but also had the effect of preventing those units from being deployed, but kept the second order (blocking the federalization and deployment of National Guard from other states into Oregon) in place (10/08/25). The administration had not appealed or challenged the second order. The rationale for the ruling was to preserve the status quo pending a hearing on the appeal.

**Y1, Week Forty**, on Monday the Ninth-Circuit (2-1) [ruled](#) on the merits that the National Guard deployment could go forward (10/20/25), but by Friday the Ninth Circuit had reinstated the lower court’s injunction until October 28 while it determines whether it would hear an appeal *en banc* (10/25/25). In the meantime, the plaintiff (the State of Oregon) [submitted](#) a letter to the Court (10/23/25) alerting the Court to what the State characterized was a “material factual error” by the government that goes to the heart of Monday’s ruling.

The majority had ruled that the government was likely to prevail on the third prong of § 12406 as to the inability of the government to execute federal law. The key to the government’s argument was that nearly 25% of the Federal Protective Service (FPS) officers nationwide (115 officers) had been deployed to Portland. The government’s counsel in oral argument had stated that “some” of the officers had gone home, but “many” remained. However, in discovery produced the night before, the government admitted that 115 FPS officers had never been deployed to Portland; only a fraction of that number had ever been deployed to Portland at any one time.

Judge Immergut’s second temporary restraining order (enjoining the deployment of out-of-state National guard units) remains in place. The government has appealed that temporary restraining order. Oregon urges the Ninth Circuit to consider the factual error in keeping when it considers next week whether to keep that second order in place.

Recall that the administration has moved to stay the lower court ruling enjoining the deployment of National Guard in Chicago. The State of Illinois and City of Chicago have [responded](#). A number of *amicus* briefs [have been filed](#).

**Y1, Week Forty-One**, the Ninth Circuit [agreed](#) to rehear the appeal *en banc* and expressly vacated the Ninth Circuit panel’s earlier ruling that allowed Trump to federalize and deploy the Oregon National Guard (10/28/25). The order has the effect of reinstating Judge Immergut’s injunction barring the deployment of the Oregon National Guard. Because there are 29 active judges on the Ninth Circuit, 10 judges

chosen at random plus the chief judge will rehear the appeal. Recall that Judge Immergut had written in [her opinion](#): the United States “has a longstanding and foundational tradition of resistance to government overreach, especially in the form of military intrusion into civil affairs. ... This historical tradition boils down to a simple proposition: this is a nation of Constitutional law, not martial law.” We will soon find out if this still holds.

The action now shifts back to Judge Immergut’s courtroom where a fact-finding trial will examine what is happening on the ground in Portland.

**Y1, Week Forty-Two**, following three days of testimony and a week of deliberation, Judge Immergut [concludes](#) that the plaintiffs have demonstrated that the administration violated 10 U.S. Code § 12406 and the Tenth Amendment and satisfy the requirements for a permanent injunction (11/07/25). She stayed the partial final judgment to the extent that it enjoins the federalization of the Oregon National Guard for 14 days to continue to preserve the status quo for Oregon National Guard that have been federalized but not deployed. As for the other states’ National Guard (California and Texas) deployed to Oregon, the permanent injunction is in full force and effect.

Earlier in the week, Immergut barred the administration from deploying the National Guard in Portland until at least Friday, saying she “found no credible evidence” that protests in the city had grown out of control before the president federalized the troops earlier this fall.” On Friday, she acknowledged that she may lack jurisdiction to enjoin Trump “in the performance of his official duties,” the Court’s injunction bars the Secretary of Defense and the Secretary of Homeland Security from deploying the Oregon National Guard.

The Court started with the Ninth Circuit ruling (*Newsom v. Trump*) and recognized that it is bound to apply the holding in that case, which interpreted Trump’s power to call up the National Guard under the third prong of 10 U.S. Code § 12406 (when he “is unable with the regular forces to execute the laws of the United States”). *Newsom* stands for the proposition that the decision by Trump to deploy National Guard is judicially reviewable and that while Trump is entitled to great deference, that deference is not absolute. His “exercise of his authority to maintain peace” must be “*in the face of the emergency* and directly related to the quelling of the disorder or the prevention of its continuance.”

The Court then acknowledged that the Oregon deployment presents issues not addressed in *Newsom*, namely the scope of Trump’s power under the second prong of Section 12406 (permitting the call-up when “there is a rebellion or danger of a rebellion against the authority of the Government of the United States”) and the meaning of “to execute the laws of the United States,” contained in the third prong of Section 12406. In resolving these issues, this Court looked to both *Newsom*’s reasoning and the constitutional scope of Congress’s “calling forth power,” which defines the outer boundaries of the President’s power under § 12406.

Notwithstanding deference due, and even applying *Newsom*’s “highly deferential standard of review,” Trump did not have a “colorable basis for invoking” either prong of § 12406. There was neither “a rebellion or danger of a rebellion” nor was Trump

“unable with the regular forces to execute the laws of the United States” in Oregon when he ordered the federalization and deployment of the National Guard. Hence the deployments were *ultra vires* and they violated the Tenth Amendment – both as to the Oregon National Guard but also as to the California and Texas National Guard, whose deployment in Oregon violated Oregon’s sovereignty.

**Y1, Week Forty-Seven**, the Ninth Circuit order to hear the challenge to the Portland deployment *en banc* was amended to include a statement [issued](#) by District Judge Jay Bybee (and a counter to that issued by Judge Tung) (12/08/25). Judge Bybee submitted his statement because he feels that the appellate court had overlooked a provision of the Constitution that undercuts the standard of deference adopted in *Newsom v. Trump* that whereby the Court deferred to the President’s determination to send the National Guard into a state over its objection so long as that determination “reflects a colorable assessment of the facts and law within a ‘range of honest judgment.’”

The overlooked provision is the Domestic Violence Clause, which provides “The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.” This provision, he believes, constrains 10 U.S.C § 12406 – in effect requiring governors to consent to the federalization and deployment of National Guard in their states, unless there is an overriding imperative, namely enforcement of the Fourteenth Amendment.

### **San Francisco**

**Y1, Week Forty**, the administration appeared ready to deploy Border Patrol and other federal agents to a Coast Guard base in Alameda, east of San Francisco, as part of an immigration-enforcement plan. On Thursday, as protestors descended on the base and following a conversation with San Francisco mayor Daniel Lurie, Trump reversed himself and called off the federal deployment. See [Guardian](#) coverage.

### **Charlotte**

**Y1, Week Forty-Four**, Border Patrol, led by Gregory Bovino who led similar operations in LA and Chicago, descended on Charlotte (Operation Charlotte’s Web). At least 81 arrest were reported on the first day. See [New York Times](#) coverage. Some experts question the authority of the Border Patrol to operate in Charlotte as it is 170 miles inland, meaning it is beyond the 100-mile zone recognized under federal law in which the Border Patrol may operate.<sup>28</sup>

### **New Orleans**

**Y1, Week Forty-Nine**, around 350 members of the National Guard [are expected](#) to arrive just before New Year’s Eve in New Orleans to support Border Patrol operations.

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<sup>28</sup> [INA Section 287\(3\) \(8 U.S.C § 1357\(3\)\)](#) allows Border Patrol agents without a warrant and “within a reasonable distance from any external boundary of the United States ... board and search for non-citizens in any vessel within the territorial waters of the United States and any railcar, aircraft, conveyance, or vehicle.” “Reasonable distance” is [defined](#)

The deployment has the support of Trump's new envoy to Greenland, Louisiana Governor Landry.

## Minneapolis

**Y1, Week Fifty-One**, the week began with [reporting](#) of an enforcement surge in the Minneapolis-St Paul twin cities, intensifying immigration arrests ([characterized](#) by acting ICE director as the largest ever) alongside an investigation into fraud. Two thousand agents were expected to be involved. On Wednesday, the surge turned deadly. See [Fatalities Caused by ICE](#). By Friday, it [appears](#) more federal agents are heading to Minneapolis.

**Y1, Week Fifty-Two**, Minnesota city and state officials [sue](#) to declare the surge of federal agents in Minneapolis as part of Operation Metro Surge unlawful and block its implementation, block a series of specific tactics used by federal agents and mandate body cams as well as visible identification (01/12/26). The motion for declaratory and injunctive relief was filed by Minnesota Attorney General Keith Ellison and by the cities of Minneapolis and St. Pauls. Plaintiffs argue, among other things, that the operation “is driven by nothing more than the Trump Administration’s desire to punish political opponents and score partisan points” and cite Tenth Amendment and Administrative Procedures Act claims.

District Judge Katherine Menendez [issued](#) a preliminary injunction enjoining federal agents as part of Operation Metro Surge from certain crowd control actions (pepper spray and nonlethal munitions), from detaining or arresting persons engaged in peaceful demonstrations and from stopping or detaining drivers/passengers in “vehicles where there is no reasonable articulable suspicion that they are forcibly obstructing or interfering” with federal agents (01/16/26). The Court also granted limited class-wide relief covering “[a]ll persons who do or will in the future record, observe, and/or protest against Operation Metro Surge and related operations that have been ongoing in this District since December 4, 2025.” The complaint [was filed](#) by six individual plaintiffs (12/17/25). See [Court Listener](#) docket.

It is widely [reported](#) that a two U.S. citizens (Patty O’Keefe and a friend) were following ICE agents when they were stopped, the car windows smashed and their car pepper sprayed. “The three ICE agents that were in the car with me immediately started taunting me. The driver of the car said, ‘You guys gotta stop obstructing us. That’s why that lesbian bitch is dead.’” O’Keefe said she was held for eight hours before being released without charges.

Media report possible deployment of active-duty troops to Minnesota, with up to 1,500 troops from the cold-weather trained 11<sup>th</sup> Airborne Division on standby in Alaska. This follows Trump’s threat on Thursday to [invoke](#) the Insurrection Act to suppress protests in Minneapolis following the killing of Renee Good and the shooting of a

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as 100 air miles from the 6,000-mile external border of the United States. Most of the ten largest cities in the United States, including New York City, Los Angeles, and Chicago, fall in this zone. See [CBP](#) explainer.



Venezuelan immigrant in the leg on January 14. Trump then said, “I’d do it if it was necessary. So far, it hasn’t been necessary. But we have an Insurrection Act for a reason. If I had to enact it, I’d do that.” See [NPR](#) coverage.

Meanwhile, at Gov. Walz’s direction, the Minnesota National Guard has been [mobilized](#) and is standing by to assist local law enforcement. Minnesota National Guard troops [will be wearing](#) yellow vests to distinguish them from federal or federalized elements.

More than two dozen House Democrats held an unofficial congressional hearing in St. Paul on the conduct of ICE and other federal agents in Minnesota. The meeting was co-chaired by Reps. Jaypal and Omar.

**Y2, Week One**, as Heather Cox Richardson succinctly summarizes:

- A local police chief, Mark Bruley, [told](#) reporters that his officers were getting repeated complaints about violations of civil rights by ICE and that ICE agents were stopping off-duty police officers of color. In one incident, ICE agents stopped an off-duty police officer, demanded her paperwork—she is a U.S. citizen—and then held her at gunpoint. When she tried to film the interaction, they knocked the phone out of her hand. Finally, when she identified herself as a police officer, they got in their vehicles and left.
- Dell Cameron of *Wired* [reported](#) that internal ICE planning documents show ICE plans to spend up to \$50 million on jail space and a privately run transfer hub in Minnesota for detainees from Minnesota and four neighboring states.
- Video footage from Minneapolis [shows](#) a federal agent spraying chemical irritants directly into the face of a man ICE agents had pinned and held to the ground. Other video [shows](#) CBP leader Greg Bovino throwing tear gas at peaceful protesters. Yet other videos captured an American citizen [dragged](#) out of his home in his underwear in subzero weather. See also [New York Times](#) coverage.
- The El Paso County Office of the Medical Examiner [ruled](#) that the death of 55-year-old Cuban-born detainee Geraldo Lunas Campos was a homicide. Lunas Campos died of asphyxiation after guards put pressure on his neck and chest during an altercation during which Lunas Campos asked for his medication. Two detainees testified that they saw guards choking Lunas Campos, who repeatedly told them he couldn’t breathe. The Trump administration has since tried to deport the two witnesses. See also
- ICE agents are deployed around schools, threatening children. Media [reported](#) that ICE has detained a five-year-old preschooler after using him as bait to get someone in his house to open their door. Then ICE transferred him and his father from Minnesota to detention in Texas. His family reportedly has an active asylum case and it does not have an order of deportation, meaning they are in the United States legally.

If the Insurrection Act is triggered, we will be in uncharted territory, not because the Insurrection Act has not been triggered before, it has on a number of occasions, but because we have not faced the toxic mix of ICE raids and dangerous slide towards the creation of a police state. If the Insurrection Act is triggered, what role will active-duty military play, and how will they coordinate (under the command of NORTHCOM) with a Minnesota National Guard reporting to Gov. Walz, potentially Red state National Guard units also reporting to NORTHCOM, ICE, state/local law enforcement and other federal agents? Will intelligence capabilities of the military be deployed? Will the military allow itself to be an adjunct to ICE enforcement or will it serve as a buffer between ICE and civilians? What rules on the use of force will the military draw up, and how will those rules fit with the apparent disregard of the Fourth Amendment by ICE.

And what happens if troops are deployed to other states? Potential deployment to Arizona raises a different set of concerns, not only because of the heavy concentration of Latino residents and large numbers of undocumented migrants in the state, but also because it is a heavily armed state and has a strong stand your ground law. Imagine if masked agents without insignia confront armed civilians involving stand your guard protections.

**Y2, Week Two**, a clearly exasperated Patrick J. Schiltz, Chief Judge United States District Court in Minnesota, [orders](#) acting Director of ICE Todd Lyons to personally appear in court later this week to show cause why he should not be held in contempt (01/26/26). “The Court’s patience is at an end,” writes Judge Schiltz, in response to repeated failures of the government to respond to court orders.

Two days later, Judge Schiltz withdrew his order (01/28/26). This was a *habeas* petition and the petitioner was released. The Court noted, however, that the release “does not end the Court’s concerns.” The Court went on to say:

“Attached to this order is an appendix that identifies 96 court orders that ICE has violated in 74 cases. The extent of ICE’s noncompliance is almost certainly substantially understated. This list is confined to orders issued since January 1, 2026, and the list was hurriedly compiled by extraordinarily busy judges. Undoubtedly, mistakes were made, and orders that should have appeared on this list were omitted. This list should give pause to anyone – no matter his or her political beliefs – who cares about the rule of law. ICE has likely violated more court orders in January 2026 than some federal agencies have violated in their entire existence. The Court warns ICE that future noncompliance with court orders may result in future show-cause orders requiring the personal appearances of Lyons or other government officials. ICE is not a law unto itself. ICE has every right to challenge the orders of this Court, but, like any litigant, ICE must follow those orders unless and until they are overturned or vacated.”

**Y2, Week Four**, two federal agents reportedly are under investigation by DoJ for lying about the incident in which one of them [shot](#) a Venezuelan immigrant in the leg. They have reportedly been placed on administrative leave.

The announcement comes one day after prosecutors [dropped](#) criminal charges against the man shot and a second immigrants at the scene. DHS officials, including

Secretary Noem, had [previously defended](#) the agents, saying they had fended off an “attempted murder” and that one officer had fired in self-defense.

The agents reportedly initially claimed under oath that the two men assaulted them with a broom and a shovel before one of them fired his shot. But that account was called into question. According to the government’s motion to dismiss the complaint against the two men, “newly discovered evidence” contradicts the officers’ story as set out in FBI affidavit supporting the criminal complaint.

*POLITICO* [reports](#) that the dismissal of charges followed an aggressive effort by federal prosecutors to keep the two men locked up, even after a federal judge ordered their release, as well as to target for deportation other witnesses to the incident. District Judge Paul Magnuson, who ordered the release of two men from criminal detention, subsequently ordered ICE not to deport any witnesses before they could testify in the matter. After ICE detained the two men — despite their release from criminal custody, Chief Judge Patrick Schiltz [ordered](#) their release once again (02/07/26).

Meanwhile, District Judge Nancy Brasel [ruled](#) that the government had violated the rights of people detained by ICE in the Bishop Henry Whipple federal building in Minneapolis, finding they had been placed in an ill-equipped, overcrowded facility without access to attorneys (02/07/26). Judge Brasel found that the government had surged agents into Minneapolis and St. Paul as part of Operation Metro Surge without respecting “the constitutional rights of its civil detainees.” “The government suggests – with minimal explanation and even less evidence – that doing so would result in ‘chaos.’ The Constitution does not permit the government to arrest thousands of individuals and then disregard their constitutional rights because it would be too challenging to honor those rights.”

## Seattle

**Y2, Week Four**, District Judge James L. Robart [ordered](#) the release of Joswar Rodriguez-Torres from ICE detention, whose detention over seven months had caused protests and the arrests of close to 30. The ruling found that Torres’ constitutional rights had been violated. Torres reportedly was granted humanitarian parole and had an asylum petition pending, and was detained after a routine check-in with DHS. After the protests, federal prosecutors brought conspiracy charges against nine protesters, including Bajun Mavalwalla II, an Afghanistan war veteran, who [faces](#) up to six years in prison if he is convicted. Richard Barker, a DoJ prosecutor, resigned as acting U.S. Attorney for Eastern Washington rather than sign the indictments. The Guardian [quoted](#) Barker as saying, “No one was hurt. You have people who were executing their rights to free speech. You have people who were seeing an injustice and they were saying something about it.”

## In Sum...

Trump paints a dystopian picture of war zones in cities controlled by Democrats and deploys National Guard units either from the relevant state or from Red states with the cooperation of their governors. Speaking of Chicago, Trump had this to say, “It’s probably worse than almost any city in the world. You could go to Afghanistan, you

can go to a lot of different places, and they probably marvel at how much crime we have.” Gov. Pritzker has called Trump’s characterization of Chicago as “deranged.”

In no case is local law enforcement not more than capable of handling the small protests that have broken out around ICE facilities. As Joyce Vance [aptly put it](#), “Local police departments are more than capable of handling local crime problems. They don’t need help in the form of military boots on the ground from the feds. State and local law enforcement benefit from the provision of federal grants that permit them to hire, train, educate, supervise, and upgrade technology and equipment. They don’t need National Guardsmen who aren’t trained in community policing and don’t know state law to be dropped in, under federal control, supposedly, to help.”

We may now see what military law and civil liberties experts have long feared – an invocation of the Insurrection Act. I have thought this would be a bridge too far for the American people, which is why Trump did not default to it right away.

Adding to the concern is [reporting](#) by the Minnesota Star Tribune, based on Signal messages seen on the phone of Anthony Salisbury, Deputy Homeland Security Advisor in the White House, discussing (in an echo of Signalgate, while “in clear view of others”) a plan to deploy the elite 82<sup>nd</sup> Airborne division to Portland. Salisbury apparently was messaging Patrick Weaver, a senior advisor to Hegseth. Weaver texted that Hegseth wanted Trump to expressly tell him to deploy the 82<sup>nd</sup> to Portland – “Between you and I (*sic*), I think Pete just wants the top cover from the boss if anything goes sideways with the troops there. 82<sup>nd</sup> is like our top tier for abroad. So, it will cause a lot of headlines. Probably why he wants potus to tell him to do it.” In any event, Hegseth would likely need Trump to invoke the Insurrection Act for that deployment.

Incidentally, Salisbury reports to Stephen Miller.

This observed text exchange and the [reporting](#) that Miller is involved in orchestrating the Venezuelan boat strikes prompts Heather Cox Richardson [to ask](#) who is really in charge and how closely Trump is following what is being unleashed in his name? She raises the question of what is feeding his latest obsessions with Democratically led cities.

- Dan Froomkin [noted](#) in *Press Watch* that Trump has been obsessed with the idea that Portland is a “war zone” since he apparently watched a September 4 Fox News Channel special report that passed off footage from the violence of 2020 as happening now. In fact, we are talking about a handful of protests, and the protests have largely been peaceful, with few arrests.
- On September 25, Trump asserted that “nobody’s ever seen anything like it every night and this has gone on for years. They just burned the place down.... These are professional agitators. These are bad people and they [are] paying a lot of money by rich people....” He claimed Portland was plagued by “anarchists” and “crazy people” who were trying to “burn down buildings, including federal buildings.”
- On September 27, Trump posted on Truth Social “At the request of Secretary of Homeland Security Kristi Noem, I am directing Secretary of War, Pete Hegseth, to provide all necessary Troops to protect *War ravaged* Portland, and

any of our ICE Facilities *under siege from attack by Antifa*, and other domestic terrorists. I am also authorizing Full Force, if necessary. Thank you for your attention to this matter!”

- Oregon Gov. Tina Kotek told Trump his impression of Portland was wrong. On Sunday morning, Trump told NBC White House correspondent Yamiche Alcindor: “I spoke to the governor, she was very nice. But I said, ‘Well wait a minute, am I watching things on television that are different from what’s happening? My people tell me different.’ They are literally attacking and there are fires all over the place...it looks like terrible.”

Professor Vladeck, in his op-ed in the *New York Times* (“[No, Trump Can’t Deploy Troops to Wherever He Wants](#)”), neatly summarizes what we and, more importantly, the federal courts face: “a factual dispute more than a legal one.” Trump is using, as Judge Immergut characterized them, determinations “untethered to the facts” about what is happening on the ground in the cities he has targeted to justify federalizing and deploying National Guard units from the states affected and other states. As to where we go next, Vladeck notes,

“The Supreme Court will no doubt have the last word. And the question is going to be whether the president can use a contrived crisis as a justification for sending troops into our cities. In other words, the issue is going to come down to who decides the *facts* when it comes to domestic use of the military. That question meant one thing when we had presidents who, for whatever reason, were constrained to acknowledge reality. It means something else altogether in an administration for which, to borrow from George Orwell,  $2 + 2 = 5$ .”

**As Y1, Week Thirty-Eight** tees up, David French, in his op-ed (“[How a Trump Judge Exposed the Trump Con](#)”), exclaims that Judge Immergut “did the worst thing you can do to Trump in a court of law: She took him seriously. She read his words, found them disconnected from reality and acted accordingly.” He points out that when Trump is getting his way he is celebrated as unique, but when he is challenged, he demands to be treated like any of his predecessors. In other words, when his actions are challenged in court, he seeks the deference typically accorded holders of the highest office in the land. Judge Immergut, French notes, “refused to play Trump’s game and instead held him accountable for his words. There is no deference due to a president who refuses to operate in good faith.”

**As Y1, Week Thirty-Nine** winds down and with the benefit of the ruling of the Seventh Circuit that upheld a lower court ruling (by Judge April Perry) blocking deployment of National Guard in Illinois, and two rulings by the Ninth Circuit that froze similar orders in respect of Portland and Los Angeles though accepted the administration’s alternate reality of the facts on the ground, the Brennan Center’s Elizabeth Goitein frames the stark choice that the Supreme Court must now grapple with. She is clear as to the stakes: “If the Court permits military deployment in any of these cases, the consequences will be profound. ... The president would be able to deploy the military almost any time and any place Americans gather.”

**Y1, Week Forty-Seven**, Judge Breyer, taking back up the challenge to the deployment of the California National Guard, after ruling once and then having the case move up

the appellate chain, ruled in respect of the current standing deployment orders (an August 5<sup>th</sup> memorandum federalizing 300 members of the California National Guard for an additional 90 days and an October 16<sup>th</sup> memorandum federalizing again 300 California National Guard through February 2026 and directing that 200 be redeployed to Oregon). This time he [granted](#) the plaintiffs the preliminary injunction they had requested, enjoining the deployment of the California National Guard and returning that Guard back to the control of Gov. Newsom (12/10/25).

The punchline was the first paragraph:

“The Founders designed our government to be a system of checks and balances [citing Federalist No. 51]. Defendants, however, make clear that the only check they want is a blank one. Six months after they first federalized the California National Guard, Defendants still retain control of approximately 300 Guardsmen, despite no evidence that execution of federal law is impeded in any way – let alone significantly. What’s more, Defendants have sent California Guardsmen into other states, effectively creating a national police force made up of state troops. In response to Plaintiffs’ motion to enjoin this conduct, Defendants take the position that, after a valid initial federalization, all subsequent re-federalizations are completely, and forever, unreviewable by the courts. Defendants’ position is contrary to law. Accordingly, the Court **ENJOINS** Defendants’ federalization of California National Guard troops.”

On the question of reviewability, the Court took issue with the government’s contention that, after an initial federalization, all extensions of federalization orders are forever, unreviewable. It found that position “shocking.” Specifically, adopting that interpretation of 10 U.S.C § 12406 “would permit a president to create a perpetual police force comprised of state troops, so long as they were first federalized lawfully. Such a scenario would validate the Founders’ ‘widespread fear [of] a national standing Army,’ which they believed ‘posed an intolerable threat to individual liberty and to the sovereignty of the separate States.’ Defendants’ argument for a president to hold unchecked power to control state troops would wholly upend the federalism that is at the heart of our system of government.”

As for likelihood of success on the merits, the Court found, even under the highly deferential standard articulated by the Ninth Circuit in the *Newsom* case – “courts may at least review the President’s determination to ensure that it reflects a colorable assessment of the facts and law within a ‘range of honest judgment’” – plaintiffs were likely to succeed on the merits. The focus came back to the third prong of § 12406 (“the President is unable with the regular forces to execute the laws of the United States”). The Court found that the defendants had failed to satisfy two requirements – “is unable” and “with regular forces.” It examined first the temporal requirement (“is,” as in at the time – not hypothetically in the future or in the past, and noting that “the spectre of a protest that is not a current impediment to the President’s ability to execute the laws becoming a future impediment is not adequate”).

On the basis of the facts on the ground, the Court concluded that there was no basis to conclude that Trump was “significantly impeded” from executing federal law on either August 5 or October 16.



As for the second element (“regular forces”) the Court noted there were potentially two standards, the second having been [raised](#) by Justice Barrett when taking up the Illinois/Chicago appeal. Essentially, there was no basis to conclude that civilian law enforcement was inadequate.

Likelihood of success on the merits of the § 12406 claim also means likelihood of success on the merits of the Tenth Amendment claim.

The injunction is stayed until December 15.

### **Red States Step Up**

**Y1, Week Thirty-Two**, *Stars & Stripes* [reports](#) that, in response to a DoD request to provide in aggregate 1,700 National Guard troops, seven Red states have agreed to provide National Guard troops for a federally funded mission within their states, to support ICE in managing its growing population of detained migrants. The troops remain under the control of the applicable governor. Stars & Stripes reports that the mission initially was intended from Marines and Reserve personnel, but because the work involved close contact with detainees, for example personal data collection, fingerprinting, DNA swabbing, photographing people in ICE custody, and adding biographical and detention data into government systems, the plan was scrapped in favor of the Guard units.

And, as noted above, Red state National Guard units have been deployed to D.C. and are heading to Chicago.

### **Broader Concerns with Civil Liberties Implications**

**Y1, Week Twenty-Four**, the *Miami Herald* [reports](#) that Trump had announced, during his visit to the South Florida detention facilities known as [Alligator Alcatraz](#), that he would approve a plan by Florida to expedite deportations by having National Guard JAGs serve as immigration judges. The plan was drawn up by Gov. Ron DeSantis to create a one-stop shop for deportations. It is unclear how this plan would fit within the Posse Comitatus Act on the ground that acting in the capacity of an immigration judge would be tantamount to law enforcement, which would be prohibited absent an invocation of the Insurrection Act.

If this plan does not qualify as a training opportunity under Title 32, then that leaves Title 10, and the corresponding potential violation of Posse Comitatus. The administration might claim authority under INA Section 287(g), which [authorizes](#) ICE to delegate authority to state and local law enforcement to perform specified immigration officer functions under ICE direction and oversight, but that is a DHS authority and immigration judges are part of DoJ.

Also **Y1, Week Twenty-Four**, the Brennan Center’s Elizabeth Goitein [reports](#) that federalized National Guard units deployed in Los Angeles assisted the DEA in conducting routine counter-drug operations in Coachella Valley region, 130 miles east of Los Angeles. As she notes, the deployment “represents an alarming escalation of President Donald Trump’s efforts to use the military as a domestic police force. Based on currently available information, it appears to be illegal, as well.” Goitein quotes NORTHCOM as saying that National Guard troops “supported a Drug Enforcement

Agency operation a few hours outside of Los Angeles” and that their role in the operation was to “protect federal personnel who are performing federal law enforcement functions.” The DEA spokesperson [defined](#) the Guard’s role more broadly: “Due to the vast magnitude of the operation, we needed partners to safeguard not just our personnel, but also the individuals either working or living in the premises.”

Goitein points out that while the deployment of National Guard in the June 7 Memorandum was not limited to Los Angeles, it was limited to “locations where protests against [federal] functions are occurring or are likely to occur based on current threat assessments and planned operations.” So, what protests were planned in Coachella Valley? Goitein goes on to note that there is no statutory basis for the deployment for the drug raid. As [noted above](#), federalized National Guard are deployed under 10 U.S.C § 12406, which requires an invasion or threat of an invasion; a rebellion against the authority of the U.S. government or threat of such a rebellion; or the president “is unable with the regular forces to execute the laws of the United States.” The Ninth Circuit recently found the third prong was met, based on government declarations of multiple acts of violence by protesters against ICE raids in Los Angeles. Any justification would strain credulity.

Nor can the National Guard rely on statutory authority to protect federal property or functions or on [10 U.S. Code Subtitle A Chapter 15 Part I](#), which authorizes use of federal armed forces for logistical support. This does not authorize use of federalized National Guard.

So, the question then is whether this deployment violates The Posse Comitatus Act? Goitein points to [DoD Instructions](#) that characterize security functions as tantamount to impermissible direct law enforcement assistance. Case law is less clear. Goitein concludes that “Military participation in routine criminal law enforcement functions like drug raids is precisely the type of activity the Posse Comitatus Act was intended to prevent.”

The broader questions that we as Americans must confront is whether a litany of actions, starting with the firing of the TJAGs and other senior military officers, the deployment of National Guard and Marines in Los Angeles, the threat to use National Guard JAGs as immigration judges, and now this use of National Guard for drug raids, represent a dismantling of our armed forces and National Guard as an internal police force deployable to stifle dissent and the exercise of other civil liberties.

Three former senior JAGs, [writing](#) in The Bulwark (“The Dangerous Plan to Turn Military Lawyers Into Immigration Judges”), characterized both the LA deployment (which, as of Y1, Week Twenty-Six, as to the National Guard units, has been drawn down by one half) and the DeSantis proposal to convert JAGs to immigration judges, as inserting “our apolitical armed forces into polarizing domestic issues that risk politicizing the military itself.” The deployments of troops on American streets “have brought our troops further into tension with civilian society by detailing them to roles as law enforcement and border agents,” and the DeSantis proposal “further increases the risks that the military will become divided by – and defined by – politics.” The three former JAGs conclude:

“Deploying members of the military into law enforcement, criminal justice, and other civilian roles blurs the lines between our armed forces and civilian society in ways that would have shocked our Founders. Our Founders understood that a military strong enough to repel foreign invaders was also strong enough to repress freedoms at home. Maintaining a strong military, with a commitment to the rule of law, is undermined when politicians disregard our founding traditions and put our servicemembers where they don’t belong.”

There is at least one other issue of concern to the JAG community, namely the recent nomination and Senate confirmation of a member of the Army reserve as *the* Judge Advocate General of the U.S. Army, the senior most military lawyer in the U.S. Army. The problem is that new Army TJAG also currently serves as the District Attorney in Columbia County, Georgia. The Former JAG Working Group point out that “the continuing political activity” of the new Army TJAG “as a Georgia county district attorney violates Department of Defense regulations [Department of Defense Directive 1344.10, paragraph 4.5] prohibiting military officers on extended active duty from exercising the duties of State or local elective offices.” “It is unconscionable,” they note “that the senior officer responsible for providing legal advice to every commander in the US Army is subject to the influence of the voters of Columbia County, Georgia.”

As for Alligator Alcatraz, **Y1, Week Thirty-One**, District Judge Kathleen M. Williams [ruled](#) that, in the absence of an environmental impact assessment having been made, the site needed to be shut down (08/21/25). Judge Williams’ order expands the temporary restraining order issued two weeks earlier and directs the government to begin dismantling the fencing, lighting, sewage and other elements put in place to support the facility, and to halt transferring any more detainees to the site. *See also* [Washington Post](#) coverage.

**Y1, Week Thirty-Four**, The Guardian [reports](#) that, in July, a U.S. Army veteran, Bajun Mavalwalla II – a former army sergeant who survived a roadside IED blast on a special operations mission in Afghanistan – was [charged](#) with “conspiracy to impede or injure officers” after joining a demonstration in June against ICE in Spokane, Washington. While there was some violence at the demonstration, Mavalwalla was not arrested at the time, and he has not been charged with obstruction or assault. He has no criminal record. The indictment was handed down two days after the acting U.S.A for Eastern Washington, in place for four months, [resigned](#).

The Guardian notes that the government largely has charged demonstrators for assault and obstruction, which requires a victim and an assailant. [Conspiracy to impede or injure an officer](#) is a crime of intent, requiring proof that defendants agreed to act in concert to impede or injure the agent. Experts characterize this as a test case to see how far they can push the envelope.

**Y1, Week Thirty-Six**, Sen. Mazie Hirono and 11 other Democratic members of the Senate Armed Services Committee sent a [letter](#) to the senior JAGs for each of the military services about the [recent authorization](#) by the Secretary of Defense to assign up to 600 JAGs to serve as temporary immigration judges within DoJ. Rep. Chrissy Houlahan raised similar concerns in a [letter](#) to the Secretary of Defense last week.

**Y1, Week Thirty-Seven**, there is an extremely odd dynamic going on with immigration judges. The need to deploy JAGs is turbo-charged by the depletion in the

ranks of the civilian judges. Some may be voluntary, but on top of that we have reports of an unprecedented number of firings. NPR [reports](#) that close to 20 immigration judges were fired earlier this month, bringing the total to over 80 immigration judges cut by Trump this year. It is curious that at a time when backlogs at immigration courts are at historical levels and with immigration enforcement a central pillar of Trump's agenda, the service is shedding judges at an accelerated pace.

**Y1, Week Forty**, OLC [issued](#) an opinion (10/23/25) providing legal justification for detailing JAGs to serve as immigration judges and Special Assistant U.S. Attorneys. It surfaces now, and a quick read suggest that the opinion does not address the key criticisms proffered by no-longer serving military law experts.

**Y1, Week Forty-Four**, the Washington Post [chronicles](#) how the White House barrelled past concerns raised by lawyers across the national security agencies in pursuing its military campaign against alleged drug smugglers.

### **Congressional Pushback**

**Y1, Week Forty-Four**, Rep. Robert Garcia, Ranking Member of the Committee on Oversight and Government Reform, and Sen. Richard Blumenthal, Ranking Member of the Senate Permanent Subcommittee Committee on Investigations, [wrote](#) to Homeland Security Secretary Noem demanding information and records from DHS following reports of wrongful detentions of American citizens by DHS agents Reports document citizens being held for extended periods, being denied access to counsel, and other civil rights violations (11/18/25). While Democrats can start any investigation they wish, as the minority they do not have subpoena power.

News outlets, including [The New York Times](#) and [ProPublica](#), have documented the detention of American citizens during immigration sweeps. LA Mayor Bass and Rep. Garcia said that more than 170 American citizens had been arrested in immigration raids or protests.

**Y1, Week Forty-Four**, Sen. Slotkin also [posted](#) a video calling on the Secretary of Defense and the Secretary of Homeland Security to testify on the domestic deployments (11/20/25).

Sen. Slotkin, with co-sponsors Sens. Kelly, Duckworth, Blumenthal and Wyden, has [introduced](#) legislations titled “No Troops in Our Streets Act,” which seeks to expand the power of Congress to block deployment by the president of National Guard on American streets while injecting \$1 billion in new resources to help cities fight crime. The bill was previewed in Slotkin's [Brookings speech](#) and in an [interview](#) with *MSNBC*. See [press release](#). The bill would create a termination mechanism, though some experts on emergency legislation suggest that a time limit that could only be extended by congressional approval would be more effective.

Separately, Sen. Duckworth has [spoken out](#) forcefully on the National Guard deployments and [secured](#) a commitment from the Chair of the Senate Armed Services Committee that he would hold a public hearing to receive testimony from the DoD on deployment of troops domestically. This followed the [dispatch](#) of a letter to Trump from the entire delegation from Illinois of House and Senate Democrats urging him to reverse the decision to federalize and deploy Texas and Illinois National Guard to

Illinois. She also [introduced](#) legislation titled “Safeguarding the Use of the National Guard Act” or the “SUN Act” and then [introduced](#), with co-sponsors Sen. Hirono, Durbin, Gillibrand and Padilla, the “Military in Law Enforcement Accountability Act.” This latter bill would:

- restrict and enhance oversight over indirect military support to civilian law enforcement by reforming sections of title 10 to prohibit indirect military support to civilian law enforcement except in specific emergency circumstances and requiring Congressional approval for any dedication of military or defense assets for that purpose when it lasts longer than 14 days. This reform limits permissible indirect support to only the following scenarios: humanitarian crises; natural disasters; public health emergencies; attacks on critical infrastructure; nuclear attacks; domestic terrorist incidents and preparations for a major U.S. event, in which the domestic response needs are expected to exceed the capacity of civilian law enforcement.
- prohibit individuals from simultaneously holding any position in DoD and in any civilian law enforcement entity, except if they are members of the reserves and National Guard and hold law enforcement roles in their civilian capacities only; and
- change 10 USC 723 to expand the conditions under which members of the armed forces or Federal law enforcement are required to visibly display their identifier and name of their organization to include all scenarios involving support to civil authorities, not just under “civil disturbances” only.

Sen. Durbin, Ranking Member of the Senate Judiciary Committee, along with House Democrats’ Litigation Task Force, led by Task Force Chair Joe Neguse, House Judiciary Ranking Member Jamie Raskin, House Democratic Leader Hakeem Jeffries and House Armed Services Ranking Member Adam Smith, led a group of 155 Senate and House Democrats in support of Illinois’s legal challenge to Trump’s National Guard deployment in Illinois by [filing](#) an *amicus* brief in the appeal before the Supreme Court. See [press release](#).

### **“Don’t Give Up the Ship!”**

I recall hearing Atlantic Editor Jeffrey Goldberg relay a story after Signalgate about Trump taking credit for amping up Goldberg’s ratings by attacking him over his Signalgate reporting and suggesting Goldberg should be thankful. We now have another gift from Trump – a message to the troops has hit stratospheric heights of coverage thanks to his unhinged reaction.

**The backstory:** Six veterans of the CIA and the military [posted](#) a video directed at the military and the intelligence community. “Don’t Give Up the Ship” features Sens. Elisa Slotkin and Mark Kelly and Reps. Jason Crow, Chris Deluzio, Maggie Goodlander and Chrissy Houlahan warning that the military and intelligence community risk losing the trust of the American people as the administration pits both against American citizens. The six remind all that the oaths military and intelligence professionals take comprehends refusing to obey illegal orders and they urge military and intelligence professional to stand up for our laws and the Constitution.

Trump lost no time in demanding the arrest of the six Democrats – accusing them of “seditious behavior at the highest level” and labelling them as “traitors.” He then posted another missive, “This is really bad, and Dangerous to our Country. Their words cannot be allowed to stand. SEDITIOUS BEHAVIOR FROM TRAITORS!!! LOCK THEM UP???” In a third post, Trump [wrote](#), “SEDITION BEHAVIOR punishable by DEATH!” Trump also reposted multiple posts from other Truth Social users about the video, including one [that said](#), “Hang them George Washington would.” Stephen Miller weighed in as well, and also like his boss completely mischaracterized what the video proclaimed – Miller [labelled](#) the message as “openly calling for insurrection.”

In a fourth post, Trump continued to double down: “THE TRAITORS THAT TOLD THE MILITARY TO DISOBEY MY ORDERS SHOULD BE IN JAIL RIGHT NOW, NOT ROAMING THE FAKE NEWS NETWORKS TRYING TO EXPLAIN THAT WHAT THEY SAID WAS OK. IT WASN’T, AND NEVER WILL BE! IT WAS SEDITION AT THE HIGHEST LEVEL, AND SEDITION IS A MAJOR CRIME. THERE CAN BE NO OTHER INTERPRETATION OF WHAT THEY SAID!”

Sen. Slotkin defended the messaging, [writing](#) in a separate post, “This is the law. Passed down from our Founding Fathers, to ensure our military upholds its oath to the Constitution – not a king. Given you’re directing much of a military policy, you should buff up on the Uniformed Code of Military Justice.”

Rep. Deluzio said he and his fellow Democrats felt compelled to remind the military of their duty to ignore any illegal orders, “the people are expressing privately or otherwise about decisions coming from this administration and whether they might be placed in a position to have to order something that’s not lawful.”

In a phone interview later with NBC News, Houlahan said that Press Secretary Leavitt “twisted” the words in the video. “We said that people cannot – literally cannot – obey unlawful orders. That’s what we said. She twisted that into saying that we told people to disobey lawful orders, and this is exactly what the problem is with this upside-down world that we’re living in right now. This administration is just messing with everybody’s minds, and that makes me even angrier than my own personal safety.”

Later in the afternoon, the six veterans [issued](#) a joint press release and [released](#) a joint statement, which I quote:

“We are veterans and national security professionals who love this country and swore an oath to protect and defend the Constitution of the United States. That oath lasts a lifetime, and we intend to keep it. No threat, intimidation, or call for violence will deter us from that sacred obligation.

What’s most telling is that the President considers it punishable by death for us to restate the law. Our servicemembers should know that we have their backs as they fulfil their oath to the Constitution and obligation to follow only lawful orders. It is not only the right thing to do, but also our duty.

But this isn’t about any one of us. This isn’t about politics. This is about who we are as Americans. Every American must unite and condemn the President’s calls for our murder and political violence. This is a time for moral clarity.

In these moments, fear is contagious, but so is courage. We will continue to lead and will not be intimidated.



Separately, Sen. Slotkin [posted](#) a rebuke of Trump on Instagram. Rep. Crow, in an interview, repeated the central message of the video “if you are violating the law and the Constitution, then there will be accountability. People need to know we are not going to forget. People need to know we are taking names.” *See also* Houlahan’s [post](#) and Crow [interview](#).

The ACLU [put out](#) a statement, noting that:

“President Trump’s threats are a dangerous attempt to silence his political opposition. All of us have a First Amendment right to restate the law, and the President cannot threaten to silence elected officials simply because he does not like what they have to say. Service members do not have to obey a manifestly illegal order, and anybody encouraging them to violate their oaths and the law is doing harm to them and to the rule of law.”

The House Democratic leadership [put out](#) its own statement, calling on Trump to delete his social media posts and recant his violent rhetoric. Gov.-elect Mikie Sherrill [urged](#) Democrats and Republicans alike to join her in condemning Trump’s continued disregard of “basis precepts of our military and democracy.”

Let’s please stop and unpack what Trump has done. He has threatened six Americans with arrest, trial and death – six Americans who served their country as intelligence officers or military officers. Six Americans who put their lives on the line to protect the rest of us. Six Americans serving as representatives of the American people. He is endorsing political violence against his opponents for simply affirming the rule of law.

And why did Trump do that? Trump did it because they spoke truth to power – reminding members of the military that they are not forced to follow an illegal order. As Eugene Fidell, who teaches military justice at Yale School Law, noted – consistent incidentally with many other experts on military justice – “There is nothing in the video that is inconsistent with the current law of military justice. [Domestic deployment and the boat strikes are] a step in the longer trajectory, and it’s a trajectory that involves an ongoing challenge to the rule of law, and the role of the rule of law in the defense establishment.”

Ironic too how Trump and so many called out the need for vigilance against political violence, only to have Trump now lead the charge against six Democrats.

Threats against the six lawmakers [have surged](#) since Trump issued his death threats. At least three of the lawmakers targeted by Trump filed complaints with the U.S. Capitol Police. *See* [Washington Post](#) coverage. Rep. Houlahan noted that not a single

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<sup>29</sup> The phrase (DONT GIVE UP THE SHIP) was immortalized on a battle ensign commissioned by Commodore Oliver Hazard Perry, which he proudly flew to mark his victory against the British Navy in the Battle of Lake Erie on September 10, 1813. The words were those of Perry’s friend Captain James Lawrence as he was mortally wounded in the action between the American frigate *Chesapeake* and the British frigate *Shannon* on June 1, 1813, which was blockading Boston harbor. The original flag is displayed in the Naval Academy Museum and a replica is displayed in Memorial Hall at the Naval Academy.

Republican House member had reached out to her following the death and other threats she and the other five lawmakers have been receiving.

When asked by Fox News radio host Brian Kilmeade what he meant by his “punishable by death” post, Trump [walked back](#) his death threats, saying “I’m not threatening death, but I think they’re in serious trouble. In the old days, it was death. That was seditious behavior.” He then goes on to say that he is not worried about members of the armed forces refusing orders “because I’m a leader and they do as I say.” This has echoes of his EO in which he [abrogated to himself](#) and the Attorney General the ability to “provide authoritative interpretations of the law for the executive branch.”

**Y1, Week Forty-Five**, the video fallout, as expected, has continued and ramped up... DoD [posted](#) a statement that “allegations of misconduct” had been received in respect of Sen. Kelly (former Navy captain) and, citing [10 U.S. Code § 688](#) (authority to recall retired military to active duty – Kelly is the only one of the six that is a retired officer), that it would “review of these allegations has been initiated to determine further actions, which may include recall to active duty for court-martial proceedings or administrative measures” (11/25/25). DoD also cited [18 U.S. Code § 2387](#) (counselling insubordination, disloyalty, mutiny, or refusal of duty).<sup>30</sup>

This was Sen. Kelly’s [response](#), referring to the intimidation, “it won’t work.” *See also* [Morning Joe](#) coverage and the interview with Kelly. Fox News correspondent Andy McCarthy had this say: “There is no insurrection or sedition without the use of force. Disobeying a lawful order is insubordination, not insurrection or sedition. Disobeying an unlawful order is required. That is all.”

A group of former senior JAG officers (the Former JAGs Working Group) issued a statement on the Kelly investigation (available [here](#)). The statement raises, among other issues, the potential bar against “unlawful influence,” which is the military version of “vindictive or selective prosecution.” *See also* [the NPR](#) interview with law professor and former JAG Rachel VanLandingham, who reiterated, “Military members should and must disobey all orders that they either know are unlawful or should know are unlawful. An order to commit a crime, they should be disobeying. Or an order that they otherwise know is unlawful, they should be disobeying. And so reminding service members of their legal duties is in - under no stretch of anyone's imagination an actual crime.”

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<sup>30</sup> Specifically, the statute provides: sanctions any person who, “with intent to interfere with, impair, or influence the loyalty, morale, or discipline of the military or naval forces of the United States: (1) advises, counsels, urges, or in any manner causes or attempts to cause insubordination, disloyalty, mutiny, or refusal of duty by any member of the military or naval forces of the United States; or (2) distributes or attempts to distribute any written or printed matter which advises, counsels, or urges insubordination, disloyalty, mutiny, or refusal of duty by any member of the military or naval forces of the United States.”

Needless to say, this is unprecedented, raising separation of powers and Speech and Debate Clause issue. One military historian pointed out that President Lincoln had left it to Congress during the Civil War to determine the fitness of citing members Alexander Long and Benjamin Gwinn – neither was expelled; rather they were censured. At no time during the 1930s or the Cold War were retired officers who were publicly critical of the government or publicly espoused segregationists or antisemitic views prosecuted. And during the Biden years, Mike Flynn was never called to active duty and court martialled.

It is widely reported that the Counter-Terrorism Division of the FBI has requested interviews with the six Democratic lawmakers, raising serious First Amendment issues as well a Separation of Powers issues, including Speech and Debate immunity, and potentially abuse of power. Sen. Slotkin confirmed that the idea to post the video followed concerns received by their offices from current and former members of the military about the domestic deployments and the boat strikes. See [Washington Post](#) and [Associated Press](#) coverage.

Rep. Houlihan [posted](#) on Instagram a recording of constituent calls of support.

The Secretary of Defense has [ordered](#) Navy Secretary John Phelan to complete a review by early next month of the DoD complaint against Sen. Kelly. Republican Sen. John Curtis [issued](#) a statement in support of Sen. Kelly as [did](#) Lisa Murkowski.

**Y1, Week Forty-Eight**, the Office of the Secretary of Defense and its General Counsel announced that they were [escalating](#) the preliminary review of Kelly to an official [command investigation](#). Kelly’s counsel (Paul Fishman of Arnold & Porter) [responded](#) shortly thereafter in a letter to Navy Secretary Phelan, the operative message of which was: “To be clear, there is no legitimate basis for any type of proceeding against Senator Kelly, and any such effort would be unconstitutional and an extraordinary abuse of power. If the Executive Branch were to move forward in any forum – criminal, disciplinary, or administrative – we will take all appropriate legal action on Senator Kelly’s behalf to halt the Administration’s unprecedented and dangerous overreach.”

**Y1, Week Fifty**, citing UCMJ Sections 133 and 134, the Secretary of Defense [announced](#) that he had begun a retirement grade determination process to demote Kelly and reduce his pension compensation. Essentially, the Secretary of Defense issued a “Secretarial Letter of Censure” declaring that Kelly’s public statements have “undermined the chain of command,” “counselled disobedience,” and constituted “conduct unbecoming an officer.” At Secretary Hegseth’s direction, and relying on that determination, the Department of the Navy then initiated proceedings to “reconsider” Kelly’s rank (or “grade”) and retirement pay. The letter also threatened “criminal prosecution or further administrative action” if Kelly continues to make similar statements.

As David Graham pointed out (“[Hegseth’s Appalling Vengeance Campaign](#)”), “What Hegseth did *not* cite was what Kelly and his colleagues actually said in the video, and for good reason. Doing so would expose the absurdity of the charge and the abuse of power involved in the attempt to demote him.”

The sanction is appealable in the next 30 days, and Kelly has vowed to fight it:

“My rank and retirement are things that I earned through my service and sacrifice for this country. I got shot at. I missed holidays and birthdays. I commanded a space shuttle mission while my wife Gabby recovered from a gunshot wound to the head – all while proudly wearing the American flag on my shoulder. Pete Hegseth wants to send the message to every single retired servicemember that if they say something he or Donald Trump doesn't like, they will come after them the same way. It's outrageous and it is wrong. There is nothing more un-American than that.

I will fight this with everything I've got – not for myself, but to send a message back that Pete Hegseth and Donald Trump don't get to decide what Americans in this country get to say about their government.”

Military law expert Eugene Fidell [predicted](#) that the demotion effort would be “dead on arrival,” noting that the military can only use misconduct while actively serving to determine retirement grades and raising the First Amendment argument.

Note that the administration did not seek to court-martial Kelly, presumably because they feared they would lose. The *Hill* [reported](#) that Hegseth declined to answer the question why he decided not to go the court-martial route.

**Y1, Week Fifty-Two**, Sen. Kelly [files](#) his complaint for declaratory and injunctive relief (01/12/26). The complaint cites violations of the First Amendment (which “forbids the government and its officials from punishing disfavored expression or retaliating against protected speech,” which “prohibition applies with particular force to legislators speaking on matters of public policy”); the Speech or Debate Clause (and “the long-recognized immunity for legislative acts”); the separation of powers; due process; 10 U.S. Code § 1370 (providing that an officer's retirement grade must be determined exclusively by active-duty conduct) and the Administrative Procedure Act, and asks the Court to declare the censure letter, reopening determination, retirement grade determination proceedings, and related actions unlawful and unconstitutional; to vacate those actions; to enjoin their enforcement; and to preserve the status of a co-equal Congress and an apolitical military.

Kelly also made a motion for a temporary restraining order, as well as a preliminary injunction, vacatur, and stay of agency action under [5 U.S. Code § 705](#).

The complaint also notes that “It appears that never in our nation's history has the Executive Branch imposed military sanctions on a Member of Congress for engaging in disfavored political speech.”

The case has been assigned to District Judge Richard J. Leon, who is likely to rule quickly as DoD has given Kelly a January 20<sup>th</sup> deadline to respond to their action against him. The Washington Post [reports](#) that Judge Leon could decide the District Court does not have jurisdiction and direct the case into the military justice system, but given the constitutional issues raised might rule on the merits nonetheless.

Sen. Elissa Slotkin and Reps. Jason Crow, Maggie Goodlander, Chris Deluzio and Chrissy Houlahan all reported that they had received inquiries from Jeanine Pirro, the U.S. Attorney for the District of Columbia, requesting an interview with them or their private counsel. Sen. Slotkin [posted](#) a video response, in which she exclaimed, “The

intimidation is the point. And it's not going to work." She notes too that the day before, Trump visited Michigan and claimed she had stolen her 2024 election – that statement led to a torrent of threats against her and her family.

**Y2, Week One**, [Vet Voice Foundation](#) and a group of 41 former service secretaries of the Army and Navy and retired senior military officers [submitted](#) an *amicus* brief in support of Kelly's motion for a preliminary injunction and stay. Amici explain why disciplining Sen. Kelly "for engaging in protected, political speech violates the First Amendment and, if permitted to stand, would chill public participation by veterans around the country." They maintain that "diverse viewpoints are critical to a healthy and free marketplace of ideas, and silencing veteran voices would be especially harmful – depriving the public of experienced and informed views on critical matters of national security." Amici are represented by Protect Democracy Project and States United Democracy Center.

**Y2, Week Three**, Judge Leon held a hearing in the Kelly case and indicated that he plans to rule "as quickly as possible." The judge asked questions regarding the First Amendment, the protections afforded a lawmaker and whether the administration was trying to expand the scope of prior decisions regarding the applicability of the UCMJ to retirees. Overall he appeared sceptical of the administration's case. See [States Newsroom](#) coverage and the [Hill](#) coverage.

Elissa Slotkin, in an email to supporters, announced that she has declined the request from D.C. U.S. Attorney Jeanine Pirro to interview her. She instead asked prosecutors to preserve all records relating to their investigation in case she decides to sue for infringement of her constitutional rights.

**Y2, Week Four**, Sen. Durbin, Ranking Member of the Senate Judiciary Committee, [sent](#) a formal request to Attorney General Bondi and U.S. Attorney Pirro that they preserve all records related to investigations of Sens. Mark Kelly and Elissa Slotkin, as well as four members of the House.

A few hours later, the [New York Times](#) and [NBC News](#) reported that the D.C. U.S. Attorney's office, under Jeanine Pirro, had sought and failed to obtain indictments against Democrats for posting the Don't Give Up the Ship! Video. *NBC News* reported that the government attorneys assigned to the case are political appointees and not career DoJ prosecutors. This is another remarkable rejection by ordinary citizens of this DoJ's prosecutorial overreach.<sup>31</sup> Under DoJ's Justice Manual, since the grand jury returned a "no bill," Pirro would need the explicit approval to proceed further against the six Democrats ([9-11.120](#)). Incidentally, under the policy,

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<sup>31</sup> *Bloomberg* was the first [to report](#) that Pirro had tapped as one of the two prosecutors for the case Steven Vanderveldena, a [dance photographer](#) who had worked as a local prosecutor for her in Westchester County, NY in the 1990s. The other prosecutor was Carlton Davis. Davis, a former staffer for Reps. Darrell Issa, Trey Gowdy, Doug Collins, Jim Jordan and James Comer, served briefly as an assistant U.S. Attorney in EDVA in 2018, while Vandervelden had no prior DoJ background before joining the Pirro's office last year.

- federal prosecutors are supposed to bring only cases in which they believe the defendants “will more likely than not be found guilty beyond a reasonable doubt by an unbiased trier of fact and that the conviction will be upheld on appeal” ([9-27.220](#)), and
- prosecutions are not supposed to be initiated “unless the attorney for the government believes that the admissible evidence is sufficient to obtain and sustain a guilty verdict by an unbiased trier of fact” ([9-27.220](#)).

In an email to supporters, Sen. Slotkin remarked that while Pirro’s failure to obtain an indictment was “a good day for democracy,” it was not only an embarrassment for the DoJ but another sad day for the United States –

“Because whether or not Pirro succeeded is not the point. The point is that President Trump continues to weaponize our justice system against his perceived enemies. It’s the kind of thing you see in a foreign country, not in the United States ... And if they can do this to me -- a sitting United States Senator -- what can they do to a business leader or the head of a community foundation or a mom who goes viral on the internet for criticizing Donald Trump?

Once again, the first paragraph of a court ruling presaged the conclusion. Judge Leon granted Mark Kelly’s motion for a preliminary injunction on his First Amendment claim (there were seven altogether, and he only needed to prevail one one). Some of the highlights from his ruling that incidentally had 15 exclamation points sprinkled throughout:

- “Secretary Hegseth relies on the well-established doctrine that military servicemembers enjoy less vigorous First Amendment protections given the fundamental obligation for obedience and discipline in the armed forces. Unfortunately for Secretary Hegseth, no court has ever extended those principles to retired servicemembers, much less a retired servicemember serving in Congress and exercising oversight responsibility over the military. This Court will not be the first to do so!”
- “This Court has all it needs to conclude that Defendants have trampled on Senator Kelly’s First Amendment freedoms and threatened the constitutional liberties of millions of military retirees. After all, as Bob Dylan famously said, ‘You don’t need a weatherman to know which way the wind blows.’ To say the least, our retired veterans deserve more respect from their Government, and our Constitution demands they receive it!”
- “Speech from retired servicemembers---even speech opining on the lawfulness of military operations--does not threaten “obedience, unity, commitment, and esprit de corps” in the same way as speech from active-duty soldiers. Nor can speech from retired servicemembers “undermine the effectiveness of response to command” as directly as speech from active-duty soldiers. As such, the military cannot claim the same “legitimate interest in prohibiting” speech by retired veterans.”
- “The next factor of the retaliation test is whether Defendants took retaliatory action against Senator Kelly sufficient to deter ‘a person of



ordinary firmness.’ The ‘bar is not a high one,’ and Defendants’ actions here clearly pass the bar.”

- “Rather than trying to shrink the First Amendment liberties of retired servicemembers, Secretary Hegseth and his fellow Defendants might reflect and be grateful for the wisdom and expertise that retired servicemembers have brought to public discussions and debate on military matters in our Nation over the past 250 years. If so, they will more fully appreciate why the Founding Fathers made free speech the first Amendment in the Bill of Rights! Hopefully this injunction will in some small way help bring about a course correction in the Defense Department’s approach to these issues.”

\* \* \*

**For the record:** [18 U.S. Code § 2384](#) defines “seditious conspiracy” as two or more conspiring to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof. In 2022, two members of the Oath Keepers were [found guilty](#) of seditious conspiracy relating to the January 6<sup>th</sup> insurrection, and one member pleaded guilty to seditious conspiracy, and in 2023 five members of the Proud Boys were found guilty of seditious conspiracy. CBS News [quotes](#) a former federal prosecutor who notes that the principal defect in the accusation of sedition is that one needs to have used force.

[10 U.S. Code § 894](#) defines mutiny as acting “with intent to usurp or override lawful military authority, refuses, in concert with any other person, to obey orders or otherwise do his duty or creates any violence or disturbance” and defines sedition as acting “with intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority is guilty of sedition.”

There are also two of the three sections of the UCMJ (Article 133 and 134) cited above that may be rolled out as a basis for a court-martial.

As for [18 U.S. Code § 2387](#), CBS News also quotes George Washington University law professor Laura Dickinson, who notes two potential challenges for any prosecution: first the prosecution will need to establish that the defendants *intended to impair the loyalty or the morale* of members of the military. Moreover, the six Democrats are correct as to the law, they were restating the law and clearly not encouraging servicemembers to refuse to follow lawful orders. In fact, JAGs will likely tell you that throughout their military careers that is exactly how they regularly counselled troops. One stated it in plain English “reminding troops to follow the law is not treason, it is duty.”

And then of course there are the Speech and Debate immunity and the First Amendment hurdles.

**Bottom line:** this is not the first (in fact, these pages chronicle a number of other examples) nor the last of threats of prosecution or even prosecutions by this administration where the law is clearly on the side of the targets, but that is not the point. The point is to attempt to silence critics and to normalize abuse of the legal system for political ends. And, ironically and perhaps not coincidentally, not long after the Don't Give Up the Ship! video hit the headlines, the Washington Post [published](#) its bombshell piece on the double tap strikes against survivors of the first attack on a fast boat on September 2.

See also [FactCheck.org](http://FactCheck.org) analysis.

Law Professor Joshua Kastenberg (a former JAG) writes (“[If tried by court-martial, senator accused of ‘seditious behavior’ would be deprived of several constitutional rights](#)”) that Kelly has a series of defenses starting with his First Amendment rights and that he gave a correct description of the law. In addition,

- Kelly might argue that the President, under the Constitution's Separation of Powers framework, has no power to penalize him. Doing so would erode the independence and authority of a co-equal branch of government.
- Kelly might also raise *lex non scripta* (unwritten law) – past practices of the military. History, Kastenberg notes “is replete with retired officers criticizing presidents or even joining in hate groups that accused a president of being beholden to subversive interests. Past presidents have ignored these men (citing [George Van Horn Moseley](#), who aligned himself with pro-Nazi groups and accused President Franklin Roosevelt of being a communist, and Gen. (ret.) [Albert Coady Wedemeyer](#) and Gen. (ret.) [Bonner Fellers](#), who formed organizations that attacked Presidents Harry Truman and Dwight Eisenhower).
- Third, Kelly could point to unlawful command influence, including statements made by the Secretary of Defense, and argue there are no safeguards within the military justice system to ensure a fair hearing.

### **Retired Military Officers Speak Out**

- Freedom Watch Media produced two short YouTube videos (available [here](#) and [here](#)) featuring retired three-star general Russel Honoré. In addition to his 35+ years in the Army, Honoré commanded the National Guard in the aftermath of Hurricane Katrina.
- [The Dangerous Plan to Turn Military Lawyers Into Immigration Judges](#)
- [The Crisis in Uniform: The Danger of Presidential Immunity for the U.S. Military](#)
- [What Happens If Trump Gives the Military an Unlawful Order](#)
- [Congress must investigate the blowing up of drug boats](#)
- [Defense Secretary Pete Hegseth's War With the Rules of Engagement](#)
- [The “Tepid Legality” of Hegseth's Department of Defense](#)
- [Reckless, Shameless, and Blameless: Fixing the Appointed National Security Official's Character and Fitness Problem](#)
- [Are Military Lawyers Being Sidelined?](#)
- [US Servicemembers' Exposure to Criminal Liability for Lethal Strikes on Narcoterrorists](#)

- [Defining ‘Rebellion’ in 10 U.S. Code § 12406 and the Insurrection Act, Lawfare](#)
- [On Treason and Traitors](#)
- [Border Militarization Blurs the Distinction Between “Policing” Immigration and “Combating” Immigrants](#)
- [Congress Must Protect the Role of JAGs in the Military](#)
- [JAGs Alone Can’t Defend the Rule of Law](#)
- [Congressional Action Could Stymie Executive Clemency for War Crimes](#)
- [Soldiers in Robes: Why Military Lawyers Can Not and Should Not Serve as Immigration Judges](#)
- [Using Labels, Not Law, to Justify Lethal Force: Inside the Venezuelan Boat Strike](#)
- [Trump, the National Guard, and the District of Columbia: What You Need to Know](#)
- [The Caribbean Strikes and the Collapse of Legal Oversight in U.S. Military Operations](#)
- [Legal experts fear Trump admin is ignoring JAGs on cartel strikes, Guard deployments](#)
- [A Dangerous Precedent: What Happens If Military Lawyers Go Silent](#)
- [Legal Flaws in the Trump Administration’s Notice to Congress on “Armed Conflict” with Drug Cartels](#)
- [The Many Ways in Which the September 2 Caribbean Strike was Unlawful ... and the Grave Line the Military Has Crossed](#)
- [Dissecting the Trump Administration’s Effort to Circumvent the War Powers Resolution for Boat Strikes](#)
- [Asserting a License to Kill: Why the Caribbean Strike is a Dangerous Departure from the “War on Terror”](#)
- [Trump Has Put the Military in an Impossible Situation](#)
- [Dear JAG: What Do I Do if I Get Unlawful Orders to Blow Up Civilian Boats](#)

**Y1, Week Forty-Two**, Chris Purdy, Founder and CEO of the Chamberlain Network, in his latest Substack (“[The Longest Shadow](#)”), draws an insightful parallel between the global war on terror and the threat to democracy we now face. The forever Afghanistan and Iraq deployments, and the hasty withdrawal from Afghanistan, deeply affected trust in government, though they served, in marked contrast to the Vietnam War, to strengthen trust in the military (aided no doubt by the trauma of the 9/11 attacks). As the military served to fill a vacuum in legitimacy, it was not unreasonable for Americans to see the military as the solution. The danger is that it is easy for that solution to extent to domestic law enforcement. And therein lies the ultimate danger to democracy.

Purdy aptly concludes, “Americans should look to examples of other democracies that have struggled when the military becomes a political tool. We have to build a democracy strong enough that it doesn’t need to rely on the uniform to hold it together. Because when the military becomes our only trusted institution, it’s not a sign of strength. It’s a warning.”

### **Partial Withdrawal**

**Y1, Week Fifty**, the administration ordered National Guard units deployed in Chicago, Los Angeles and Portland. In his social media post announcing the withdrawal, Trump [vowed](#), “We will come back, perhaps in a much different and stronger form, when crime begins to soar again – Only a question of time!” In each case, Guard units had limited presence in each of the cities due to pending litigation blocking deployment on the streets. National Guard units remain in New Orleans and Memphis, with the support of the respective governors, and in D.C., where Trump, rather than the mayor, has command and control of the D.C. National Guard.

Shortly after the announcement, the Ninth Circuit ordered the administration to return the California National Guard to the control of Gov. Newsom.

Trump’s announcement presumably was triggered by [his loss](#) at the Supreme Court. While that decision only applied to Illinois and was only temporary, the direction of travel was clear. Trump would need to invoke the Insurrection Act if he wanted to send in National Guard over the objection of the respective governor.

## WEAPONIZATION OF THE MILITARY – FIGHTING THE DRUG CARTELS AND MORE

- [Role of the military EO](#)
- [Designation as foreign terrorist organizations](#)
- [Further politicization of the military](#)
- [The strikes in the Caribbean and Eastern Pacific](#)
- [Kinetic operations in Venezuela](#)
- [Fentanyl](#)
- [Traditional drug interdiction](#)
- [The capture of Maduro – At War with Venezuela](#)

### Role of the Military as Outlined in Early EOs

Trump clarified his view of [the role of the military at our national borders](#) in a [separate EO](#). Trump called for the military to “prioritize the protection of the sovereignty and territorial integrity along our national borders.” He called, among other things, for a revision to the Unified Command Plan that assigns US Northern Command (NORTHCOM) the mission of “sealing the borders” and maintaining the sovereignty, territorial integrity and security of the United States, “by repelling forms of invasion, including unlawful mass migration, narcotics trafficking, human smuggling and trafficking, and other criminal activities.” The plan was due in days 10 days. The EO goes on to address “steady-state southern border security,” but the balance of the EO speaks of border security, without a reference to the southern border. Is this sloppy drafting or intentional? In any event, this would catapult the US military into an unprecedented role, one incidentally for which the military lacks training. This EO does not appear to contemplate that the military would serve as support for law enforcement.

Trump’s invocation of the power to call up the military, according to Goitein, could fail under [10 U.S. Code § 276](#), under which the military may not provide support to law enforcement “if the provision of such support will adversely affect the military preparedness of the United States.” Both the active-duty military and the National Guard are stretched thin. Moreover, deployments are likely to severely undermine the morale and readiness of the active-duty military, which for years has been plagued by recruitment and retention challenges. (See [Testimony of Retired Major General Randy Manner](#).)

Mark Nevitt, [writing](#) in *Just Security*, reminds us that the foregoing EOs represent a fundamental shift in immigration and national security priorities, and potentially expand the role traditionally envisioned for the US military. While the first EO uses “assist” and “support the activities of the Secretary of Homeland Security” and “assist the “Department of Homeland Security,” suggesting that the military will not displace civilian or federal law enforcement at the border, the second EO refers to “invasion” and protection of “sovereignty and territorial integrity.” That potentially represents an expansion of the “[military purpose doctrine](#),” veering close to displacing law enforcement.

As I set out in my January 2024 briefing note ([available here](#)), absent invocation of the Insurrection Act, by reason of the Posse Comitatus Act, the military is prohibited from *directly* supporting law enforcement domestically. Nevitt notes that this would mean that active-duty military would be unable to engage in interviews, interrogations or questioning. Posse Comitatus would not apply to National Guard operating with state or federal funding status, or to the Coast Guard. Indirect support, Nevitt notes, such as detection, monitoring, communications and logistics support, would be permitted. (See also my March 2024 briefing note, [available here](#))

In his [Daily Blast Podcast](#), Greg Sargent explores the implications of leaked reports of quotas of ICE arrest to make Trump look good. The problem is that to meet the quotas it means likely targeting less dangerous (*i.e.*, noncriminal) undocumented migrants that are easier to locate. Sargent's interviewee (former DHS official Deborah Fleishhacker) notes that average arrests under Biden were around 300 per day, and going to 1,200 a day would be an exponential increase. Not only does this put a lie to the Trump explanation of going after dangerous criminals, but it also means targeting migrants who are cooperating with ICE and showing up at ICE offices. It also means that law enforcement resources will need to be redirected towards immigration enforcement, putting other public safety efforts at risk.

**Y1, Week Seventeen**, it was widely reported (*see, e.g.*, [New York Times](#) coverage) that DHS had requested from DoD more than 20,000 members of the National Guard as part of Trump's crackdown on immigration. If approved, the deployment would represent the first time National Guard units would be used to enforce immigration laws. There are a number of unanswered questions including whether states would have to approve deployments of their National Guard units and what role these units would undertake.

These deployments would augment support from agents and officers pulled in from Justice Department components – the FBI, the Bureau of Alcohol, Tobacco and Firearms (BATF), the U.S. Marshals Service and DEA, as well as local law enforcement. Media reported (*see* [New York Times](#) coverage) that DoJ has decided that 2,000 of their federal agents will be deployed to assist DHS agents to find and arrest undocumented migrants. This comes amidst reports that the administration has cut back on white-collar crime investigations. This also comes amidst [reporting](#) that the DoJ is moving forward with plans to merge BATF and DEA, arguably requiring congressional approval.

The *New York Times* reported that the administration has surged active-duty troops and materiel to the southern border. At the end of the Biden administration there were 2,500 active-duty troops; now there are around 8,600, along with U-2 spy planes, surveillance drones, helicopters and two Navy warships. The report notes that “The deployments [(which to date have cost \$525 million)] continue to grow in size, scope and sophistication even as the debate over the benefits and drawbacks rages on, and the military expands its territorial authorities to help interdict migrants.” These troops are deployed along the two narrow strips of land along the border, one in New Mexico and one in Texas, that have been [designated as military land](#), with the status akin to



military bases. See update on dismissal of [trespass charges](#) on the zone in New Mexico.

### **Designation of Drug Cartels/Other Transnational Criminal Organizations as “Foreign Terrorist Organizations” (FTOs) or Specially Designated Global Terrorists (“SGDTs”)**

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDP) sets out the legal basis to create a list of FTOs. The current list of FTOs is available [here](#). Congress first proposed designating Mexican drug cartels as FTOs in 2011. The Trump administration threatened to designate the cartels in 2019 but was persuaded by then Mexican President López Obrador not to. Since then, typically following attacks on Americans, the issue has resurfaced.

Trump called for designation ([Designating Cartels and Other Organizations as FTOs and SDGTs](#)) of drug cartels and other transnational criminal organizations operating within and outside the United States as both FTOs and SGDTs. He also called on the Attorney General and the Secretary of Homeland Security to “make operational preparations regarding any decision I make to invoke the Alien Enemies Act, in relation to the existence of any qualifying invasion or predatory incursion.” (See [below](#) as to the invocation of the Alien Enemies Act on 3/14/25, though only published on 3/15/25.) Trump also called for the preparation of facilities needed to expedite the removal of those designated under “this order.”

It is unlawful for a person in the United States or subject to its authority to provide “material support or resources” to an FTO (18 U.S. Code § 2339B), which could easily pick up a broad range of financial interactions (payments to cartel-affiliated organizations or individuals, and any logistical assistance provided to either). This designation could have myriad unintended consequences for US businesses with operations in Mexico in view of the general understanding that cartels also have material presences in legal supply chains centered in the Mexican economy, including in the avocado trade (see [“The U.S.-Mexico Relationship Is About More Than Migration”](#)). The designation also could cover ransom, extortion or protection payments made to companies associated with FTOs and separately raise issues for civilians and civil society organizations living in or adjacent to cartel-controlled areas.

Note that designation of drug cartels as FTOs would be separate from addressing drug cartels under the existing regime established under the Foreign Narcotics Kingpin Designation Act. There is significant overlap between the two sets of authorities, though it is believed that the benefit of the FTO designation is that it facilitates prosecutions for providing “material support and resources” (as described above). See generally, The Wilson Center’s [“Mexican Cartels and the FTO Debate”](#) and Lawfare’s [“Should Mexican Cartels Be Designated as Terrorist Organizations?”](#)

Designation of SGDTs under a post-9/11 EO ([13224](#)) subject designated individuals to blockage of property and interests. It also prohibits transactions by US persons or others within the United States in respect of property or interests in blocked property, including making or receiving contribution of funds, goods or services to or for the benefit of designated persons. The provision to keep an eye on is the extent to which

US citizens and others will be subject to sanction for wittingly or unwittingly providing material support.

Regrettably, Trump administration efforts to curb the cartels overlooks one significant inconvenient fact – the violence that blights Mexico is largely the result of the flow of firearms from the United States to cartel members. The Supreme Court [agreed](#) in October to hear a claim brought by Smith & Wesson and Interstate Arms ([Smith & Wesson Brands, Inc. et al. v. Estados Unidos Mexicanos](#)) to dismiss a lawsuit brought by Mexico accusing them of aiding and abetting the illegal trafficking of firearms to Mexican drug cartels. As issue is whether the [Protection of Lawful Commerce in Arms Act](#) (PLCAA) shields the gun manufacturers from liability. A federal district court in Massachusetts dismissed the case in September citing the PLCAA, but that decision was [overturned](#) by the First Circuit Court of Appeals in January 2024, on the ground that the complaint adequately alleges that defendants aided and abetted the knowingly unlawful downstream trafficking of their guns into Mexico.” Arguments in the case will be heard before the Supreme Court March 4.

Designation of drug cartels as FTOs raised the prospect of the deployment of U.S. troops in Mexico to dismantle cartel operations.

**Y1, Week Fifteen**, Mexican President Claudia Sheinbaum [reportedly](#) rebuffed Trump’s offer to send U.S. troops into Mexico, though apparently drone flights [have been permitted](#). She had taken a [hard line](#) against deployments in February when the designations were first announced. Her public statement in Spanish (05/03/25) was in response to [reporting](#) by the *Wall Street Journal* (05/02/25) that Trump had been pressuring her to allow the United States to deepen its involvement in the fight against the cartels to shut down fentanyl labs operating in Mexico and that the head of U.S. Northern Command recently had asked Congress for expanded capabilities that would allow U.S. Special Forces to work more closely with Mexican soldiers conducting operations against cartel gunmen. Deployments of U.S. troops in Mexico understandably touch a raw nerve in light of two invasions of Mexico since 1846.

**Y1, Week Forty-Three**, the State Department exercised its authority, under [EO 13224](#) and Section 219 of the INA, to [designate](#) as FTOs and as Specially Designated Global Terrorists” four groups in Europe, Antifa Ost (in Germany), Informal Anarchist Federation (in Italy), and the Armed Proletarian Justice and the Revolutionary Class Self-Defense (in Greece) (11/13/25). These designations appear triggered by the September EO (designating antifa as a domestic terrorist organization), which as noted above had little effect as antifa is not an organization and so there is no organization to designate and there is no legal basis for making it a crime to provide material support for domestic groups (and EO does not itself create law). See [New York Times](#) coverage.

### **Further Politicization of the Military**

In the middle of the uproar over deployment of National Guard and active-duty Marines in Los Angeles, Trump delivered a highly and inappropriately partisan [speech](#) at Fort Bragg (which recently reverted to its former name by order of Trump – and incidentally Trump is looking to revert to names of confederate generals at a number of other military installations – though with an interesting sleight of hand, the Pentagon

has found veterans with the same names to honor). He accused Gov. Newsom and Mayor Bass of “paying troublemakers, agitators and insurrectionists. They’re engaged in this wilful attempt to nullify federal law and aid the occupation of the city by criminal invaders.” An official @DHSgov [post](#) amplified the falsehood by calling on “California politicians [to] call off their rioting mob.”

Trump falsely described protests as “a full-blown assault on peace, on public order and on national sovereignty carried out by rioters bearing foreign flags with the aim of continuing a foreign invasion of our country.” (Stephen Miller on Sunday claimed, “foreign nationals, waving foreign flags” were “rioting” and DHS Secretary Noem accused Mexican President Claudia Sheinbaum of “encouraging violent protests.”)

Military.com [described](#) the speech as “laced with partisan invective, goading jeers from a crowd of soldiers positioned behind the podium – blurring the long-standing and sacrosanct line between the military and partisan politics.” Military.com also reported that there was a “tightly orchestrated effort to curate the optics of Trump’s recent visit, including handpicking soldiers for the audience based on political leanings and physical appearance. The troops ultimately selected to be behind Trump and visible to the cameras were almost exclusively male.”

See also [NBC News](#) coverage, which, among other sources, cites an email statement from former State Department and NSC official under President George W. Bush, Kori Schake, “It’s terrible. It’s predictably bad behavior by the President to try and score political points in a military setting, and it’s a command failure by leaders at Ft Bragg not to prepare soldiers for that bad behavior and counsel them not to participate.”

**Y1, Week Twenty-Eight**, Greg Sargent, of The New Republic, [reports](#) that a leaked DHS [memorandum](#) prepared by Pete Hegseth’s brother Philip (an adviser to DHS Secretary Noem and DHS liaison to the Pentagon) portends a potential significant escalation of involvement by the military in domestic law enforcement for immigration purposes. Most troubling is that involvement of the military would not be limited to the border but comprehends roll-out of LA-style operations across urban centers. The memo reflects pressure from DHS on the Pentagon to accelerate military involvement in immigration enforcement, with the Secretary of Defense characterizing the meeting “as a message to the uniform side of DoD emphasizing the urgency of the homeland mission.”

**Y1, Week Thirty-Nine**, at an event marking the 250<sup>th</sup> anniversary of the Navy, Trump was in campaign rally mode. As widely reported (*see, e.g.,* [NewsY1, Week](#) coverage), Trump also [claimed](#) he had warned of the dangers posed by Usama Bin Laden in a book published a year before the 9/11 attacks. No such warnings were made. He also suggested he had spoken to (then 19-year-old) Pete Hegseth at time about this.

CNN reporter Daniel Dale [posted](#) on X: “President Trump told this tale about his 2000 book again today. I (and others) debunked it six years ago. He’s been repeating it for at least 10 years.” Jessica Riedl, a senior fellow at the Manhattan Institute, [posted](#) on X: “I mean, the U.S. govt had been aware of Bin Laden for decades, and by the mid-1990s he was the CIA’s most wanted terrorist with several well-known attacks. They were actively pursuing him at the time. So, Trump’s boast is like warning the world

about Hitler in 1942.” Recall the criticism and mockery that rained down on Joe Biden when he made similar errors.

**Y1, Week Forty-One**, speaking to troops aboard the U.S.S. George Washington, a carrier docked at Yokosuka Naval Base in Japan, Trump once again delivered a partisan campaign-style speech. Among his dark warnings: “We have cities that are troubled, we can’t have cities that are troubled. And we’re sending in our National Guard, and if we need more than the National Guard, we’ll send more than the National Guard, because we’re going to have safe cities.” “We’re not going to have people killed in our cities. And whether people like that or not, that’s what we’re doing.” So much for leave politics at the water’s edge. Retired four-star Gen. Barry McCaffrey [called](#) the speech “unhinged,” “cringeworthy” and “bellicose.”

**Y2, Week Four**, once again, Trump does something which if any of his Democratic predecessors had done, Republicans would have been calling for impeachment. And actions that could reasonably be perceived as implying DoD sponsorship, approval, or endorsement of partisan political activity. Once again the [setting](#) was Fort Bragg. At the army base, in front of an audience in uniform, Trump disparaged Joe Biden and urged the assembled troops to vote for Republicans in the midterms. He called up Michael Whatley, a former RNC chair and candidate for the U.S. Senate and urged support for him. The troops reportedly largely refrained from reacting during Trump’s speech.

An FAQ about Political Activities by Members of the Armed Forces [specifically](#) prohibits active duty troops from “engaging in partisan political activities.” It also warns members to “avoid actions that could reasonably be perceived as implying DoD sponsorship, approval, or endorsement of partisan political activity.”

## **Murder on the High Seas?**

### ***The Attacks***

**Y1, Week Thirty-Four**, the administration reported that it had conducted a “lethal strike” in the Caribbean against a Venezuelan boat allegedly carrying drugs, killing 11 on board. The strike occurred in the context of a deployment in the Caribbean, intended to put pressure on Venezuelan president Maduro, of three destroyers and an amphibious assault force of 4,500 sailors, including 2,500 marines. It was reported that the strike was conducted by an MQ-9 Reaper drone, run by special operations forces, or a military helicopter.

Trump [stated](#) the attack was “against positively identified [TdA] narco-terrorists” and cited his previous designation of TdA as an FTO. He claimed the boat was headed to the United States and made reference to “massive amounts of drugs.” Few details have been released about the strike, and no legal authority has been cited by the administration for the strike. Moreover, no reason has been advanced as to why the boat was not simply subject to customary U.S. Coast Guard interdiction.<sup>32</sup>

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<sup>32</sup> Mark Nevitt, writing in *Just Security* (“[Using Labels, Not Law, to Justify Lethal Force](#)”)

In his post on X, the Vice President [labelled](#) the killing of cartel members as the “highest and best use of our military.”

One former senior Coast Guard officer involved in prior drug interdiction operations notes that it would be unusual for a drug smuggling boat to have 11 on board – typically only three or four. Also, due to fuel capacity, the boat would be unlikely to be headed to the United States. The “go-fast” boats carrying drugs typically would be heading from Venezuela to the Isthmus of Panama, where the drugs would be transferred to land and driven overland to the United States. More plausible explanations could include involvement in human trafficking or transportation of drugs to islands for onward shipment to Europe. Where the boat was heading is important for purposes of establishing an “imminent threat.”

Speaking of “imminent threat,” Brian Finucane (formerly of the State Department Legal Advisers Office and now with the Crisis Group) argues in his *Just Security* article (“[Legal Issues Raised by a Lethal U.S. Military Attack in the Caribbean](#)”) that the strike raises a number of potential legal issues. Among the points he raises:

- The President may direct the use of military force pursuant to a congressional authorization for the use of force/declaration of war or he may seek to rely on inherent authority under Article II, as commander in chief of the U.S. military. The scope of Article II authority to direct the use of force in the absence of congressional authorization is [contested](#). Notwithstanding the “narco-terrorist” label, the 2001 Authorization for the Use of Military Force would not cover the use of force against TdA.
- A [series](#) of OLC [opinions](#) interpret Article II as allowing the President to use force where there is an important “national interest” in doing so (Curtis Bradley and Jack Goldsmith [explain](#) that this has become an expansive concept in modern practice; Marty Lederman has [suggested](#) the concept should be understood as limited to significant national interests that have historically supported such unilateral actions in the past) and the use of force does not constitute “war” in the constitutional sense.
- When the President directs certain military actions without prior congressional authorization, those actions must be reported to Congress under the [War Powers Resolution](#).<sup>33</sup> Further, when U.S. forces are introduced “into *hostilities* or into

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explained that “the United States has [longstanding](#) *law enforcement* rules to deal with these situations. These rules have been in place for decades. Typically, such a boat would be intercepted and boarded, the drugs confiscated, and the people on board arrested and prosecuted. Longstanding law enforcement [statutes](#) and rules dictate that the Coast Guard takes the lead in maritime law enforcement operations, using well-established procedures to halt any suspected drug vessel. If the vessel refuses to comply, the Coast Guard may resort to firing warning shots and disabling fire. None of these escalation of force procedures was followed here—why?”

<sup>33</sup> The War Powers Resolution (also known as the War Powers Act), [passed](#) in 1973 over a veto by President Nixon, requires the President to notify Congress within 48

situations where imminent involvement in *hostilities* is clearly indicated by the circumstances,” the President must not only report the action to Congress within 48-hours but terminate the action within 60-days unless Congress votes to authorize it.

In 1975, the State Department’s Legal Adviser [informed](#) Congress that its working definition of “hostilities” meant “a situation in which units of the U.S. armed forces are actively engaged in exchanges of fire with opposing units of hostile forces.” “Imminent hostilities” means “a situation in which there is a serious risk from hostile fire to the safety of United States forces.” The executive branch has at times taken the [position](#) that supposedly defensive action by U.S. armed forces is exempt from the reporting and withdrawal requirements of the War Powers Resolution because U.S. armed forces were not “introduced” into hostilities, but instead hostilities were introduced to U.S. armed forces. The Biden administration adopted this legal theory to wage its campaign against the Houthis without congressional authorization despite the restrictions of the War Powers Resolution.

- Whether pursuant to congressional approval or based on Article II, any use of force must comply with international law.
- Even though FTO designations have resulted in the use of lethal force, an FTO designation does not in and of itself provide legal authority for the use of force. Said another way, just because Trump has labelled the 11 killed “terrorists” does not justify the use of lethal military force or trigger the military rules of engagement that apply in armed conflict.
- [Executive Order 12333](#) provides that “No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination.” Under executive branch legal doctrine, “assassination” is understood to include the targeted killing of individuals. (The [Uniform Code of Military Justice](#) also criminalizes murder.) Public reporting on the past interpretation of the assassination ban indicates that the executive branch has recognized two potentially relevant exceptions to the prohibition in recent decades: actions taken in self-defense and use of lethal force consistent with the law of war. As for self-defense, the administration has indicated that it is countering the flow of drugs into the United States, drug trafficking by itself neither constitutes an “armed attack” nor a threat of an imminent armed attack under domestic or international law.
- The [U.S. War Crimes Act](#) criminalizes murder, defined as the “act of a person who intentionally kills, or conspires or attempts to kill, or kills whether intentionally or unintentionally in the course of committing any other offense

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hours of the deployment of military forces overseas and limits that deployment essentially to 90 days, absent a formal declaration of war by Congress. For a discussion of whether the War Powers Resolution is constitutional, see “[The Constitutionality of the War Powers Resolution.](#)”



under this subsection, one or more persons taking no active part in the hostilities, including those placed out of combat by sickness, wounds, detention, or any other cause.” A number of other countries criminalize this offense and have [universal jurisdiction](#) over the crime, regardless of who perpetrates it. If U.S. forces are targeting individuals who are civilians – not qualifying as combatants/fighters or directly participating in hostilities – it may trigger accountability under the War Crimes Act.

In his [Just Security article](#), Mark Nevitt calls out the potential damage of treating drug traffickers, brutal as they may be, as terrorists akin to al-Qaeda. “Never before has drug trafficking been treated as terrorism, and there is a danger that with this rhetorical move, the Trump administration is attempting to open a new ‘forever war’ against an amorphous set of actors who are not in reality engaged in hostilities against the United States. And it raises a broader question: what does the United States lose as a nation when the use of force is justified with such unsound [legal reasoning](#) and without a clearer explanation?” Moreover, what does it mean for collaboration with our allies.

Nevitt stresses the need for answers from the Pentagon: what was the boat’s flag, its origin and destination, why were time-tested escalation of force measures ignored, who provided the legal advice for the strike, and what was the substance of the legal advice.

Emily Goodin and Antonio Maria Delgado, writing in the Miami Herald, [point out](#) that Title 50 give the president the power to take covert action as long as Congress is informed. Posting a video of the attack on social media undermines any claim to covert action. They quote Rachel VanLandingham, a former Air Force attorney and professor at the Southwestern Law School in Los Angeles, who said that the strike “has profound implications for the entire global world order, the legal order that’s been established since World War II to try to prevent the use of force. Another world war.”

On Friday, Trump officials abruptly [cancelled](#) a briefing (after attendees had already arrived) of Senate national security and leadership staff about the strike.

**Y1, Week Thirty-Five**, more questions than answers. The Secretary of State said that the strike was undertaken because “the president has a right to eliminate immediate threats to the United States.” But, as Max Boot [points](#) out, “it isn’t clear how a speedboat in the Caribbean, even one full of drugs, constituted ‘an immediate threat,’ especially when [Rubio initially said](#) that its destination was Trinidad.” If the destination in fact was Trinidad and Tobago, chances are if there were drugs on the boat, they were destined for Europe. Also, as many have noted, 11 people on a boat belies the idea that it was carrying drugs – one would maximize space and minimize humans that take up valuable space.

Boot quotes Ryan Goodman, a special counsel at the Defense Department during the Obama administration, who [wrote](#): “I literally cannot imagine lawyers coming up with a legal basis for lethal strike of suspected Venezuelan drug boat. Hard to see how this would not be ‘murder’ or war crime under international law that DoD considers applicable.” Boot quotes Matthew Waxman, who served in senior national security positions in the George W. Bush administration, as saying “The president can label

this like the war against al-Qaeda, but that doesn't make it legally so. This is yet another astonishing theory of Trump's powers, this one being used to justify murky operations that likely violate international law and perhaps domestic law, too."

Equally troubling is that senior administration officials are fully on board in disregarding the rule of law. The Secretary of Defense [said](#) that the "War Department" push for "maximum lethality, not tepid legality." For his part, the Vice President, in response to a comment by influencer and podcaster Brian Krassenstein that "killing the citizens of another nation who are civilians without any due process is called a war crime," said "I don't give a shit what you call it." Yet another example of how little Vance learned at Yale Law School. GOP Sen. Rand Paul [asked](#) rhetorically of Vance "Did he ever read *To Kill a Mockingbird*? "Did he ever wonder what might happen if the accused were immediately executed without trial or representation?"

The implications of the strike should not be underestimated. If, as noted above, none of the authorities apply, then the strike could constitute murder, and those who engaged in the operations could in a normal administration risk being court martialled for failing to disobey an unlawful order. In the meantime, it should alarm all that no factual justifications have been provided.

The *New York Times* [reports](#) that Trump appears to be claiming extraordinary powers to shift drug interdiction efforts from being governed by law enforcement rules to wartime rules, meaning suspects (enemy combatants) can be killed on sight. Not only has he labelled the drug cartels as terrorists but he is now characterizing drug trafficking as an armed conflict. The Secretary of State at a press conference (09/03/25) [described](#) the attack as justified on the ground that as commander-in-chief, the President "has a right under exigent circumstances to eliminate imminent threats to the United States."

In [his letter](#) to Congress under the [War Powers Resolution](#) (09/04/25), Trump justified the order to attack the boat pursuant to his "constitutional authority as Commander in Chief and Chief Executive to conduct United States foreign relations."

Separate [reporting](#) by the *New York Times* suggests that the boat appeared to have turned around when spotted and was heading back to shore, noting that "[l]egal specialists who have called it a crime to summarily kill suspected low-level smugglers as if they were wartime combatants said the revelations further undercut the administration's claim that the strike was legally justified as self-defense." National security officials did acknowledge in a closed briefing on Capitol Hill that the boat was fired upon after it had changed course.

Legal experts reject the argument that Trump has the authority to treat drug smugglers as enemy combatants engaged in an imminent attack on the United States, but even if he did, the fact that the board had already turned away undermines the idea that there was an imminent attack necessitating an act of self defense. The report also reminds us that there apparently is a [directive](#) that has not been made public authorizing the military to use force against the groups names as FTOs.

The reporting cites a piece by a retired JAG officer, Geoffrey Corn ("[A Dangerous Precedent: What Happens If Military Lawyers Go Silent](#)"), who questioned where

were the legal objects to the strike. Corn warns that “all Americans should be concerned about how our military is being cut loose from its legal moorings by what appears to be the abandonment of the rule of law from the very top of our national chain of command. What is equally – and perhaps even more troubling – is how an order to employ U.S. military power - arguably beyond the bounds of international and domestic law – made its way down a chain of command staffed with military commanders and legal advisors who are obligated to comply with these laws.”

Writing in *Defense One*, retired Navy Captain John Duffy writes (“[A killing at sea marks America’s descent into lawless power](#)”) that the strike “to all appearances, [was] against the letter and the spirit of the law.” “The people on board were not given the chance to surrender. No evidence was presented. No rules of engagement were cited. The administration claimed authority to kill on suspicion alone.” Duffy goes on to posit that beyond the violations of domestic and international law “lies an enormous strategic danger. By redefining traffickers as legitimate military targets, the administration has plunged the United States into another war without limits.” He asks, how does one define the enemy, the battlefield, the objective?

It is important to keep in mind, as Duffy urges, that we should not focus on 11 lives lost, but rather must focus on the precedent of military acting unlawfully and silence from senior leaders normalizing that conduct. While the military has long drilled into new recruits the obligation to not follow unlawful orders, the strike in the Caribbean has undermined that and the silence that followed has compounded the damage inflicted on the military. “That,” he notes “is how institutions corrode. That is how democracies die.”

**Y1, Week Thirty-Six**, Trump [announces](#) Monday that the military had conducted a “kinetic strike” against a second suspected boat from Venezuela, killing three aboard. He called Venezuelan cartels “a threat to U.S. National Security, Foreign Policy, and vital U.S. Interests.”

The following day, Trump [announced](#) to reporters that a third boat had been sunk. Thus far, the administration has not held a briefing for lawmakers (the *Washington Post* [reports](#) that DoD did send officials to meet with select congressional staffers, but the briefing was vague). The third strike prompted Brian Finucane ([quoted](#) in the *Washington Post*) to state that “In essence, the president is asserting a license to kill outside the law.” Professor Mark Nevitt [remarked](#) that that absence of legal analysis justifying the strikes is “unsatisfactory and deeply disturbing.”

**Y1, Week Thirty-Seven**, *New York Times* national security correspondent Charlie Savage, speaking on *The Daily* (“[The U.S. Keeps Killing Venezuelans on Boats. Is this Legal?](#)”), reports that Trump signed a secret order this summer authorizing strikes of this kind.

Experts on role/rule of law in the military continue to flag the dangers posed by these strikes. *See, for example*, Dan Maurer (“[US Servicemembers’ Exposure to Criminal Liability for Lethal Strikes on Narcoterrorists](#)”); John Shkor, Steven Lepper and William Baumgartner (“[Congress must investigate the blowing up of drug boats](#)”) who

ask whether these strikes are actual counter-narcotics operations or rather provocations in search of an excuse to go to war with Venezuela.

There is one other inconvenient fact in all of this. Trump cites the scourge of fentanyl as the justification for attacks on “narco-terrorists.” Atlantic national security correspondent Nick Miroff ([“Fentanyl Doesn’t Come Through the Caribbean”](#)) writes that there is no evidence that fentanyl is smuggled in via the Caribbean. He cites Coast Guard data on maritime seizures that overwhelmingly reflect seizures of cocaine and marijuana, but no instance of fentanyl seizures.

Charlie Savage and Eric Schmitt [report](#) that Trump, in a notification to Congress under [50 U.S. Code § 1543a](#), has concluded that the United States is engaged in an “armed conflict” with the cartels his administration has labelled as FTOs and that suspected smugglers for the cartels are “unlawful combatants.” This was intended as the justification for the strikes against boats in the Caribbean. Note that the justification set forth in this [notification](#) differs from Trump’s [letter](#) to Congress (dated 09/04/25) provided under the War Powers Resolution following the first strike. In the earlier justification Trump did not cite the “armed conflict” rationale.

Savage and Schmitt quote retired JAG, Geoffrey S. Corn, as saying that drug cartels are not engaged in “hostilities,” the standard for determining whether there is an armed conflict for legal purposes, against the United States because selling a dangerous product is different from an armed attack. He goes on to say that, as it is illegal for the military to deliberately target civilians who are not directly participating in hostilities, even suspected criminals, Trump’s move is an “abuse” that crosses the legal line. “This is not stretching the envelope; this is shredding it. This is tearing it apart.”

Military law experts Steven Lepper and Eugene Fidell, in their article in *Just Security* ([“The Crisis in Uniform: The Dangers of Presidential Immunity for the U.S. Military”](#)), note that, “With the unprecedented gathering of general and flag officers and their senior enlisted advisers at Quantico now in the rearview, one thing is certain: at no time since 1860 have military leaders confronted such a grave challenge to their oath to support and defend the Constitution.” Addressing their concerns to military commanders and their JAGs, they urge that

- Commanders, whether present at the Quantico photo op or not, must understand that the law is still the law, even if the Supreme Court is willing to exempt the president from its consequences. “Rather than maintaining a visible distance from their JAGs, who are increasingly being treated as irrelevant, commanders must proactively seek their legal advice.”
- JAGs must understand that the administration’s efforts to marginalize them have ironically underscored their importance. The only way the U.S. military can continue to operate in a democratic society is if they understand what the law says and where it applies. If the Constitution, statute, regulation, and judicial decisions appear to conflict with the “law as Trump has defined it or with orders issued in his name, JAGs need to identify, document, and report those conflicts. This is their duty as officers, attorneys, and citizens.”

- “If commanders are ordered to engage in acts or operations affected by conflicting legal interpretations, they must first find a way to achieve stated objectives within the bounds of international and domestic law as commonly understood, not as the president has egregiously misinterpreted them. If that’s not possible, they must speak up, put their concerns in writing, and be willing to resign if necessary.”

**Y1, Week Thirty-Nine,** The Guardian [reports](#) that Stephen Miller is playing a leading role on the Venezuelan boat strikes and, at times, supersedes the Secretary of State/National Security Adviser. The boat strikes authorizations are coming via the Homeland Security Council (HSC) which Miller apparently has created as a standalone committee; in prior recent administrations homeland security advisers would have formed part of the National Security Council and, therefore, would have reported to the National Security Adviser.

CNN [reports](#) that DoJ’s OLC has produced a classified legal opinion to the effect that the President may authorize deadly force against a broad range of drug cartels on the ground that they pose an “imminent threat” to Americans.<sup>34</sup> The list of cartels, apparently, goes beyond those the administration has publicly designated as FTOs. The opinion appears to justify war against a secret list of cartels, giving Trump power to designate drug traffickers as enemy combatants and have them summarily killed without legal review.

CNN quotes Sarah Harrison, of the International Crisis Group (and former Associate General Counsel at DoD), as saying that “If the OLC opinion authorizing strikes on cartels is as broad as it seems, it would mean DOJ has interpreted the president to have such extraordinary powers that he alone can decide to prosecute a war far broader than what Congress authorized after the attacks on 9/11. By this logic, any small, medium or big group that is trafficking drugs into the US – the administration could claim it amounts to an attack against the United States and respond with lethal force.”

Congress reportedly has repeatedly asked to see the OLC opinion, but to date it has not been provided.

I commend the *Just Security* articles written by Mary McCord and Tess Bridgeman “[What the Senate Judiciary Committee Should Ask A.G. Bondi on Drug Cartel Strikes](#)” and by Marty Lederman “[Legal Flaws in the Trump Administration’s Notice to Congress on “Armed Conflict” with Drug Cartels](#)” and “[The Many Ways in Which the September 2 Caribbean Strike was Unlawful ... and the Grave Line the Military Has Crossed](#).” Collectively, they identify significant defects in the justifications proffered in support of the strikes against “narco-terrorists.” Summarizing:

The “armed conflict” justification for lethal strikes on the alleged drug boats and the civilians on those boats is groundless. There are at least two basic problems with the assertion.

- The United States is *not* engaged in an armed conflict with any drug cartel. Under the well-established understanding of the preconditions for a “non-

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<sup>34</sup> The OLC, which sits within DoJ, interprets federal law for the executive branch.



international armed conflict” at the very least it is necessary that the non-State entity is an “organized armed group” with the sort of command structure that would render members targetable on the basis of their status because they are subject to commanders’ direction and control and that the organized armed group has engaged in armed violence that is of some intensity and that has been protracted. See [\*Prosecutor v. Haradinaj\*](#), Case No. IT-04-84-T, Trial Judgment ¶ 49 (Int’l Crim. Trib. for the former Yugoslavia, Apr. 3, 2008); [\*Prosecutor v. Tadić\*](#), Case No. IT-94-1-AR72, Decision on Defense Motion for Interlocutory Appeal on Jurisdiction ¶ 70 (Int’l Crim. Trib. for the former Yugoslavia, Oct. 2, 1995); International Committee of the Red Cross, [Commentary to Common Article 3 of the Geneva Conventions](#), [Part C-2-b](#).

- The administration has yet to demonstrate that any of the drug cartels are “organized” armed groups with the sort of command structure that would render members targetable on the basis of their status. But even if it could do so, those cartels have not engaged in any protracted or intense armed violence against the United States.
- When Trump uses the term “armed attack” he is referring *not* to any actual armed attack as any States or international tribunals understand that term, but instead to the “flow of illicit narcotics into the United States,” which “illegally and directly cause the deaths of tens of thousands of American citizens each year.” That flow of drugs is not an armed attack or armed violence as used in international law.
- Even if there *were* an armed conflict, the Constitution likely precludes Trump from ordering ongoing status-based targeting of members of that cartel due to the absence of any *domestic law authority*. Yes, Article II empowers him to repel an actual attack against the United States (or its troops). But that’s a far cry from authorizing an ongoing series of *status-based* strikes by the United States against a non-State armed group as part of an exchange of attacks that is sufficiently prolonged or intense to establish a “non-international armed conflict”. If that is the case, it would be of such “nature, scope and duration” to constitute “war in the constitutional sense” under longstanding OLC opinions and, therefore, would require congressional authorization pursuant to the “Declare War” clause of Article I, section 8 of the Constitution. And Section 5(b) of the [War Powers Resolution](#) would prohibit such attacks as of 60 days after they began.
- 18 U.S. Code § 1111(b) makes it a felony to commit murder within the “special maritime and territorial jurisdiction of the United States,” which is defined to include the high seas (see 18 U.S. Code § 7(1)). See also 18 U.S. Code § 956(a)(1) (making it a felony to conspire within the United States “to commit at any place outside the United States an act that would constitute the offense of murder ... if committed in the special maritime and territorial jurisdiction of the United States” if “any of the conspirators commits an act within the jurisdiction of the United States to effect any object of the conspiracy”).



- Section 2.11 of Executive Order 12333, . . . provides: “No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination.” This prohibition does not prohibit the targeting of persons (*e.g.*, Usama Bin Laden) in an armed conflict (if done in compliance with the laws of armed conflict), or as a legitimate act of self-defense to stop or prevent an armed attack.

In sum, there is no legal basis for Trump to order the military to summarily kill people he believes may be planning to commit crimes in the United States, even assuming those who were killed in these strikes were in fact attempting to smuggle drugs into the United States. Quite the contrary, criminal prohibitions (against murder and conspiracy to commit murder) prohibit such killings. And as McCord and Bridgeman remind us, under [Youngstown](#), when the President takes actions contrary to duly enacted statutes, he is acting at the “lowest ebb” of his authority – in which the actions can only be claimed to be lawful if the President has exclusive authority over the matter and Congress may not regulate it based on its own Article I authority. That is plainly not the case here, where Congress’ role in criminally prohibiting actions such as murder is beyond question (and where Congress also has the constitutional authority to declare war under Article I).

In a highly unusual and perhaps unprecedented statement, the New York City Bar Association [explained](#) that none of the strikes in the Caribbean “was authorized under U.S. law and . . . each of them appears to be an unlawful summary execution prohibited by both U.S. and international law.” It continued, there is “neither a lawful nor factual justification to engage our armed forces to use lethal force in international waters in the absence of lawful armed conflict or self-defense.” It therefore

“called upon the President to desist from any further unlawful attacks on the high seas. We also call upon Congress to remind the President that he lacks authority to continue to misuse our military forces for similar unlawful attacks on foreign vessels and their civilian crews and that continuation of such attacks is unlawful. Congress and the courts have a critical role in requiring the President to comply with the Constitution and our treaties with respect to the use of armed force, and they must not abdicate that responsibility in the case of these (and threatened future) attacks.”

On the Hill, a proposed joint resolution (S.J.Res. 83) was introduced by Sen. Kaine and Schiff to direct the removal of U.S. military forces from hostilities that have not been authorized by Congress [fell short](#) by a vote to 48-51, largely along party lines. Sen. John Fetterman voted against, and Sens. Paul and Murkowski voted for. Sen. Cruz did not vote. A similar resolution (H.J.Res.126) has been [introduced](#) in the House by Rep. Jason Crow (with 49 co-sponsors, all Democrats).

The New York Times [also reported](#) that Trump had secretly authorized the CIA to conduct covert operations in Venezuela. Shortly after the New York Times reported on the secret so-called “presidential finding,” Trump acknowledged planning for those operations – “We are certainly looking at land now, because we’ve got the sea very well under control.” In the meantime, it is [reported](#) that there are 10,000 American forces in the area, most at bases in Mexico, with a contingent of Marines on amphibious assault ships. The Navy has eight surface ships and a submarine in the

Caribbean. The Washington Post [reports](#) sightings of the air assets from the 160th Special Operations Aviation Regiment (SOAR), which typically supports Navy SEALs, Special Forces and Delta Force, suggesting preparations for the introduction of U.S. forces into Venezuela.

See also the [resignation](#) of Admiral Holsey.

There are [reports](#) that a bipartisan group of Senators is seeking to force a vote on a bill that would bar the administration from engaging in military operations in Venezuela without congressional authorization. The move is led by Sens. Kaine, Schiff and Paul. The Y1, Week before, the Senate, following reports of a fourth strike in the Caribbean, [blocked](#) a measure proposed by Kaine and Schiff that would have prohibited boat strikes without congressional authorization. Only two Republicans (Sens. Paul and Murkowski) supported the motion. Recall that in June, the Senate had blocked an effort that would have required authorization for additional strikes against Iran following Operation Midnight Hammer – Sen. Paul supported the motion, and Sen. Fetterman voted to block it.

There have now been six strikes in the Caribbean – a [fifth strike](#) killed six, bringing the total to 27, and a [sixth strike](#) on a semi-submersible vehicle reportedly left two dead and two survivors, who were rescued.

There continues to be little evidence presented and no legal justification published. The administration has changed its professed justifications – first it was [self-defense](#) (09/02/25) and then it was that the United States was [engaged](#) in a formal armed conflict with certain undisclosed cartels and criminal gangs that Trump had labelled as “terrorists” (09/15/25). Reuters also noted that, in a move that surprised military-watchers, the Pentagon announced that rather than be led by the combatant command, SOUTHCOM, the counter-narcotics operations in the region would be overseen by a newly formed task force to be led by II Marine Expeditionary Force, based at Camp Lejeune in North Carolina. See also [USNI News](#) coverage.

The first five strikes were announced proactively by the administration; the sixth [reportedly](#) was leaked to *Reuters*. Trump then confirmed the story. Holding prisoners, presumably currently in international waters, now leaves the Pentagon with a dilemma – do they hold them as enemy combatants or turn them over to civilian law enforcement?

CNN [reported](#) that the two survivors were being repatriated to their countries of origin, Colombia and Ecuador. Colombian President Gustavo Petro [confirmed](#) the Colombian had been repatriated.

Earlier in the day, CNN had reported that administration officials had been scrambling to decide what to do with the first known survivors of the six military strikes on boats in the Caribbean. CNN reported that former State Department lawyer and war powers expert Brian Finucane had suggested the administration faced both policy and legal dilemmas as it was unclear as to what legal authority the military would rely on to hold the survivors as prisoners. CNN reported that one of its sources had told it that the “legally dubious situation” had prompted consideration of whether to hold or release the survivors. This is but one of the issues raised by the strikes, which a number of

legal experts believe are unlawful and both Republican and Democratic lawmakers are questioning.

The fact that the survivors are not from Venezuela complicates the narrative that the imminent threat comes from drug cartels linked to Venezuelan president Maduro.

**Y1, Week Forty**, *POLITICO* [reports](#) that Ecuadorian authorities released the survivor repatriated to Ecuador after prosecutors determined that they found no evidence that the man had committed a crime in Ecuador.

There was a [seventh strike](#) in international waters, killing three men on board, bringing the number of people reportedly killed to 32. The boat that was attacked reportedly was affiliated with the Colombian organization Ejército de Liberación Nacional (ELN). That was followed by [reports](#) of two more strikes on Tuesday night and Wednesday, these in the Pacific, bringing the total number of killed to 37. The Secretary of Defense equated the drug traffickers to al-Qaeda's attacks on 9/11. The Guardian [had reported](#) earlier in the week that a significant portion of the intelligence used to target boats is being sourced from the CIA. Note that information of this kind is not intended to serve as evidence in court.

On Friday, the Treasury Department's Office of Foreign Assets Control (OFAC) [sanctioned](#) Colombian President Gustavo Petro, his wife, his son and the Interior Minister under counternarcotics-related authorities. The Treasury Secretary accused Petro of "allow[ing] drug cartels to flourish and refus[ing] to stop this activity."

Earlier in the week, Trump cut off aid to Colombia after Petro criticized the Caribbean boat strikes. Petro wrote on X, "It is murder. Whether in the Caribbean or Pacific, the US government strategy breaks the norms of international law." In September, Petro's visa was revoked by the State Department following comments he made at a pro-Palestine protest on the sidelines of UNGA calling on U.S. service members to resist Israel's actions in Gaza. See [Guardian](#) coverage.

Meanwhile, in what appears to be a dramatic escalation of force projection off the coast of South America, the Secretary of Defense is deploying an aircraft carrier and supporting strike group (destroyers and a submarine) to the region. The carrier group currently is largely in the Mediterranean. According to [PBS News](#), if the entire strike group arrives, it could bring more than 4,500 sailors and nine squadrons, augmenting the more than 6,000 sailors and Marines aboard eight , in the region.

The fast-boat strikes continue, now bringing the total number of boats attacked to ten (eight in the Caribbean and two in the Pacific – the last two being in the Pacific and the Caribbean, respectively) and the total reportedly killed to at least 43. The tenth boat struck allegedly was operated by TdA. The purported supporting evidence [appears](#) shaky at best.

Back on the Hill, Vice Chair of the Senate Intel Committee Warner and Ranking Member Himes on the House Intel Committee [wrote](#) the DNI setting out in a classified appendix a set of questions about the IC's role in the fast-boat strikes. Referring to the OLC opinion that has yet to be provided to Congress and reminding the DNI that to the extent that IC personnel are assisting DoD operations, "they must do so knowing that they are supporting legally authorized operations." The letter asks

“whether IC attorneys have independently analyzed the legality of these strikes and the potential for legal repercussions for IC personnel who support them. If such an analysis exists, we ask that you provide it to the congressional intelligence committees. If it does not, we ask that the appropriate Intelligence Community personnel brief the committee on why they assessed it was not required.”

Republican Senator James Lankford also called for more transparency in a C-SPAN [interview](#), “If this was happening with this level of insight under the Biden administration, I’d be apoplectic.”

**Y1, Week Forty-One**, Reuters was the first [to report](#) that military officials involved in operations in Latin America have been asked to sign NDAs. This is highly curious as these officials presumably are required to not improperly divulge classified information. Is this intended to prevent disclosures to members of the House and the Senate who would otherwise be entitled to receive briefings on the operations?

Lt. Gen Mark Hertling, writing in the Bulwark ([“Why Commanders Don’t Sign NDA”](#)), argues that existing laws and rules on secrecy suffice and that asking officials to sign these NDAs is “deeply inappropriate.” He did not mince words: “I can say this plainly: Such a move betrays a profound misunderstanding of how secrecy, accountability, and trust work inside the U.S. military.” Hertling notes that NDAs are civilian instruments – contractual arrangements. Any person in government with a security clearance signs [SF312](#), the Classified Information Nondisclosure Agreement. Under 18 U.S. Code §§ [793](#) and [798](#), which apply to all in uniform, unauthorized disclosure of national-defense information is punishable by up to ten years in prison. Hertling concludes that imposing these NDAs on personnel in the SOUTHCOM area of operations “is not just unnecessary – it’s counterproductive and insulting. It signals mistrust in a system that already functions with rigor, gravity, and extreme disciplinary action if violated. Asking for anything ‘additional’ also risks conflating operational security, which is essential, with overt political control, which is dangerous.”

As for the [most recent](#) strikes, the [toll](#) is now 14 strikes (and 15 boats) and potentially 61 people killed. There apparently was one survivor from the last group of three strikes. Meanwhile Rep. Seth Moulton [posted](#), “Today, at a classified [House Armed Services Committee] briefing on recent counternarcotics operations in the Pacific and Caribbean, the Pentagon pulled its lawyers - the exact people who would supply a legal justification for these strikes - from the briefing with no notice.” Rep. Sara Jacobs [told POLITICO](#) that DoD officials said that they have not positively identified individuals targeted in strikes, they just need to prove a connection to a designated terrorist group.<sup>35</sup> And recall that the White House has long highlighted the threat posed by the

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<sup>35</sup> [Speaking at Brookings](#), Sen. Elissa Slotkin, referring to her time in the intelligence community, noted that “for those of us who worked during the Global War of Terror, we named the groups we were going after. Think Al Qaeda or ISIS. Congress knew the name of every targeted group. The Administration at the time provided the intelligence that justified going after those groups, and why it was legal to do so.” She then warned But it seems clear from his own order that Trump plans to see how far he can stretch the law before someone tells him no. And if the Administration won’t publicly name drug

flow of fentanyl into the country and yet the boats hit are primarily smuggling cocaine, according to DoD officials.

Senator Mark Warner [called out](#) the Trump administration for briefing Senate Republicans without telling Senate Democrats about the briefing, and reportedly showed the Republicans the DoJ OLC opinion purporting to justify the strikes. See [CNN](#) coverage.

**Y1, Week Forty-One**, Former State Department lawyers Rebecca Ingber and Jessica Thibodeau, writing in *Just Security* (“[Expert Backgrounder on War Powers Resolution 60-Day Clock for Boat Strikes Expiring Monday](#)”), examine the statutory requirement that the executive branch cease use of any military force without congressional authorization past November 3, 60 days after Trump sent his [letter](#) to Congress under the [War Powers Resolution](#). In short, even when a president is acting under their constitutional authority to use force, the War Powers Resolution requires that operations terminate after 60 days, unless Congress has approved the operations.

For the record, the Chair (Sen. Roger Wicker) and the Ranking Member (Sen. Jack Reed) on the Senate Armed Services Committee have submitted various requests to the DoD for supporting evidence regarding the strikes (*see* letters of [September 23](#) and [October 6](#)), which they made public in frustration at the stonewalling. And to summarize, the evidence does not stack up: it remains unclear where the boats were heading, who was on the boats and what the boats were carrying. Boats were unlikely heading to the United States given the assumed fuel capacity and the direction they were heading. Venezuela, relative to its neighbors, is neither significant producer nor a major transit hub drugs, and certainly not for fentanyl.<sup>36</sup> And there is yet to be any intelligence shared that the purported smugglers were members of TdA.

One final thought, if Chinese, or Russian, or Iranian drones took out a boat carrying Americans (smugglers or even just fisherman), what ground do we have to stand on to complain? Might makes right?

**Y1, Week Forty-Two**, media report that T. Elliot Gaiser, head of OLC, told a group of lawmakers that the administration is not bound by the War Powers Resolution (including its 60-day limit) because the strikes did not meet the definition of

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cartels in the Caribbean, you can bet they’ll keep their new list of domestic terrorist organizations a secret, as well. Only this time, the secret lists won’t be made up of supposed drug traffickers in international waters. It’ll be Americans, on American streets, and in American homes.”

<sup>36</sup> Nancy A. Youseff, Gisela Salim-Peyer and Jonathan Lemire write in the *Atlantic* (“[The Boat Strikes Are Just the Beginning](#)”), “It’s also not clear that Venezuelan drug operations, centralized or otherwise, are significant enough to merit the country being singled out as a threat to American lives. Venezuela is not a major cocaine or fentanyl producer. And even though most of the world’s cocaine grows in neighboring Colombia, Venezuela is also not a major transit hub. As of 2020, the U.S. Drug Enforcement Administration estimated that three-quarters of South American cocaine reached the United States through the Pacific, one-sixth through Colombia’s Caribbean shore, and only one-twelfth through Venezuela’s Caribbean shore.”



“hostilities.” Apparently the rationale is that the smuggler cannot shoot back and that U.S. service members are not in harm’s way!<sup>37</sup> The *Washington Post* [quotes](#) Brian Finucane (one-time War Powers Resolution counsel at State), “What they’re saying is anytime the president uses drones or any standoff weapon against someone who cannot shoot back, it’s not hostilities. It’s a wild claim of executive authority.”

Finucane notes that during Trump 1.0, strikes were carried out on Houthis in Yemen in 2016, as well as against Syrian military facilities in 2017 and 2018, and in all these cases, the actions were considered “hostilities” activating the War Powers Resolution. He also notes that by notifying Congress on September 4 after the first strike in the Caribbean, the administration acted as if that first strike triggered the War Powers Resolution (recall the letter stated it was being submitted “to keep the Congress fully informed, consistent with the War Powers Resolution”).

This position presumably is separate from the classified OLC opinion that reportedly concludes that the strikes do not rise to the level of war and therefore do not require congressional approval.

In the Senate, a resolution [introduced](#) by Sens. Kaine, Paul and Schiff to prevent the use of U.S. forces in or against Venezuela was voted down 51-49 (with Sens. Paul and Murkowski voting with the Democrats) unless authorized by Congress. Hours after the vote, the Secretary of Defense [announced](#) the 17<sup>th</sup> strike, bringing the death toll in the Caribbean and the Eastern Pacific to at least 70. See [CBS News](#) coverage.

Two GOP members of the House (Reps. Don Beacon and Mike Turner) and two Democrats (Reps. Seth Moulton) [sent](#) a letter to the White House requesting answers to series of questions on the boat strikes.

**Y1, Week Forty-Three**, now up to 20 strikes and at least 80 killed.

There are media reports that allies have reduced sharing intelligence that could lead to further strikes for fear of being complicit in illegally causing the death of civilians on

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<sup>37</sup> As Charlie Savage and Julian E. Barnes note (“[War Powers Law Does Not Apply to Trump’s Boat Strikes, Administration Says](#)”), there is some unfortunate precedent. During the 2011 air campaign over Libya, President Obama reportedly chose to ignore the view that the campaign amounted to “hostilities” advanced by then DoD General Counsel Jeh C. Johnson and then head of OLC Caroline D. Krass, and sided with then White House counsel Robert Bauer and State Department Legal Adviser Harold L. Koh, who argued that the operations fell short of “hostilities” (see “[2 Top Lawyers Lost to Obama in Libya War Policy Debate](#), “[White House Defends Continuing U.S. Role in Libya Operation](#)” and [House Hearing on Libya and War Powers](#)). The latter position apparently advanced the notion that the Libyans could not shoot back and there were no U.S. ground forces involved. There is also the distinguishing fact that the Libyan operation was a NATO-led multilateral mission to carry out a UN Security Council resolution.



board targeted ships. See British [reluctance](#). Colombia, which has a long history of cooperating with the United States on counter-narcotics operations, is also reported to have cut back on intelligence-sharing with the United States as a “human rights” imperative.

A far-fetched explanation for the boat strikes, admittedly yes, but in the ever-present search for explanations for actions that seem to defy, not completely far-fetched. Professor of history Barbara F. Walters [asks](#) whether, in addition to the explanations making the rounds – to distract from problems at home or to create a convenient enemy as a rationale for expanding executive power – there might be a third reason for the strikes, namely to shake down the cartels.

**Y1, Week Forty-Three**, the *Wall Street Journal* [reports](#) on multiple justifications for the attacks on the boats in the Caribbean and the Pacific. If the following summary appears disjointed, that is because the justifications seem to be all over the place, and it suggests that if the administration has decided on a course of action, and OLC came up with a muddled set of justifications hoping one would pass muster (all of which reportedly are set out in nearly 50 pages).

- First, there reportedly is a justification that treats fentanyl as a potential chemical weapons threat. Experts tend to say that Venezuela has long been a transshipment route for Colombian cocaine and there is no evidence Venezuela produces or traffics fentanyl, which is typically manufactured in labs Mexico and smuggled across land borders. And the idea that somehow drugs equate to chemical weapons is beyond comprehension.
- Second, the *Wall Street Journal* cites a DoJ spokesperson as saying that the OLC opinion does not rely on the chemical weapons justification but rather that the designation of the cartels as FTOs makes them legitimate military targets, since they are [smuggling](#) drugs to fund violence and extortion that pose threats against the United States and its allies. So, here we have a financial destabilization argument.
- Third, the OLC opinion reportedly also maintains that the United States is involved in an “non-international armed conflict” with the cartels (meaning one within the territory of a single state). As a consequence, U.S. military personnel would be acting lawfully and would be immune from future prosecution. That position was first [reported](#) by the *Washington Post*.
- Fourth, apparently, the OLC opinion also maintains that the drug smugglers are “enemy combatants,” while also taking the highly illogical position that the United States is not engaged in “hostilities” against these “enemy combatants,” obviating the need to seek congressional approval for continued military operations. But, in short, and much is being written on this, drug trafficking is a civilian offense perpetrated by criminal gangs, which incidentally would result in prison sentences for those convicted of trafficking and not death. Not to put too fine a point on this, but what distinguishes what our armed forces are doing in the Caribbean and ordering police to shoot drug dealers on a street corner.

- Fifth, the opinion cites the right to aid allies facing threats (collective defense), but it is unclear which allies they mean since, as the *Wall Street Journal* notes, key allies such as Colombia and Mexico have criticized the boat strikes and said they were not consulted about the shift in U.S. tactics or had even requested such assistance.

It is worth questioning the OLC conclusion on immunity of U.S. service personnel, which appears to go something like this: The strikes are consistent with the laws of armed conflict and consequently are lawful orders. Military personnel are obligated to follow lawful orders and consequently are immune from prosecution for following lawful orders. While this last sentence undoubtedly is true, there are a number of military experts (including those cited above in this section) who take fundamental issue with the conclusion that the strikes are consistent with the laws of armed conflict.

The *Washington Post* article likens the OLC immunity conclusion with the OLC response during the Bush II years to senior JAGs' concerns about "enhanced interrogation techniques" (read: torture) used on suspected Al-Qaeda operatives. In a since [declassified](#) 2003 OLC memorandum, then OLC Deputy Assistant Attorney General John Yoo in effect concluded that personnel engaged in these techniques would not be subject to prosecution.

That OLC has concluded that the boat strikes are lawful does not make them so, though any OLC conclusion that they are may well, as former State Department attorney Rebecca Ingber notes, "serve as a hurdle to a future Department of Justice prosecution." The Obama administration withdrew the Bush II torture memorandum, but the Obama DoJ declined to prosecute personnel that relied on the OLC position.

Ironically, Yoo, for some years a law professor at the University of California at Berkeley, writing in September ("[What's wrong with a military campaign against the drug trade](#)"), maintains that the boat strikes (he was writing after the third one) "risk crossing the line between crime-fighting and war." He notes that

"...the U.S. cannot wage war against any source of harm to Americans. Americans have died in car wrecks at an annual rate of about 40,000 in recent years; the nation does not wage war on auto companies. American law instead relies upon the criminal justice or civil tort systems to respond to broad, persistent social harms. In war, nations use extraordinary powers against other nations to prevent future attacks on their citizens and territory."

Yoo does believe that "the White House can justify its naval attacks in South America only if it can show that the cartels act as instruments of the Venezuelan government." "The White House has yet to provide compelling evidence in court or to Congress that drug cartels have become arms of the Venezuelan government. That showing is needed to justify not only the deportations (which were [just overturned](#) by the conservative U.S. Court of Appeals for the 5th Circuit) but also the naval attacks in the South American seas."

**Y1, Week Forty-Four**, media reports that in February, then acting Deputy Attorney General and now federal appellate judge Emil Bove reportedly advised DoJ prosecutors attending a conference for the Organized Crime Drug Enforcement Task

Forces (OCDETF), that the administration would no longer be interested in interdicting at sea vessels suspected of carrying drugs, seizing the cargo and detaining and prosecuting the crew, and instead the United States should “just sink the boats.” See [NPR](#) coverage.

Stars & Stripes [reports](#) that, while Trump claims that interdicting drug boats does not work, the Coast Guard announced that it had set a record for cocaine seizures over the previous year.

NBC News [reports](#) that the senior JAG at SOUTHCOM raised legal concerns in August before the first strike in the Caribbean, but he was ultimately overruled by officials at OLC. He reportedly expressed the concern that the strikes could be deemed extrajudicial killings that could expose service members involved in the operations to legal liability.

**Y1, Week Forty-Seven**, two former JAGs, Steven Lepper and Eugene Fidell, in their Slate article ([Dear JAG](#)), deconstruct one of the reported justifications for the boat strikes (“The strikes were ordered consistent with the laws of armed conflict, and as such are lawful orders. Military personnel are legally obligated to follow lawful orders and, as such, are not subject to prosecution for following lawful orders”). They point out that while the second sentence is true, the first is a *non-sequitur*.

The laws of armed conflict (LOAC) [have no bearing](#) on the legality of the strikes. First, the United States is not in an armed conflict; no country or organized group has attacked or used armed force against us, and no such armed attack is imminent. Once an armed conflict has been deemed lawful, LOAC applies to regulate the conduct and application of our armed forces. Thus, the suggestion that LOAC is applicable is wrong, as is his second point suggesting that orders issued consistent with LOAC are legal. It incorrectly presumes that any order given in the LOAC context is *per se* lawful and hence must be followed. The point out that merely attaching an “LOAC” label to an order does not make the order lawful, even if the label had been correct (which it is not). “A LOAC-related order may be unlawful, as can an order that arises in the law-enforcement context.”

Lepper and Fidell then walk through the commentary on Article 90 of the UCMJ in the 2024 [Manual for Court-Martial United States](#): “An order requiring the performance of a military duty or act may be inferred to be lawful, and it is disobeyed at the peril of the subordinate. This inference does not apply to a patently illegal order, such as one that directs the commission of a crime.” The next clause provides: “The lawfulness of an order is a question of law to be determined by the military judge.” The commentary to Article 916 states “Ignorance or mistake of law, including general orders or regulations, ordinarily is not a defense.”

A voluntary reporting regime has been set up by Ocean Posse with SOUTHCOM to allow vessels in the Eastern Pacific and the Caribbean to submit their “float plans.”

**Y1, Week Forty-Nine**, DoD now reports 22 strikes that have killed 86 people, 11 strikes in the Caribbean and 11 in the Eastern Pacific (see [Axios](#) reporting – from prior Y1, Week).

Recall the curious decision to repatriate two survivors to Ecuador and Colombia. Well, the Washington Post has the backstory (“[Inside the Pentagon’s Scramble to Deal With Boat Strike Survivors](#)”). Apparently, on a conference call between DoD officials and State Department lawyers, the Pentagon suggested that the survivors be shipped to CECOT. The journalists report that, “The State Department lawyers were stunned and rejected the idea.”

Two weeks later (on the same day as the attack against the 14<sup>th</sup> fast boat), DoD convened another conference call with U.S. diplomats across the Western Hemisphere, and directed that survivors be repatriated to their country of origin or a third country. The goal though was to keep them out of the U.S. judicial system (including at Guantánamo Bay) and not touch U.S. soil even for a short period of time, presumably because arresting and prosecuting them in a U.S. court would compel the administration to provide evidence that justifies the attacks in the first place (that is, that these are “narco-terrorists” smuggling drugs into the United States and they pose an imminent threat of attack against the United States).

The Washington Post reporting also picks up an interesting thread around legal terminology – the DoD officials described people on the fast boats as “unlawful combatants” or “unprivileged belligerents,” terms used by the U.S. government to describe combatants not in conventional uniforms, such as members of Al Qaeda or ISIS. These irregular combatants are entitled to certain protections under the Geneva Conventions, and of course would be entitled to protections as noted above accorded to those who had been in a “shipwreck.” Apparently, the DoD officials repeatedly referred to survivors in the water as “distressed mariners,” presumably to justify repatriation rather than detention.

**Y1, Week Forty-Eight**, the death toll following another lethal strike in the Eastern Pacific, [announced](#) by SOUTHCOM, stands at 99.

**Y2, Week Three**, another strike in the Eastern Pacific is [announced](#) by SOUTHCOM, bringing the toll now to 37 strikes and at least 127 dead.

*No Quarter ...*

*...The Order*

As **Y1, Week Forty-Seven** gave way to Thanksgiving, bombshell [reporting](#) by Washington Post reporters Ellen Nakashima and Alex Horton laid bare how far this administration has fallen, and provides more justification, if ever any was needed, for the “Don’t Give Up the Ship!” messages. CNN [followed](#) with its own story. (*See also [Military.com](#) coverage.*)

Reportedly, the Secretary of Defense gave an oral order while surveillance aircraft followed the first boat that was attacked with 11 on board to “kill everybody.” After the boat was blown up, the surveillance feed showed two had survived the initial attack.

The commander overseeing the operation, which was being conducted by SEAL Team Six, Adm. Frank Bradley, who at the time headed the Joint Special Operations Command and now [leads](#) the overarching Special Forces Command, then ordered a

second (“double-tap”) strike, killing both survivors in the water. Bradley reportedly said that the survivors were legitimate targets because they in theory could call other traffickers to retrieve them and whatever was left of the cargo. Really, this from the overall head of our special forces! The redacted 29-second video clip released by Trump does not include footage of the second strike on the survivors.

Apparently, after this double-tap strike killing two survivors, the protocol was changed to direct the military to rescue any survivors. In a strike in October, two survivors were rescued and repatriated.

The Intercept [had reported](#) back in September that there had been a second strike that killed survivors, but the backstory only became known (and would then go viral) with the today’s reporting. The Washington Post reporting also notes that in briefing materials provided to the White House and in two closed-door briefing given to lawmakers, the second strike was characterized as necessary to sink the boat to “remove a navigation hazard,” and not to kill survivors.

Monday morning, **Y1, Week Forty-Eight**, not surprisingly the White House doubled down in its now customary chaotic and contradictory fashion. White House Press Secretary Leavitt confirmed that the Secretary of Defense had issued the “kill everybody” order. On Sunday, Hegseth [posted](#) a meme (Franklin the turtle) in effect making light of the killing, which has drawn universal condemnation.<sup>38</sup> The day before Hegseth [posted](#) an implied denial – “As usual, the fake news is delivering more fabricated, inflammatory, and derogatory reporting to discredit our incredible warriors fighting to protect the homeland.”

Over multiple statements, Hegseth has not expressly denied giving the “kill everybody” order. Rather, he said that “the declared intent is to stop lethal drugs, destroy narco-boats and kill the narco-terrorists who are poisoning the American people.” “Every trafficker we kill is affiliated with a Designated Terrorist Organization.” [“We have only just begun to kill narco-terrorists.”](#) Incidentally, those given classified briefings reportedly complain that there is no specific evidence on who actually has been targeted and killed on the high seas, and independent reporting suggests that many may simply be fisherman offered money to make a run or who were pressured into doing so. That stretches the “affiliation” label to the point of absurdity. These are civilians, and recall that during Coast Guard interdiction operations, if fired upon, the Coast Guard fired back ... to disable the engines.

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<sup>38</sup> Tom Nichols, writing in The Atlantic ([“Pete Hegseth Needs to Go - Now”](#)), had this to say about Hegseth’s response, “Posting stupid memes after being accused of murder is not the response of a patriot who must answer to the public about the security of the United States and its people in uniform. It is not the response of a secretary of defense who values the advice of the officers who report to him. It is not the response of a human being who comprehends the risks – and the costs – of ordering other people to kill helpless men clinging to the wreck of a boat.”

Trump on Sunday [stood by](#) Hegseth and stated that Hegseth had denied giving that order.

Signs are pointing to a few ending up under a bus, perhaps Hegseth, and perhaps Bradley at the hands of Hegseth before he too exists. Hegseth signalled the latter by [posting](#) support for Bradley, including “the combat decisions *he has made* on this September 2 mission and all others since.”

The *New York Times* diplomatically [notes](#) that Hegseth is becoming “a growing political liability.” He slipped through confirmation with a tie-breaking vote by Vance, in Europe in February he sounded like an apologist for Putin, he invited Elon Musk to a classified briefing, and then there was Signalgate. After Signalgate, three members of the team he brought with him were accused of leaking unauthorized information and escorted out of the Pentagon. His principal spokesperson at the time accused him of being disloyal and incompetent. During the Iran missile attacks, he was largely sidelined, and the key defense official assigned to restarting the Russia-Ukraine negotiations is now the Secretary of the Army, Daniel Driscoll. Hegseth has largely been absent from any conversations over China – defaulting instead to Venezuela.

George Will, in his op-ed (“[A sickening moral slum of an administration](#)”) pointed out that Hegseth had the distinction of being a war criminal despite the fact that we are not at war. Will trains his fire on incompetence beyond Hegseth in noting that Secretary of State Rubio had advised some of his alarmed former Senate colleagues that the Ukrainian “plan was just an opening gambit from Russia –although Trump demanded that Ukraine accept it within days. Specifically, Sen. Mike Rounds “reported that, in a conference call with the bipartisan group of senators, [Rubio said the plan](#) was a Russian proposal: ‘He made it very clear to us that we are the recipients of a proposal that was delivered to one of our representatives. It is not our recommendation. It is not our peace plan.’ Hours later, however, [Rubio reversed himself](#), saying on social media that the United States ‘authored the plan.’”

*CBS News* [reported](#) that Admiral Bradley claimed that all aboard the fast-boat struck on September 2 were on an internal list of narco-terrorists whom U.S. intelligence and military officials determined could be lethally targeted. This seems at odds with reporting on the ground that many on these fast-boats are local fisherman.

### ...The Reaction from Military Law Experts

Now paraphrasing Todd Hunter, a former JAG who advised special operations forces for seven years and is now director of the national security law program at Georgetown, we come back to the threshold premise which is that these traffickers pose no “imminent threat of attack” against the United States and are not in an “armed conflict” with the United States despite administration arguments that we are. As there is no war, the killing amount to murder. And, even if we were at war, a kill order against those no longer able to fight (“[hors de combat](#)”) would amount to a war crime.

CNN [quotes](#) Sarah Harrison, former associate general counsel at the Pentagon, “They’re breaking the law either way. They’re killing civilians in the first place, and then if you assume they’re combatants, it’s also unlawful — under the law of armed



conflict, if somebody is ‘hors de combat’ and no longer able to fight, then they have to be treated humanely.”

What have we become? A military expert pointed me to the [war crimes](#) trial of the captain and various other members of the crew of a German U-boat, who in March 1944, after attacking with torpedoes and sinking a Greek steamer (the SS Peleus), attacked and killed 12 surviving crew members. Three crew members, however, survived, and their report became the basis for the prosecution. The German U-boat and its crew (and the submarine’s log book) ultimately fell into British hands and were prosecuted for war crimes. Three, including the captain, were executed, and two were sentenced to prison. *See also* “[The duty to rescue at sea, in peacetime and in war: A general overview](#)” (including a discussion of the Second Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, in effect prohibiting the targeting of survivors unless they are engaged in hostile acts).

Former Assistant Attorney General, Office of the Legal Counsel Jack Goldsmith put it bluntly in his op-ed (“[A Dishonorable Strike](#)”), “Indulging all assumptions in favor of the administration’s boat strikes, killing helpless men is murder.” If the reporting is correct, “it appears that Special Operations Forces committed murder when the ‘two men were blown apart in the water,’ as the Post put it.”

Goldsmith quotes from DoD’s [Law of War Manual](#) (Section 5.4.7):

*“Prohibition Against Declaring That No Quarter Be Given.* It is forbidden to declare that no quarter will be given. This means that it is prohibited to order that legitimate offers of surrender will be refused or that detainees, such as unprivileged belligerents, will be summarily executed. Moreover, it is also prohibited to conduct hostilities on the basis that there shall be no survivors, or to threaten the adversary with the denial of quarter. This rule is based on both humanitarian and military considerations. This rule also applies during a non-international armed conflict.” (footnotes omitted)

The [Hague Regulations of 1907](#) state that “it is especially forbidden . . . [t]o declare that no quarter will be given.”

The [1863 Lieber Code](#) – the famous U.S. government rules governing military conduct during the Civil War – provides: “Whoever intentionally inflicts additional wounds on an enemy already wholly disabled, or kills such an enemy, or who orders or encourages soldiers to do so, shall suffer death, if duly convicted, whether he belongs to the Army of the United States, or is an enemy captured after having committed his misdeed.”

The DoD Law of War Manual (Section 5.9) states that persons “placed hors de combat may not be made the object of attack.” The Manual defines “hors de combat” to include “persons . . . otherwise incapacitated by . . . shipwreck.”

As for Admiral Bradley, Goldsmith writes, “The prohibition on targeting a disabled combatant is so clear that Bradley had a duty, in the words of 18.22.4 of the Law of War Manual ‘to refuse to comply with clearly illegal orders to commit violations of the law of war.’”

Moreover, there is also international humanitarian law – as described to me by the Former JAG Working Group: The United States has publicly described boat strikes

as a response to a “non-international armed conflict” because our “enemy” is an international terrorist organization rather than a sovereign state. As such, the full scope of international law generally applicable to armed conflict does not necessarily apply to this conflict. However, Common Article 3 of the Geneva Conventions applies to NAICs and bans murder of any “persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed ‘hors de combat’ by sickness, wounds, detention, or any other cause. The Working Group [issued](#) a press statement, which was picked up by a number of commentators, including Heather Cox Richardson in her [November 29](#) Substack, Julia Conley of [Common Dreams](#), Ryan Goodman, editor of [Just Security](#) and Max Boot in his op-ed, [“No wonder Trump is outraged by warnings about illegal orders”](#) and [CBS News](#). The press statement also found its way in short order onto Admiral Bradley’s [Wikipedia](#) page. *See also* [Washington Post](#) coverage.

While violations of international humanitarian law rising to the level of war crimes could be prosecuted by an international tribunal, domestic U.S. law – [18 U.S. Code § 2441](#) subjects U.S. citizens to criminal prosecution for war crimes. U.S. courts have jurisdiction over such offenses regardless of where they are committed if the offender is a U.S. national or member of the U.S. armed forces and the crime constitutes, inter alia, a “grave breach of Common Article 3.” There is also [18 U.S. Code § 1111](#), which provides that “Murder is the unlawful killing of a human being with malice aforethought.” Civilian personnel who issue and execute orders to kill any human being can be prosecuted for murder unless a defense applies. The Nuremberg War Crimes Tribunals established as a matter of customary international law that superior orders are no defense to war crimes.

UCMJ Article 118 ([10 U.S. Code § 918](#)) is substantively similar to the federal murder statute applicable to civilians, and provides that anyone who unlawfully kills a human being is guilty of murder. As for the “superior orders defense,” [Rules for Courts-Martial \(R.C.M.\) 916\(d\)](#) states that “It is a defense to any offense that the accused was acting pursuant to orders unless the accused knew the orders to be unlawful or a person of ordinary sense and understanding would have known the orders to be unlawful.” And, [as noted above](#), Article 90, para 16.c.(2)(a)(i) in the [Manual for Courts-Martial](#) states that “An order requiring the performance of a military duty or act may be inferred to be lawful, and it is disobeyed at the peril of the subordinate. **This inference does not apply to a patently illegal order, such as one that directs the commission of a crime.**”

In addition to the Former JAG Working Group press statement on the double tap killings, others weighed in as well: Mark Nevitt, writing in *Just Security* ([“Killing Shipwrecked Survivors is Not Just Illegal—It Endangers U.S. Servicemembers”](#)), warns that “The United States, which has military forces deployed around the globe, cannot build a safer world for its own servicemembers by discarding basic laws of war. History shows that when America blatantly abandons humane norms and the law of war, it ultimately endangers its own people.” In elaborating, he notes:

“If the United States abandons these rules, it cannot expect its adversaries to follow them when Americans are the ones captured, isolated, shipwrecked, or shot down. And it’s not

just reciprocity. Weakening the legitimacy of such fundamental rules also corrodes the underlying foundation of a system that serves U.S. servicemembers time and again. As the world's most widely deployed maritime power, the United States relies on these protections more than any other nation. And what's more, illegal orders create moral, reputational, and strategic harm long after the violations of law have ceased."

Geoffrey Corn and Ken Watkin, in their piece in War on the Rocks ("[Attacking the Drug Boats: Bending or Breaking the Law?](#)"), return to the issue of whether the attacks on the boats are legal or not, and cite [two commentators](#) who conclude they are on the ground that the United States faces "an armed attack" and therefore is entitled to act in self-defense under Article 51 of the UN Charter, and cite a second [article](#) that argues that international law has evolved based on targeting of non-state actors such as Al-Qaeda and ISIS. Corn and Watkin disagree – "it is, however, the Trump administration's effort to advance its policy agenda by continuing to distort what constitutes an armed attack that lies at the heart of the legal invalidity of this campaign."

They point out that the fundamental flaw in the argument that the strikes are legal under international is that those advancing the argument, as well as the administration, is that the United States faces a law enforcement challenge, not a "war by any objective measure." Their conclusion is not based on an overly restricted view of international law, in fact they supported a more expansive view back in 2005 of self-defense when dealing with non-state actors such as Al-Qaeda and ISIS, but recognizing the evolution in thinking around self-defense should not be "an invitation to transform every national security threat into an armed conflict –

"Unless such a threat manifests in a manner that effectively overwhelms normal law enforcement response capabilities, it is legally and functionally overbroad to treat it as an armed conflict. When dealing with a non-state group, that line is crossed only when the group has military-type organization, engages (or is about to engage) in armed attacks against the United States or its personnel or interests abroad, and brings to bear a military-type capability that cannot be effectively addressed within the normal law enforcement legal framework. In short, only when common-sense dictates a genuine threat-based necessity to resort to combat power is it legitimate to assert the existence of an armed conflict."

In short, there is no basis for comparing drug smugglers to Islamic insurgents that posed direct armed threats to the United States, to U.S. forces and facilities abroad and to the regions in which they operated. Treating drug smugglers as an armed conflict ignores a foundational principle of the right to self defense enshrined in international law, namely that it is not a blank check. The right to use force requires a genuine security necessity, a genuine imminent threat compelling a response that is proportionate to the threat. We are not without solutions – this is a law enforcement threat that can be met as it has been traditionally through interdiction by the Coast Guard.

Corn and Watkin conclude: the Trump approach,

"ignores the legal, moral, and human consequences of security overzealousness, and violates the most fundamental principle of international human rights law: the protection of human life (even the lives of suspected criminals). Instead, these interests can all be

advanced by continuing to apply the widely accepted legal authority and operational means to address criminal activity at sea. This may necessitate expanding the role of U.S. naval forces in direct law enforcement operations. But the need to enhance the resources involved in such operations does not justify the leap from law enforcement to armed conflict.”

*Just Security* carried a piece written by Ryan Goodman, Margaret Donovan and Tess Bridgeman (“[U.S. Boat Strike Campaign: Questions Congress Should Ask Executive Branch Officials](#)”) shortly before Admiral Bradley testified on the Hill, providing an insightful suite of questions that demand answers from the administration. Michael Schmitt, Tess Bridgeman and Ryan Goodman, writing in *Just Security* (“[Operation Southern Spear: Why the Crews, Drugs, and Boats are Not Targetable](#)”) provide a useful overview of the entire legal landscape governing the fast-boat strikes.

Mark Nevitt in his *Just Security* updated backgrounder (“[The Law on Targeting Shipwrecked Drug Traffickers](#)”) does a deep dive on the double tap strikes, pointing out that, as others have argued, as we are not in an armed conflict with drug smugglers, the threat they pose must lawfully be addressed through law enforcement, not lethal military operations, and then goes on to note that even if one accepts the flawed legal conclusion that we are at war, the double tap strikes violate fundamental laws of war – and as shipwrecked persons, the defenseless survivors floating in the war must be treated as *hors de combat* and are entitled to protection and rescue, not lethal attack. In other words, no matter what the administration’s characterization, the killing of the survivors is illegal.

Nevitt summarizes the flaws in each of the four arguments being proffered by the administration:

- *The Drug Boats Are Lawful Military Objectives*: the Law of War Manual states that military objectives “include any object which by its nature, location, purpose or use makes an effective contribution to military action and whose total or partial destruction, capture, or neutralization ... offers a definite military advantage.” The United States gains no articulable military advantage from targeting these drug boats that are led by gangs or cartels and that are not involved in military action against the United States.
- *The Strike Targeted the Drugs, Not the Survivors*: the boats and drugs are not war-sustaining objects because there is no war to sustain. Drug sales flow back to enrich criminal enterprises, not fund arms to be used against U.S. military forces in the region or to conduct military hostilities in or against the United States.
- *The Attack Satisfied Proportionality Analysis*: The military advantage is not clear at all – the survivors were floating in the water for 41 minutes without communications capability to escape or “return to the fight.” It is inconceivable that there is any incremental “military advantage” gained from destroying any drugs that may have still been present (apparently, none were visible at the time), even in an imaginary armed conflict scenario. But even if there were such an incremental military advantage in destroying possibly remaining

cocaine bound for Europe and sinking the already inoperable vessel, it surely would have been outweighed by the deaths of two shipwrecked survivors.

- *The Survivors Could Have “Returned to the Fight”*: “Hypothetically, the ocean currents could float any shipwrecked survivor back to safety, where they could hypothetically take up arms again sometime in the future. This is a textbook example of reverse engineering the legal justification in such a manner that expands the exception beyond all recognition, swallowing the stated rule.”

Nevitt concludes, “The broader implications [of the administration’s actions and justifications] are deeply troubling. If the administration’s legal theory prevails, it transforms routine law enforcement operations into armed conflict, strips away protections for vulnerable persons at sea, and abandons the duty to rescue that has anchored maritime law for centuries.”

### ...The Fallout on Capitol Hill

Late Friday, Sen. Roger Wicker, the chairman of the Senate Armed Services Committee, and Sen. Jack Reed, the committee’s ranking Democrat, issued a statement stating that the committee “is aware of recent news reports – and the Department of Defense’s initial response – regarding alleged follow-on strikes on suspected narcotics vessels.” The committee “has directed inquiries to the Department, and we will be conducting vigorous oversight to determine the facts related to these circumstances.” See [Washington Post](#) coverage.

The House quickly followed suit with House Armed Services chair Rep. Mike Rogers and Ranking Member Adam Smith [issuing](#) a joint statement saying the House Committee is “committed to providing rigorous oversight of the Department of Defense’s military operations in the Caribbean.” “We take seriously the reports of follow-on strikes on boats alleged to be ferrying narcotics in the SOUTHCOM region and are taking bipartisan action to gather a full accounting of the operation in question.”

Interestingly, both the SASC and the HSAC statements refer to the “Department of Defense” rather than the still faux-branded “Department of War.”

Sen. Ed Markey [posted](#) “Pete Hegseth is a war criminal and should be fired immediately.”

Sen. Angus King, who sits on both the Senate Intelligence Committee and the Senate Armed Services Committee, [told](#) CNN’s Kate Bolduan as [reported](#) by Heather Cox Richardson: “the law is clear. If the facts are as have been alleged, that there was a second strike specifically to kill the survivors in the water, that’s a stone-cold war crime. It’s also murder. So, the real question is who gave which orders, when were they given, and that’s what we’re going to get to the bottom of in the Congress.... It’s really a factual question. The law is totally clear.”

The Office of the CJCS [confirmed](#) that following the Washington Post report on the double tap strike, the Chairman had spoken with Sens. Wicker and Reed and Reps. Rogers and Smith. The SASC and HASC on a bipartisan basis could subpoena evidence, seek witness interviews and hold either public or closed-door hearings.



In his testimony on Thursday, Bradley reportedly [denied](#) that Hegseth had given a “kill everybody” order. Following Admiral Bradley’s closed-door briefing, Rep. Jim Himes [said](#) “I reviewed the video, and it’s deeply, deeply troubling. The fact is that we killed two people who were in deep distress and had neither the means nor obviously the intent to continue their mission.”

Sen. Thom Tillis, who ultimately voted to confirm Hegseth after suggesting he would not and later said he [regretted](#) voting for the confirmation, had [said](#) earlier in the week, “whoever ordered the second strike on survivors needs to get the hell out of Washington. If someone knowingly launched a second missile at that boat, which led to the deaths of the other two, then they have to be held accountable, and they shouldn’t be in whatever role they’re in.”

Sen. Rand Paul [has called](#) for Hegseth to testify to Congress under oath and for the complete video of the double tap strike to be released to the public. Sen. Chuck Schumer also called on Hegseth to testify publicly and release the video.

Noah Robertson, Alex Horton and Ellen Nakashima provide fuller insight into the decision made by Admiral Bradley – recall the reporting by Nakashima and Horton set off what has now become the most comprehensive examination of an action taken by this administration – with inquiries by two GOP-led congressional committees (“[How a U.S. admiral decided to kill two boat strike survivors](#)”).

Admiral Bradley appears to have been summoned back to Capitol Hill and told to bring his legal adviser with him. This according to an interview with Rep. Mike Rogers, the chairman of the House Armed Services Committee. As the legal adviser serves with a classified unit, he/she has not been identified.

### ***The Questions Will Keep Coming***

As **Y1, Week Forty-Eight** winds down, those calling out the double tap strike are keen to amplify the need for Congress and the American people to not lose sight of the fact that the entire enterprise – starting with the targeting of the fast boats in the first place, which began on September 2 – is illegal.

It is as simple as this – the killings in the Caribbean and Eastern Pacific – no matter how the administrations and its enablers seek to cloak this as a war (a “non-international armed conflict”) against enemy combatants that pose an imminent threat to the homeland and how often they try to obscure the situation by referring to “narco-terrorists” or in the case of the double tap strikes, talking about “radios” and “saving the cocaine” – are no different than if a member of the U.S. military or law enforcement officer walked up to a drug dealer on a street corner in a U.S. city and executed him. There is absolutely no basis for using wartime authority for what is a law enforcement activity, and in any event this is not a “non-international armed conflict.”

Drug dealing and drug smuggling (including when orchestrated by the former president of Honduras – and by the way, how does one square his release with the entire war on drug smuggling narrative) are not capital crimes – and, if supplying cocaine is the extraordinary threat to the homeland, what about all those behind the opioid



epidemic? In short, the administration has ordered the military and those supporting these operations to engage in extrajudicial killings.

Here is what needs to happen next (Former Secretary Jeh Johnson [summed](#) up some of the roadmap):

- Congress should demand public release of the video of the second strike on September 2 and should also demand public release of the OLC opinion on which the operations are based);
- the House and Senate Armed Services Committees should demand public, sworn testimony from those in the chain of command about the events of that day and the boat attacks generally;
- lawmakers should not be content with closed-door, unsworn briefings by select administration officials. The public has a right to hear the explanations for the extrajudicial killings the Trump administration is committing on our behalf; and
- “extrajudicial killing is something our government condemns when it is conducted by other nations with deplorable human rights records. We must now summon the strength of our convictions to look in the mirror and hold ourselves to the same standard.”

*NPR* [reports](#) that service members are seeking legal advice from outside groups concerning potential liability for involvement in the fast-boat strikes. The article cites call to the GI Rights Hotline, operated by Quaker House in North Carolina, among others, and the Orders Project. Frank Rosenblatt, who runs the National Institute of Military Justice (NIMJ), which includes the non-partisan [Orders Project, reports](#) an increase in the number of service personnel contacting the Project to inquire about exposure for following unlawful orders. Rosenblatt reported on one call that suggested that personnel were under pressure “by very senior political appointees to show that there was a unanimous agreement among military officers that the strikes are legally compliant.” “I think, from their perspective, it’s questionable what they may be asked to do. I think a lot of people are watching and concerned.” The article notes that the numbers seeking advice may not be large, but the fact that any are doing so “reflects the confusion and worry some of them feel about what they are being ordered to do.”

Dave Philipps of the *New York Times* raised an interesting set of issues in his article (“[Troops Involved in Boat Strikes Face a ‘Moral Injury’ Risk, Experts Say](#)”). He notes that there has been little attention paid to how the fast-boat strikes may be affecting the lower-level service members who are ordered to carry them out. Experts have a name for the particular type of trauma – “[moral injury](#).” Veterans Affairs defines moral injury as a trauma arising from perpetrating, failing to prevent, or witnessing events that contradict deeply held moral beliefs and expectations.

Moral injury has been studied, for example, among researchers tracking particularly heinous behavior, such as attacks by extremists or trafficking of child pornography. Philipps notes that hundreds could be involved in a fast-boat strike and thus exposed to psychological harm from participating in unlawful or morally/ethically problematic operations, including intelligence teams operating surveillance drones or satellites,

analysts intercepting and translating radio and mobile phone communications, sensor operators operating drone targeting lasers and drone pilots who launch missiles at the targets.

**Y1, Week Forty-Nine**, the *Intercept*, which incidentally was the first to report on the double tap strike, [reported](#) that Bradley has authorized the double tap because he did not believe the two initial survivors, who clearly were waving their arms (according to those who have seen the video) were properly surrendering by using both arms. Now keep in mind that these men could well have been fisherman and, even if they were not, on what planet do seasoned professionals consider whoever was in the water to know how to surrender “properly” after their boat has been blown largely out of the water and there is a drone or aircraft circulating overhead. Recall too that this was the first strike on a fast boat, so these men could be excused from having no idea what had just happened to them.

The *Intercept* article named a staff judge advocate (SJA) at JSOC, Bradley’s top legal adviser to whom he reportedly turned between the first strike and the

, but the author acknowledges that it is unclear what legal advice the SJA provided. Ultimately though, it is important to keep in mind that ultimately counsel advises and commanders decide.

### ***How We Got Here***

The signs dating back to the earliest days of the administration were unmistakable. Lawyers would be sidelined. The first indication of this was the firing of the Army and Air Force TJAGs by the Secretary of Defense. This prompted retired JAGs to quickly conclude that the national security apparatus would have few if any guardrails to prevent illegal operations. DoD was not the only department where effective legal counsel would atrophy.

Incidentally, [recall](#) that, in November 2019, Trump granted full pardons to two Army officers convicted or charged with war crimes and promoted a Navy SEAL who was tried and acquitted for similar violations, but demoted.

**Y1, Week Forty-Eight**, the *HuffPost* [reports](#) that there has been a significant exodus from the storied Office of the Legal Advisers at the State Department. “L” is the center of excellence in the U.S. government for opinions on whether policies and operations comport with international law. Reportedly, this year, more than 60 have left the office, which typically has a staff of between 200 and 300 people. In May, the Secretary of State had [advised](#) Congress that the Office of Global Criminal Justice would be disbanded and its work folded into “L.”

**Y1, Week Forty-Nine**, the *HuffPost* [paints](#) a deeply depressing portrait of “L,” where lawyers “worry they will face repercussions if they suggest the administration’s plans could break domestic or international law, and suspect they may be evaluated based on their apparent loyalty to President Donald Trump and his political vision, not their expertise and judgment.” Just as the gutting of independent legal advice at DoD is taking its toll not only on JAG officers but also allowing operations that violate domestic and international law to be green lighted, so too is the gutting of independent legal advice at the State Department.

## ***Legal Challenges***

**Y1, Week Forty-Seven**, the ACLU and the Center for Constitutional Rights [have filed](#) a lawsuit under FOIA seeking release of the classified OLC opinion concerning the authority of the military to carry out lethal strikes on the fast boats (which argues that the United States is in a “non-international armed conflict” with unspecified drug cartels) as well as unclassified summaries of that opinion, and the release of the July 2025 presidential directive to DoD authorizing the use of military force against the cartels (12/09/25). Plaintiffs had filed FOIA requests on October 15 seeking the documents that are now the subject of the lawsuit.

In its press release, the ACLU [notes](#), consistent with the position taken by many military law experts, that,

“Contrary to the government’s public assertions, the United States is not, and could not be, in an armed conflict with Latin American drug cartels. Under international law, an armed conflict between a state and a non-state actor exists *only* if the non-state actor is an “organized armed group” that is structured and disciplined like regular armed forces *and* is engaged in “protracted armed violence” against the state. There is no plausible argument that any drug cartel satisfies this test vis-a-vis the United States.”

**Y2, Week Two**, the mother of a Trinidadian fisherman and the sister of a second Trinidadian fisherman, both killed on October 14 when the boat on which they were travelling as they returned to Trinidad from Venezuela was attacked and sunk by the U.S. military, have [sued](#) the United States on the grounds of wrongful death as recognized under the Death on the High Seas Act (DOHSA) and extrajudicial killings as recognized under the Alien Tort Statute (ATS) (01/27/26). The complaint notes that, under the Suits in Admiralty Act, the United States has waived its sovereign immunity for claims brought under the DOHAS, the ATS, and general admiralty and maritime law. Plaintiffs are represented by the Center for Constitutional Rights and the American Civil Liberties Union Foundation. This is the first case filed in federal court over the unlawful strikes. See [ACLU](#) press statement.

It is interesting to note that this case has been filed in the District Court in Massachusetts. The complaint states that the plaintiffs have invoked its jurisdiction “in light of [its] venerable history of adjudicating admiralty disputes.”

The complaint notes that “the government has made threadbare claims that the lethal boat strikes are lawful under the laws of war. It has pointed to a still-secret Office of Legal Counsel memorandum that reportedly determined that the United States is engaged in a non-international armed conflict against scores of unspecified drug cartels in Latin America. Whatever that secret memorandum states, it cannot render the patently illegal killings lawful.” The complaint goes on to state that there is no actual armed conflict that could justify the use of lethal military force against the boats and, even if there was, the strikes would still be illegal under international humanitarian law.

Delving into the chapter and verse, as described above, international humanitarian law recognizes two types of “armed conflicts”: “international armed conflicts,” and

“non-international armed conflicts. An “international armed conflict” or “IAC,” as defined under Common Article 2 of the 1949 Geneva Conventions and customary international law, exists only when there are armed hostilities between two or more States. A “non-international armed conflict” or “NIAC,” as defined under Common Article 3 of the 1949 Geneva Conventions and customary international law, exists between a State and a non-State entity only where there is “protracted armed violence,” which is military in character, between a State and an “organized armed group.”

Because these boat strikes did not occur in an armed conflict, the laws of war do not apply. Instead, the rules under international human rights law and federal law, which protect the right to life and prohibit extrajudicial killing, govern. “Under the correct legal framework, the government is barred from using lethal force unless, at the time it is applied, lethal force is a necessary last resort to protect against a concrete, specific, and imminent threat of death or serious physical injury. Not even the government has claimed that its strikes could meet this standard. As a result, the strikes are illegal. And, even if the strikes had somehow been undertaken within an actual armed conflict, they would still be illegal.”

### ***Perfidy***

**Y1, Week Fifty-Two**, I learned a new term today or, rather, a learned a new meaning ... perfidy. “Perfidy” is a war crime – it describes feigning civilian status before attacking an adversary. Charlie Savage, Eric Schmitt, John Ismay, Julian E. Barnes, Riley Mellen and Christiaan Triebert of the *New York Times* report that the military used a secret aircraft disguised to look like a civilian plane in its September 2 attack on a fast-boat. In addition to being painted to look like a civilian aircraft, the plane carried its munitions inside the fuselage, rather than visibly under its wings. The reporting also reports that the aircraft was transmitting a military tail number, notwithstanding its paint and lack of military markings, but also notes that several experts on law of armed conflict believe the “squawking” of military identify should be irrelevant since those on the targeted fast boat presumably lacked the equipment to pick up the signal or know what it meant.

Former Air Force Deputy JAG Steve Lepper said, “Shielding your identity is an element of perfidy. If the aircraft flying above is not identifiable as a combatant aircraft, it should not be engaged in combatant activity.” The New York Times reports that the disguised aircraft flew low enough for the people aboard the fast boat to see it. The boat reportedly had turned back toward Venezuela, apparently after seeing the plane, before the first strike. The *New York Times* also reports that questions about perfidy came up in closed-door briefings of Congress by military leaders, but have not been publicly discussed because the aircraft is classified.

Sections 5.21 and 5.22 of the DoD Law of War Manual [address](#) perfidy at length. The Commander’s Handbook on the Law of Naval Operations also [addresses](#) perfidy. There refer to actions in the context of international armed conflict, and while the administration has labelled its operations to be part of an international armed conflict, many experts disagree that it is. That said, some military experts also believe that perfidy can apply in the case of non-international armed conflict, and point to

[charges](#) against a Guantánamo detainee before a military commission of perfidy over Al Qaeda's 2000 attack on the U.S.S. Cole, in which militants in a small boat floated a hidden bomb up to the side of the warship while waving in a friendly manner.

The irony should not be lost on anyone: on the same day that Sen. Kelly files his complaint challenging the sanction for raising the obligation to disobey an unlawful order, a new angle on an unlawful act likely constituting murder emerges.

### **Kinetic Operations Against Venezuela?**

**Y1, Week Fifty**, we learn the answer – see [Maduro Capture](#), below

As **Y1, Week Forty-Five** winds down, talk of kinetic action against Venezuela is rippling through the halls of official and unofficial Washington. The arrival of the aircraft carrier USS Gerald R. Ford means there are now about 15,000 troops in the area. There are also seven U.S. warships in the Caribbean: the guided missile cruisers USS Gettysburg and USS Lake Erie; the destroyers USS Gravely and USS Stockdale; and the amphibious ships USS Iwo Jima, USS Fort Lauderdale and USS San Antonio. See [Washington Post](#) coverage. There is also the special operations command ship, MV Ocean Trader. In Puerto Rico, the United States has deployed 10 Marine Corps F-35Bs, MQ-9 Reaper drones, and P-8 Poseidon spy planes.

The Stimson Center provides an interesting comparison between Venezuela and Operation Just Cause, the 1989 invasion of Panama and removal of General Noreiga (“[A War in Venezuela Would Not Solve Latin America’s Drug and Dictator Problems](#)”). Panama had a population of 2.4 million and was roughly the size of South Carolina; Venezuela has a population of close to 28.5 million and is roughly twice the size of California. The U.S. invasion required several Y1, Weeks and involved [26,000 U.S. troops](#). Short of a land invasion (and recall Trump’s aversion to casualties), Trump could opt for a Libya-style intervention based on an air campaign, supplemented by limited special operations forces to support a hoped-for armed local uprising by opposition forces. Venezuela’s two largest neighbors, Brazil and Colombia, are led by leaders openly critical of Trump.

If Trump does move forward with strikes against Venezuela, how does that square with his obsession with getting the Nobel *Peace* Prize, his frequent promises to avoid entering into new conflicts and the recent promises he and two of his senior most officials (Rubio and Hegseth) have made to Congress, on the basis of which Republicans rejected legislation that would shut down kinetic activity in Venezuela?

POLITICO’s senior foreign affairs correspondent Nahal Toosi posted an interesting piece on “Day-After” planning, reporting on administration planning for the removal of Maduro – ranging from what happens to Maduro (safe passage or arrest and trial in the United States) to which sanctions on Venezuela to lift and when, to which international financial institution might play a role in rebuilding the economy. And, of course, there are the 300-billion barrels of oil reserves, the largest in the world.

Toosi reports that these Day-After conversations are not particularly well-coordinated or robust. This is not particularly surprising given the stated rationale of countering drug trafficking and not regime change.

Toosi also raises the spectre that a post-Maduro regime could be led by someone even more anti-American and corrupt, or the country could spiral further downward if a resulting power vacuum is filled by the cartels, other criminal enterprises or armed military units. The United States does not have a great track record in ousting governments (*see, e.g., Philip Gordon's "Losing the Long Game: The false promise of regime change in the Middle East"*). And consider that with the gutting of USAID, there are few left in the federal government who could lead efforts to stabilize the country.

As **Y1, Week Forty-Six** looms, what is left, as the New York Times [frames](#) it, is “strategic incoherence, with officials explaining a different mix of grievances, objectives and acceptable outcomes.” While the Secretary of State continues to maintain this is all about counter-narcotics, the Secretary of Defense now has [attached](#) a name to an objective – “Southern Spear” is about protecting America’s neighborhood, the Western Hemisphere.

So, is this regime change waged by social media posts (even an American Embassy is drafted in – [announcing](#) a deployment of the Marine Corps 22nd Marine Expeditionary Unit deployed with SOUTHCOM in joint exercises this coming Y1, Week with the Trinidad and Tobago Defense Forces) or will we see actual operations this coming Y1, Week? Perhaps time to [rewatch](#) “Wag the Dog.”

**Y1, Week Forty-Nine**, Vivan Salama and Sarah Fitzpatrick of *The Atlantic* (“[Trump Knows What He Wants, Just Not How to Get There](#)”) explore how Trump might achieve his goal of gaining access to Venezuela’s oil reserves (estimated to be about 17% of the world’s known reserves) and significant untapped deposits of rare earth minerals and report on the opacity of the process reportedly being led by the Secretary of State. They report on divisions as to how best to achieve that objective, some recognizing that removal of Maduro could be counter-productive, creating a failed state and triggering a massive wave of emigration.

Sen. Mark Warner, a member of the Gang of Eight, in an interview with ABC News’ The Y1, Week, when asked what he was expecting, [complained](#) that “where we’re supposed to be briefed on everything, I would have the answer to that. I don’t. I do not know what this president’s goal vis-a-vis Venezuela is. Again, particularly since he makes the accusation that we’re trying to stop the narco drug traffickers. And the vast majority of the drugs come from Ecuador and Colombia. Venezuela may be a bi-station, but I don’t think the president has made the case.” Rep. Mike Turner, former chair of the House Intel Committee, expressed similar concerns during the same interview.

*See [The Hill](#) coverage. See also Tess Bridgeman, Michael Schmitt and Ryan Goodman, “[Expert Q&A on Operation Southern Spear and Seizure of Sanctioned Vessels](#)” (as updated for seizures of sanctioned vessels).*

**Y1, Week Forty-Eight**, Trump [ordered](#) that the Venezuelan government be designated an FTO and ordered a blockade of “all sanctioned oil tankers” going in and out of Venezuela. Axios [reports](#) that there are about 18 tankers under U.S. sanctions loaded with oil that are currently within Venezuelan waters (including eight classified



as Very Large Cargo Container tankers), and that U.S. forces plan to seize them when they move into international waters. The vessels reportedly are to be placed on the [SDN list](#).

Last week, the United States seized an oil tanker off the Venezuelan coast. Commentators generally agree this was a proper law enforcement operation, raising of course the question of why the fast-boats are not being treated as a law enforcement matter as both the law and custom contemplate. The seized tanker is part of a network of “ghost ships” that move transport oil from Iran, Russia and Venezuela in violation of U.S., E.U. and other international sanctions. Much of Venezuelan oil is shipped to China; [reportedly](#), not all Venezuelan oil is sanctioned, as some crude is delivered to U.S. refineries under OFAC licenses held by Chevron.

Ghost ships typically are owned by shell companies, are older than average tankers and use “spoofing” tactics to mask their locations and destinations. The seized tanker has been identified as the Skipper, which had been [placed under sanction](#) (under a different name) in 2022.

See Michael Schmitt and Rob McLaughlin explainer in *Just Security* “[Blockading Venezuela: The International Law Consequences](#)” and Elizabeth Hutton’s explainer, also in *Just Security* “[Maritime Law Enforcement on the High Seas: Authority, Jurisdiction, and the Seizure of The Skipper](#).”

As **Y1, Week Forty-Eight** winds down, U.S. forces are pursuing a third ghost vessel, having [seized](#) a second tanker earlier in the week. These last two were conducted by the Coast Guard. The second vessel does not appear to have been under sanction. The tally of fast boat strikes [reportedly](#) is 29 vessels struck and 104 killed.

Karen DeYoung, writing in the *New York Times* (“[Trump faces narrowing options on Venezuela action](#)”), sets out various options available to Trump, but short of ground forces to eject Maduro, there may not be much Trump can do. She notes that Trump has [set out](#) a new rationale for his focus on Maduro, including the “blockade” – Maduro is using oil, land and other assets expropriated decades ago from Americans to finance his criminal activities. Clearly this has nothing to do with drug interdiction or immigration.

**Y1, Week Forty-Nine/Fifty**, the CIA reportedly carried out a drone strike earlier in December on a remote boat dock at a port facility on the Venezuelan coast, representing the first known kinetic strike inside Venezuela and marking a significant escalation in Trump’s pressure campaign against Maduro. The dock is believed to have been used by TdA for storing drugs and then moving them onto boats for shipping. The strike was first [reported](#) by Natasha Bertrand, Zachary Cohen and Jim Sciutto of CNN. They also reported that Special Operations Forces provided intelligence to support the strike, but a spokesperson for Special Operations Command said that “Special Operations did not support this operation to include intel support.”

Last week Trump causally mentioned on a WABC radio talk show in his standard rambling style that the United States had hit “a big plant or a big facility where they send the, you know, where the ships come from.” He provided no other details. On

Monday, at Mar-a-Lago, confirmed a “major explosion in the dock area where they load the boats up with drugs. So, we hit all the boats... .”

No word on the dock strike from the Secretary of Defense, who has been prolific in recounting each strike on fast boats. Instead, we did get an announcement of another fast boat strike, this time bringing the number of illegally murdered above 100.

Recall that the War Powers Resolution was intended by Congress to rein in the ability of a president to conduct his own war without congressional authorization under Article I.

### **What’s Wrong with the Fentanyl Excuse**

It is now beyond doubt that the “war on drugs” was a failure. As Joshua Frens-String and Alejandro Velasco explain (*see* “[Drugs, Wars, and Capitalism](#)”), the winner of the war on drugs: “perfecting an economy of death at the nexus between states, militaries, paramilitaries, and capital” in the Americas.

Dr. David Herzberg, a professor of history and director of the drugs, health and society program at the University at Buffalo, published an op-ed in the *New York Times* (“[I Am a Drug Historian. Trump Is Wrong About Fentanyl in Almost Every Way](#)”). He takes issue with the narrative that America spiralled down from “greatness to crisis” because of the Democrats and their open-border policy. Staunching the flow of drugs, in Trump’s view, “will let the wholesome, traditional American culture that he idealizes to flourish again.” That narrative, Herzberg contends, “is wrong in almost every way.”

There is no “wholesome, traditional drug-free America” and there never was. Drug use has long been prevalent even in the white suburbs and rural areas that MAGA calls the “real America.” Herzberg traces the cycle of addiction – regulation – new drug products to the Gilded Age. Addiction, particularly among white elites, soared as pharmaceutical heroin, cocaine and morphine flooded the markets. Federal law curbed the growth of the opioid markets, but drug use remained a persistent feature of the American experience, and while white flight and segregation led to waves of heroin addiction in the major cities for twenty years into the 1970s, the focus on the cities missed the accelerating drug crises outside of the big cities.

And, as the regulation of pharmaceutical cocaine and heroin ramped up, the pharma companies pushed first barbiturates and eventually in the 1960s-70s Valium and Quaaludes. Separately, amphetamine use skyrocketed, particularly among white and middle-class Americans. Herzberg posits that, as the war of drugs focused on urban working-class areas, physicians in rural areas had freer rein to push out opioids in “real America.” Fast forward to the past few years, and we have a demand crisis –

“Fentanyl traffickers were responding to consumer demand. They did not create it. The opioid crisis initially struck white areas not because of a conspiracy to destroy heartland America. Rather, it was a devastatingly ironic result of white Americans’ privileged access to the medical system. Physicians’ willingness to recognize and treat their pain opened their communities to pharmaceutical companies’ flood of opioids. The drugs’ ubiquity meant that they were easy to get whether one had a prescription for them or not. Three decades in, the opioid crisis is no longer mostly white.”

Herzberg concludes that choking off the supply chain of fentanyl sourced from Mexico and China will not solve the problem. He warns that “history strongly suggests that it would just be replaced by newer, possibly even more dangerous supply chains. There is no shortage of global pharmaceutical production capacity. And in a world where people and goods circulate freely, there will always be ways for a tiny powder to travel with them.”

Ultimately, “there is no drug-free utopia to return to. Efforts to achieve this impossible goal will only mire us in wars and encourage the drug trafficker ‘innovations’ that intensify violence, contribute to [destabilizing our neighbors](#) and favor increasingly dangerous drugs.”

**Y1, Week Forty-Seven**, in another head-scratching move, and notwithstanding that the entire narrative underpinning the attacks on the fast boats in the Caribbean and the Pacific and the build-up of forces off the coast of Venezuela is to combat drug trafficking, Trump announced he would “grant a full and complete” pardon to a former president of Honduras, Juan Orlando Hernández, whom Trump characterized as a victim of political persecution. As [summarized](#) by the New York Times, testimony and other evidence showed how Hernandez “maintained Honduras as a bastion of the global drug trade. He orchestrated a vast trafficking conspiracy that prosecutors said raked in millions for cartels while keeping Honduras one of Central America’s poorest, most violent and most corrupt countries.”

Last year, the former Honduran president was convicted on drug trafficking and weapons charges and sentenced to 45 years in prison. Prosecutors charged that Hernandez was a key player in a scheme that spanned more than 20 years and smuggled more than 500 tons of cocaine into the United States. He was also accused of taking bribes from the former leader of the Sinaloa cartel in Mexico known as “El Chapo,” Joaquin Guzman,

Trump offered no evidence that the prosecution was tainted by political persecution. He claims “many friends” asked him to grant the pardon, Trump has linked the pardon to his endorsement of Nasry “Tito” Asfura, the former mayor of Tegucigalpa, one of the three candidates running in Honduras’ [election](#) on Sunday, warning that he could cut U.S. support to Honduras if Asfura loses.

**Y1, Week Forty-Nine**, thanks in part to Trump’s intervention, the November 30 Honduran election in which three candidates are running to replace President Xiomara Castro of the leftist Liberty and Refoundation party (Libre) – the Libre candidate Rixi Moncada, Asfura of the conservative National Party (PN), and sports commentator Salvador Nasralla of the right-leaning Liberal Party’s (PL) – is [in chaos](#). In a Truth Social post, Trump [accused](#) Honduran officials without evidence of “trying to change the results of their Presidential Election,” warning that there would be “hell to pay” if they do. President Castro has alleged there is an “electoral coup” in progress – vote tallies [show](#) the PN and PL candidates well in the lead with a narrow margin between them of only 42,000 votes, and the Libre candidate trailing at 19.3%.

**Y1, Week Forty-Eight**, Trump issues his [Designating Fentanyl as a Weapon of Mass Destruction](#) EO.

## Yet Another Example that Casts Doubt on the Seriousness of Drug Interdiction

Starting in February, the administration suspended prosecution of maritime cocaine smugglers (which, incidentally, represent the vast majority of cocaine seized by U.S. law enforcement). Specifically, the Attorney General [announced](#), in one of the 11 memoranda issued on her first day, that DoJ would no longer prosecute boat crews under the Maritime Drug Law Enforcement Act (MDLEA), which is the basis for all major maritime interdictions. Since then, the Coast Guard has continued to interdict smuggling vessels and detain their crews. But when the crews are brought to the United States, they are not arrested and prosecuted, but are sent into the general deportation process, presumably to help meet deportation quotas. As part of the prosecution process in place for over 45 years, defendants provided intelligence on drug smuggling operations are potentially able to obtain lighter sentences.

As a consequence of casual repatriation of boat crews apprehended by the Coast Guard, a potential significant source of intelligence has dried up, reducing law enforcement's ability to anticipate future drug shipments.

## Maduro Capture – At War with Venezuela?

End of **Y1, Week Fifty**, at 1:30 a.m. Caracas time on Saturday, the United States launched Operation Absolute Resolve, [reportedly](#) with 150 warplanes flying from 20 locations throughout the Western Hemisphere, and drones, attacking air defenses and other key installations, and by 3:29 a.m. President Maduro and his wife were aboard a U.S. aircraft heading out of Venezuela. The capture reportedly was carried out by Delta Force units and the 160th SOAR. Presumably someone in Maduro's inner circle betrayed his location to the CIA. See [The Economist](#) coverage.

To be clear, Maduro and his repressive regime deserve no sympathy – *see, e.g.*, the U.N. report [linking](#) the Venezuelan National Guard to systematic and coordinated repression, torture, sexual violence, arbitrary detention and killing. Maduro stole the presidential election in 2024.

## The key takeaways

The key takeaways regarding the January 3rd attack on Venezuela and the capture of Maduro, and the timing of the operation (incidentally, Panamanian President Manuel Noreiga surrendered to U.S. forces on *January 3, 1990*):

- ***The attack violated the Constitution.*** Congress alone has the power to declare war. Trump violated the War Powers Resolution by failing to obtain congressional authorization to attack another country. Trump also failed to advise members of the congressional oversight committees. To be clear, there was no threat to U.S. forces or an imminent threat to the United States. Congress approved both the invasions of Afghanistan and Iraq. Representatives of the administration repeatedly and explicitly told members of Congress that the United States would not undertake regime-change operations in Venezuela.

Panama had [declared](#) that it was in a “state of war” with the United States and had harassed U.S. service members based in Panama, including incursions

onto U.S. military bases and confrontations between U.S. forces and Panamanian security forces. The Senate had adopted language calling for the use of military options to depose Panama's government. *See generally*, the Brennan Center's "[No Legal Basis for Invading Venezuela](#)."

- *The attack violated international law.* The United States cannot attack another country except in self defense against armed aggression under Article 2(4) of the U.N. Charter.
- *The capture violated international law.* The lawful process would have been to seek extradition.
- The drug-trafficking charges *represent the height of hypocrisy* following the [pardon](#) of former Honduran President Juan Orlando Hernández.
- The *attack signals to Russia and China* that they can undertake similar operations with impunity. As Sen. Mark Warner [noted](#) in his press statement, "If the United States asserts the right to use military force to invade and capture foreign leaders it accuses of criminal conduct, what prevents China from claiming the same authority over Taiwan's leadership? What stops Vladimir Putin from asserting similar justification to abduct Ukraine's president? Once this line is crossed, the rules that restrain global chaos begin to collapse, and authoritarian regimes will be the first to exploit it."
- The attack further confirms to our allies that the United States *has become an aggressor nation*.
- Apparently 40 people died as a result of the operation, which brings the total of those *unlawfully killed* by the U.S. military in Venezuelan operations to around 150. Of those reported killed, apparently 32 were members of the Cuban military or intelligence services posted in Caracas.
- DoJ appears to be blowing through another deadline imposed by the Epstein Files Transparency Act (January 3rd was the deadline by which DoJ was to submit to Congress written justifications for any of the Epstein files that had been redacted or withheld; DoJ also missed the December 19th deadline for releasing the files themselves) and last week the Republicans in the House released the Jack Smith video testimony and transcripts on New Year's eve. Is it all intended as *a distraction?* And, let us not forget the upcoming fifth anniversary of January 6<sup>th</sup>.
- Trump and his enablers have *failed to heed the lessons* of virtually every other effort at regime change. They never end well. Ironically, the person who likely would have served as the National Security Advisor had Trump not won re-election, wrote a book chronicling the list of failed efforts at regime change: Philip Gordon's "[Losing the Long Game](#)." As a reminder, consider Afghanistan, Iraq and Libya, this century, and Chile, Cuba, Guatemala and Nicaragua during the last century.

The stated purpose of the attack appears to be *to seize control of Venezuela's oil industry*. If this operation was merely intended to seize Maduro, then why is the United States now planning to "[run the country](#)." Perhaps this is a fantasy

effort to offset the loss of Iranian oil, if we take out Iranian oil production. Incidentally, a significant proportion of the oil [exported](#) by Venezuela (80%) goes to ... China.

- The Trump press conference made clear he and his enablers have no clue what Trump means when he says the United States “*will run the country until such time as we can do a safe, proper and judicious transition.*” He said he expected that U.S. oil companies would be pouring money into Venezuela, but, [reportedly](#), the U.S. oil majors are in no hurry to participate in the theft of Venezuelan oil, particularly given that the infrastructure is completely degrade. Analysts who spoke to Reuters [noted](#) that oil companies willing to risk investing would need to deal with “security concerns, dilapidated infrastructure, questions about the legality of the U.S. operation to snatch Maduro and the potential for long-term political instability.” Venezuela apparently would also have to pass legislation to permit larger foreign investment. At best, the earliest an investment yields oil output could be five to seven years from now.

According to Reuters, Venezuela produced as much as 3.5 million barrels per day in the 1970s, at the time representing over 7% of global oil output. Production fell below 2 million bpd during the 2010s and averaged around 1.1 million bpd in 2025, or just 1% of global production. Venezuelan oil is rich in sulfur and not easily accessible. Recall that the hype about Venezuelan oil is based on reserves – who knows how much there really is. How much can be brought to the surface and refined, at today’s prices?

- And then there is the potentially precarious security situation. In contrast to Panama, which had 3 million people and U.S. troops in country, Venezuela has 28 million people and is twice the size of California. Maduro’s allies have condemned his capture and reportedly have already taken action to reassert control in the wake of the attack. Although polls found Venezuelans wanted Maduro out, a substantial number of people have remained loyal to the regime. The regime, as Reuters explains, is supported by armed traffickers, including battle-hardened left-wing Colombian ELN guerrilla fighters, together with an army estimated by military experts to have well over 100,000 troops. *See Wall Street Journal* [reporting](#) on the extended web of cocaine traffickers that reaches into the highest levels of the Venezuelan government and military.

As the New York Times [pointed out](#), the ELN, which has a presence in the west of Venezuela, or the paramilitary groups known as “colectivos” that have operated on the periphery of power under the Maduro dictatorship, could seek to take advantage of the power vacuum. Further unrest “could unsettle global energy and food markets and drive more migrants throughout the hemisphere.” *See “[The Peril of Ousting Maduro](#)” in Foreign Affairs.*

Oh, and, there are an estimated [7.7 million](#) refugees that have fled Venezuela since 2014, and the vast majority are living in out parts of Latin America and the Caribbean.

- Who knows what this all *portends for Colombia, Mexico and Cuba.*



## *The indictment*

Following the capture of Maduro and his wife, a superseding indictment, signed by SDNY U.S. Attorney Jay Clayton, [was unsealed](#). In March 2020, an indictment [was unsealed](#) that covered Maduro and 14 other defendants. The superseding indictment adds Maduro's wife, but otherwise has fewer defendants. The others charged are Maduro's son, the Minister of the Interior, Justice and Peace, a former Minister of the Interior and Justice, and the leader (or a leader) of TdA.

Like its predecessor, the superseding indictment alleges that the defendants protected and promoted drug trafficking: "This cycle of narcotics-based corruption lines the pockets of Venezuelan officials and their families while also benefiting violent narco-terrorists who operate with impunity on Venezuelan soil and who help produce, protect, and transport tons of cocaine to the United States."

Professor Vladeck [raises](#) the spectre that the administration will rely on two strands of justifications, neither of which has been blessed by the Supreme Court – the so-called 1989 OLC "override" opinion authored by then-Assistant Attorney General Bill Barr that [posits](#) that extraterritorial arrests, even if they violate international law do not breach domestic law, including the Fourth Amendment, and a 1971 OLC opinion authored by then-Assistant Attorney General William Rehnquist that [posits](#) that the President has inherent constitutional authority to use military force to protect federal institutions and officers in the exercise of their federal duties (known as the "unit self defense").<sup>39</sup> Neither, however, makes the operation legal under international law. Moreover, the override opinion has been subject to significant criticism by those who would view the operation as also violating domestic law. *See, e.g.*, Brian Finucane, "[Presidential War Powers, The Take Care Clause and Article 2\(4\) of the U.N. Charter](#)."<sup>40</sup>

## *What next?*

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<sup>39</sup> Various administration officials justified the kinetic military strikes as necessary to protect and defend FBI agents arresting Maduro and his wife. *See* "[Can the U.S. Legally 'Run' Venezuela After Maduro's Capture? Here's What to Know](#)." As Professor Vladeck pointed out, "If Article II authorizes the use of military force *whenever* a foreign national living outside the United States has been indicted in a U.S. court, that could become a pretext for the United States to use military force almost anywhere—in circumstances that could easily (and quickly) escalate to full-fledged hostilities." *See also*, Michael Schmitt, Ryan Goodman and Tess Bridgeman's "[International Law and the U.S. Military and Law Enforcement Operations in Venezuela](#)."

<sup>40</sup> Finucane argues that the "override" opinion conflates two questions – whether and when a U.S. court can enforce a treaty that has been duly ratified by the Senate but was to which Congress has not separately enacted a law that incorporates its terms, and separately whether a ratified treaty qualifies as a law that the President is constitutionally obligated to obey, whether or not U.S. courts can enforce it. He and others who believe the "override" opinion was erroneous take the position that a President is bound by Article 2(4) of the U.N. Charter even if no U.S. court can order the President to obey it.

Robbie Gramer and Juan Forero, writing in the *Wall Street Journal*, [report](#) that the administration “is racing to assemble an interim governing structure for Venezuela – one that would repair a battered oil industry and stabilize a country ruled for years by a group that plundered its riches and facilitated trafficking across its territory.” When it comes to this administration, we should not be surprised that there was little or no preparation for the “day after.” Keep in mind that so many whose expertise would be necessary, at the State Department and USAID, have been fired.

One might have thought based on history that this was about restoring democracy. But no, this is anything but. Venezuela is a sovereign nation, it has a constitution and it has a legitimately elected leader, Edmundo González Urrutia. Not only has there been no mention of González, but despite the fact that María Corina Machado dedicated her Nobel Peace Prize to Trump (she was barred from running and so backed González), Trump bizarrely dismissed her as a “nice woman” who “doesn’t have the support or the respect within the country.” As Timothy Snyder, among others, [points out](#), the U.S.-supported extraction of Machado only four weeks ago, so she could appear in Oslo to receive her prize, may well have been designed to get her off the ground and out of the way. There is subsequent [reporting](#) that Trump decided to snub Machado because she failed to turn down the Nobel Peace Prize.

As a Venezuelan friend who was forced to flee Venezuela years ago after being persecuted by the Chavez regime remarked, “I am deeply concerned that U.S. involvement could open the door the door to outcomes that do not culminate in the presidency of González or in any transitional outcome agreeable and with the involvement of [González].”<sup>41</sup> Any international engagement must be unequivocally aligned with the Venezuelan people’s democratic will and must enable alternative arrangements that undermine a constitutional transition and the will of the Venezuelan people.”<sup>42</sup>

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<sup>41</sup> As Anne Applebaum [points out](#), González received two-thirds of the vote in the 2024 election, despite the fact that state-controlled media backed Maduro, and his police and paramilitaries harassed, arrested, and murdered González supporters. Machado and González collected documentation from polling stations supporting their victory. Maduro never produced any such proof but declared victory anyway.

<sup>42</sup> Jimmy Story, a former U.S. ambassador to Venezuela, in an op-ed [written](#) shortly before the seizure of Maduro, had suggested that

“Washington ... approach dismantling the Maduro regime as we would any criminal enterprise. Venezuela is a failed state riddled with illegal armed groups and foreign terrorist organizations. FARC dissident factions, E.L.N. and Tren de Aragua, among others, operate there in an environment where the state is either complicit in their activities or incapable of halting them. The Trump administration should create an interagency task force, drawing on the authorities of the intelligence community and the Treasury and Justice Departments, to work with the democratic opposition and identify trusted elements in Venezuela’s armed forces to take charge of security during a political transition if and when Mr. Maduro leaves power. We learned the lesson of de-Baathification in Iraq, when disaffected former members of the military fueled a costly insurgency that slowed the rebuilding of Iraqi society. The task force could work with President-elect Edmundo González and the leader of the opposition, the

Perhaps the question of the hour, where does the Venezuelan army, many of the officers of which have profited from the corruption of the regime and its blind eye towards drug trafficking, stand? See generally, *The Economist's* "[The many risks to Donald Trump's plans to 'run' Venezuela](#)."

Which brings me to another theory making the rounds – this was not really regime change, but rather a negotiated exchange. Maduro was sacrificed by elements of his own regime – they get to stay in power (and Machado is out), and Trump gets to stabilize the world's supply of oil and gets a made-for-television narrative of force projection – his own Usama bin Laden moment, as well as the chance to reassert the Monroe Doctrine, spiced with the Trump corollary.

**Y1, Week Fifty-One**, Trump started off the week [reportedly](#) reversing course after praising Venezuelan leader Delcy Rodríguez the day before ("She's essentially willing to do what we think is necessary to make Venezuela great again") and warning her that "that if she doesn't do what's rights, she is going to pay a very big price, probably bigger than Maduro." Her transgression? She said the country is ready to defend its natural resources and demanding Maduro's return. Rodríguez was sworn in as interim president on Saturday.<sup>43</sup>

In a shift that would likely put him at odds with his MAGA base, he told *The Atlantic's* Michael Scherer that "rebuilding there and regime change, anything you want to call it, is better than what you have right now. Can't get any worse." As for Greenland, Trump reiterated "we do need Greenland, absolutely. We need it for defense."

At this point, Machado is out and Rubio's vision of regime change also seems to have fallen by the wayside.

In his wide-ranging Oval Office interview with the New York Times, Trump [suggested](#) that the United States would be running Venezuela and extracting Venezuelan oil for years, and insisted that the interim government of the country is "giving us everything that we feel is necessary." He continued, "We will rebuild it in a very profitable way. We're going to be using oil, and we're going to be taking oil. We're getting oil prices down, and we're going to be giving money to Venezuela, which they desperately need." Trump declined to answer questions about why he recognized Delcy Rodríguez as Venezuela's new leader instead of Machado, and declined to comment when asked if he had spoken to Ms. Rodríguez.

Trump also said that the United States was already making money by taking oil that has been under sanctions. He referred to his earlier announcement that the United States would obtain 30 to 50 million barrels of heavy Venezuelan crude oil. It was

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Nobel laureate María Corina Machado, to game out how to quickly re-institutionalize the country in a way that represents all democratic points of view."

Story warns "The Trump corollary to the Monroe Doctrine cannot become "talk brashly and merely show the stick"; it's unlikely that we will bluff our way into policy success."

<sup>43</sup> See *CBS News*, "[As Delcy Rodríguez is sworn in as Venezuela's interim president, who is Nicolás Maduro's former No. 2?](#)"

[reported](#) that Energy Secretary Chris Wright had said the United States would sell Venezuelan oil “indefinitely.” Speaking at a Goldman Sachs energy conference, Wright explained, “We’re going to market the crude coming out of Venezuela: First this backed-up stored oil, and then indefinitely, going forward, we will sell the production that comes out of Venezuela into the marketplace.”

Perhaps most worryingly, Trump [told](#) his New York Times interviewers that, as commander-in-chief, he has only one limit on his power: “My own morality. My own mind. It’s the only thing that can stop me.” He said he gets to determine what is legal under international law, and seemed to stretch that authority to domestic affairs, as well, saying that he was already considering work-arounds if the Supreme Court were to declare his tariffs unconstitutional, by repackaging them as “licensing fees,” and that he could invoke the Insurrection Act to deploy troops in the United States if he “felt it was important to do so.”

**Y1, Week Fifty-Two**, Machado [“gives”](#) her Nobel Peace Prize to Trump, who in a post on Truth Social thanked her for a “wonderful gesture of mutual respect.” The Norwegian Nobel Committee [reiterated](#) that the prize remains inseparably linked to the original recipient: “A laureate cannot share the prize with others, nor transfer it once it has been announced. A Nobel Peace Prize can also never be revoked. The decision is final and applies for all time.”

Kristian Berg Harpviken, Director of the Norwegian Nobel Institute and Secretary of the Norwegian Nobel Committee, [made clear](#) that “receiving the symbols of the Peace Prize does not make anyone a Peace Prize laureate.” Harpviken [noted](#) that Norwegian author Knut Hamsun, who won the Nobel literature prize in 1920, mailed the medal to the Nazi propaganda minister, Joseph Goebbels. Dmitry Muratov, a Russian journalist among those receiving the Peace Prize in 2021, auctioned off his medal for \$103.5 million after Russia invaded Ukraine, all of the proceeds of which were donated to care for Ukrainian refugee children.

It is not clear that Machado received anything in return for her gift to Trump. While she was at the White House, CIA Director Ratcliffe reportedly was in Caracas meeting with Venezuelan interim president Delcy Rodríguez. *See* [reporting](#) by David E. Sanger of the New York Times.

**Y2, Week Two**, the Secretary of State testifies before the Senate Foreign Relations Committee. Reportedly, among his remarks, Rubio [said](#) that “Rodríguez is well aware of the fate of Maduro; it is our belief that her own self-interest aligns with advancing our key objectives.” Demands on her include the opening of Venezuela’s energy sector to U.S. companies, providing preferential access by U.S. companies to production, using oil revenue to purchase goods from the United States, and ending oil exports to Cuba. The administration is moving forward with normalizing relations with Venezuela but that would include revocation of the United States’ recognition of the parliament elected in 2015 as the legitimate government of Venezuela. Democrats, including Sen. Tim Kaine, vented their frustration over the refusal of the administration to release the legal justification for the attacks on boats in the Caribbean and the Eastern Pacific (which now reportedly total 36 strikes and 117 killed).

**Y2, Week Four**, Congressional Democrats have introduced legislation (the [Venezuela Oil Proceeds Transparency Act](#)) calling for a GAO audit of the activities of the State Department, Treasury and the Department of Energy and any other parts of the executive branch in implementing the U.S.-Venezuela energy deal. The *New York Times* report that Senate and House Democrats were not satisfied with administration explanations regarding the supervision and disbursement of as much as \$500 million in oil sale proceeds held in Qatari accounts. The reporting cites contradictions between the Secretary of State (who promised audits would be forthcoming) and the Treasury Secretary (who said he was unaware of any finalized agreement covering the funds and confirmed no audit agreement was in place).

There is a separate and important question, namely under what authority is the Treasury Department authorized to collect, hold or disburse the funds. In other words, what is the legal basis for the administration to be operating outside the appropriations process that allows the government to spend only what is appropriated by Congress and requires the executive branch to hand over any money to the Treasury unless expressly authorized by statute not to. Secretary Bessent cited IPEEA “but struggled to explain how it applied” and promised to “get back” to lawmakers with a written explanation. Recall that in the case of Iraq oil, U.S. control was based on U.N. Security Council approval and congressional authorization.

### ***Reactions of Note***

Jack Goldsmith, in his Substack (“[On the legality of the Venezuelan invasion](#)”), notes that if Trump does intend to run the country then the United States will be an occupying power, the actions of which will be governed by international law, principally the Fourth Geneva Convention. The DOD [Law of War Manual](#) explains: “Military occupation is a temporary measure for administering territory under the control of invading forces, and involves a complicated, trilateral set of legal relations between the Occupying Power, the temporarily ousted sovereign authority, and the inhabitants of occupied territory.”

Sen. Jack Reed’s statement succinctly [captures](#) the key elements of what the American people now confront:

- Trump is waging war against a sovereign nation, without authorization from or notification to Congress;
- Trump first said the operation was to capture Maduro then he claimed it was to run the country and seize its oil;
- no serious plan has been presented as to how this will work and how much it will cost;
- the operation violates international law;
- the operation represents a profound constitutional failure – only Congress can declare war;
- Trump is weakening the international order we rely on to condemn Putin’s invasion of Ukraine and deter China from invading Taiwan;
- congressional Republicans should step up and join Democrats in exercising their constitutional duty.



See also Sen. Jeanne Shaheen's statement, available [here](#).

Sens. Grassley and Durbin [issued](#) a joint statement criticizing as “unacceptable” the failure of the administration to brief the Senate Judiciary Committee, which has primary jurisdiction over law enforcement matters, including the DoJ, FBI and DEA and noting that Trump and Rubio both characterized the Venezuelan raid as a “law enforcement” operation.

Former State Department lawyer Brian Finucane [takes issue](#) with the notification provided Congress under the War Powers Resolution, noting for example that in contrast to the notification provided in 1989 following the invasion of Panama, the Venezuela notification does not detail attacks upon or actual threats to Americans and provides not justifications under international law. Finucane also notes that the invocation of the Take Care Clause is inappropriate, as that clause would constrain presidential powers, including in this case to ensure that laws be faithfully executed, meaning in this case Article 2(4) of the U.N. Charter.

Incidentally, I note that the notification characterizes Maduro as “[leading] the regime-sponsored enterprise Cartel de los Soles, a designated Foreign Terrorist Organization,” yet only hours later DoJ backed off the claim that Maduro led Cartel de los Soles. As noted, that phrase is but a figure of speech. See “[Trump Team Calls Maduro a ‘Cartel’ Boss. That Word Doesn’t Mean What You Think](#)” and “[Justice Dept. Drops Claim That Venezuela’s ‘Cartel de los Soles’ Is an Actual Group](#).”

As for the oil bonanza about which Trump is fantasizing, Thomas Freedman, in his op-ed (“[Venezuela, Trump Came to Liberate Your Oil, Not Your People](#)”), offered a different vision – “Trump probably [hopes](#) that if he can bring Venezuela’s massive, untapped oil reserves to market, he will be able to drive down the price of gasoline at the pump toward \$1 a gallon and win the midterms.” But it is not that simple: U.S. oil companies will not readily invest billions amidst potential instability and uncertainty.

“Trump will soon discover that the only way to revive major American oil investments in Venezuela is to revive Venezuela’s democracy. If you were running a major U.S. oil company, would you invest billions upon billions of dollars in a foreign country being run by remote control from the White House under the threat of force by Trump, Pete Hegseth, Marco Rubio and Stephen Miller? I wouldn’t invest in their lemonade stand.”

**Y2, Week Three**, Charlie Trumbull and Michael Schmitt, writing in *Just Security* (“[The OLC Maduro Memorandum: Assisting in War Sustaining Activities is Not Direct Participation in Hostilities](#)”), take issue with what they called a “deeply troubling” assertion embedded in the December 2025 [OLC memorandum](#) used to justify the capture of Maduro. The statement is to the effect that the law of armed conflict (LOAC) permits killing civilians “directly participating in hostilities such as by assisting in war-sustaining activities.” They argue that, while international law recognizes that civilians who “directly participate” in hostilities can be legitimate targets, “civilians who *assist* in war-sustaining activities cannot be considered to be directly participating in hostilities. The OLC’s misstatement of the law would badly skew the [balance](#) between military necessity and humanitarian considerations that undergirds LOAC by drastically reducing the protection afforded to civilians, including Americans supporting war-sustaining activities. They also note that “[t]he



very use of the term ‘war-sustaining’ renders OLC’s statement controversial; applying the concept to civilian direct participation is simply wrong. If the administration did not intend to formally adopt this erroneous view, it is not too late to publicly correct the record.”

### ***The Fall Out***

**Y1, Week Fifty-One**, the Senate voted (52 to 47) to advance a War Powers Act resolution ([S.J. Res. 98](#)) that would bar Trump from taking further military action against Venezuela without congressional authorization. The procedural vote on the discharge resolution allows the operative resolution to advance to the full Senate. Five Republicans (Sens. Paul, Murkowski, Collins, Hawley and Young) joined every Democrat (Sen. Fetterman had voted against a prior resolution). One Republican did not vote. The bipartisan resolution, backed by Sens. Paul, Kaine, Schiff and Schumer, was privileged, allowing the Democrats to force the floor vote. If the resolution is approved by the Senate, it will still need to pass the House, and likely faces a veto from Trump, as it is unlikely either chamber will have the two-thirds majority needed to override the veto. So, this is at best symbolic, though it does represent an attempt by some Republicans to reassert their Article I voice. A similar War Powers effort failed in November, as it had only two GOP supporters – Paul and Murkowski.

Trump lashed out in response, saying Republicans “should be ashamed” of the five who supported the resolution, and “should never be elected to office again.”

Sen. Gallego indicated he would propose a similar privileged resolution on Greenland and Sen. Kaine indicated that similar privileged resolutions were likely on Cuba, Mexico, Colombia and Nigeria, as well as Greenland.

See generally, [Bloomberg](#) coverage.

**Y1, Week Fifty-Two**, Trump’s lashing out apparently yielded benefits as two of the five Republicans switched back and voted against moving the War Powers Resolution forward, which then failed when the Vice President cast the deciding vote against to break the 50:50 tie. This was only a procedural vote setting up a full debate on the War Powers Resolution. The vote was to turn off the “privilege” of the resolution, with senators voting on a point of order that the resolution should not be subject to a simple-majority vote since there are no ongoing hostilities.

It is interesting to see the extent to which the White House and the Republican leadership went in killing the resolution via a parliamentary manoeuvre, since its fate in the House was uncertain at best, and the likelihood of obtaining veto-proof majorities was highly remote. See [ABC News](#) coverage.

### ***Highlighting Tensions with Russia***

Anton Troianovski, writing in the New York Times (“[When it Comes to Russia, trump Navigates Conflicting Goals](#)”), used the recent seizure of a Russian-flagged tanker as the lead-in to an exploration of the tensions between Trump’s desire to court Putin and his new-found force projection agenda.

On Wednesday, the U.S. military [seized](#) an oil tanker that had eluded the U.S. Coast Guard after being temporarily [stopped](#) in the Caribbean while on its way to pick up oil

in Venezuela. The tanker, formerly known as the Bella 1, was under sanction for transporting oil to Iran and a federal magistrate had issued an arrest warrant for the vessel. To avoid capture, the tanker now reregistered as the Marinera hoisted a Russian flag. Russia reportedly dispatched at least one vessel to meet and escort the ship and made a formal diplomatic request asking the United States to stop its pursuit. Trump was not about to be deterred – he dispatched an overwhelming force of Navy P-8 submarine-hunting aircraft and AC-130 gunships, as well as aircraft from bases in the United Kingdom, and the tanker ultimately was boarded in Iceland’s exclusive economic zone with no Russian assets in sight.

Britain, seeking to take some credit, said on Wednesday that it had helped the United States by providing air surveillance and a naval support vessel, as well as bases to U.S. military assets.

As of Friday, the United States has [seized](#) five oil tankers linked to Venezuela.

### **Meanwhile Back in D.C.**

**Y1, Week Fifty-One**, Trump issued the [Safeguarding Venezuelan Oil Revenue for the Good of the American People and the Venezuelan People](#) EO (01/09/26). In it he seeks to safeguard Venezuelan oil revenue held by the U.S. Treasury from creditors. The basis for the EO is the declaration of another “national emergency” for purposes of IEEPA and the NEA. *Reuters* [points out](#) that Exxon Mobile and ConocoPhillips both had assets nationalized by Venezuela and are owed significant amounts as a result.

On Friday, Trump [convened](#) executives of over a dozen energy companies at the White House to discuss Venezuela and to urge them to invest in the energy sector there. Essentially, the executives warned that the country would need major reforms before companies would commit to invest.

The narrative from the White House on what happens next not surprisingly remains mixed, depending on who is speaking – Trump, Rubio or Miller. See [NBC News](#) coverage:

“Inside the Trump administration, different officials are saying different things at different times about Venezuela’s future, reflecting the competing priorities that are under discussion. One camp is stressing the need for a stable Venezuela that acquiesces to Trump’s vision of renewed American dominance in the Western Hemisphere. Another is attuned to ushering in a democracy that reflects the broader will of Venezuela’s people.”

Rep. Veronica Escobar, who attended one of the administration’s briefings last week, told *NBC News*, “It’s unclear to me who really is driving this train. Is it Rubio? Is it Stephen Miller? I don’t see a unified message about Venezuela’s future coming from different members of the administration.”

Foreign policy experts are also questioning the wisdom of keeping Rodriguez in place. *NBC News* quotes Elliott Abrams, Trump’s special representative for Venezuela during the first term, said referring to Rodriguez, “there is no incentive for her to steer the country toward democracy, given that an election could result in her ouster and possible imprisonment.”



## INNOCUOUS ON ITS FACE – BUT DON'T BE FOOLED

### Weaponizing Election Integrity

**Y1, Week Twenty-Four**, the *New York Times* [reported](#) that senior officials at DoJ are considering whether they can bring criminal charges against state or local election officials if they determine that the officials have not done enough to sufficiently safeguard election systems. The reporting indicates that the effort is based not on any new evidence, data or legal authority, but rather is driven by the unsubstantiated suspicion that election systems are susceptible to fraud and foreign manipulation. This aligns with the EO that called for “preserving and protecting the integrity of American elections.”

Recall that a central pillar of the Trump-led election denial campaign was that the 2020 election was marred by massive voter fraud – though notably only for the presidential election even though the same ballot was used for House and Senate races as well. The machines were alleged hacked by foreign adversaries, including with ties to dead dictators. Efforts to cast doubt on the integrity of the 2020 presidential election continue. In 2023, multiple actors, including a former state representative, were [indicted](#) in Michigan as part of a scheme to illegally obtain information from voting machines. A former county clerk in Colorado, Tina Peters, is serving a nine-year prison sentence for [tampering](#) with voting machines in Colorado in an effort to prove that the machines had been used to rig the 2020 election. Trump has called Peters a “political prisoner.” During his 2024 campaign, Trump [stated a desire](#) to criminally prosecute state and local election officials and Project 2025 also pushed for using the DoJ to prosecute election officials.

Recall too that one of the few government officials targeted by name in an EO, was the former director of CISA, who had declared the 2020 election the “most secure” in history. And to add to the irony, the DoJ has halted or dropped all of the voting rights lawsuits that were pending on Inauguration Day. The unit overseeing election issues is a shadow of its former self at the end of the Biden administration.

The reporters note that, while federal voting laws impose some requirements on how elections are conducted and ballots are counted, that work has historically been managed by state and local officials, with limited involvement or oversight from Washington. Any such effort “could significantly raise the stakes for federal investigations of state or county officials, thrusting the Justice Department and the threat of criminalization into the election system in a way that has never been done before.”

The reporters cite Dax Goldstein, program director of election protection at the States United Democracy Center, “The tactics we’re seeing out of DoJ right now are building on what we’ve seen from anti-democracy groups for years. They’re rooted in the same lies about elections, and they’re all meant to create noise and fear and concerns about issues with our elections that just don’t exist. Our elections are safe and secure, and election officials are working to keep them that way.”

Let’s be clear what this effort could lead to – criminal prosecution or the threat of criminal prosecution if, for example, an election system is hacked or is believed to

have been hacked, or if there are actual or alleged election irregularities. *See also* [The New Republic](#) reporting.

### **How Low Can They Go?**

**Y1, Week Forty**, we have all now been exposed to the depraved exchanges on Discord among a group of 11 “Young Republicans” – antisemitic, misogynist, racist, homophobic. The exchanges, among 2,900 texts between early January and mid-August, were first [reported](#) on by *POLITICO*.

George Packer captures what is truly at stake in his *Atlantic* article (“[The Depth of MAGA’s Moral Collapse](#)”) and urges us all not to see the texts simply as attacks on Blacks, Jews, Asians, women and the LGBTQ community, but rather as attacks on us all -- they “degrade us all.” He points out that those in this Discord group are operating in permission structure created by the political leaders and icons of the MAGA movement – Trump, Vance, Musk, Carlson, Miller. Vance makes light of the exchanges (“stupid jokes” among “kids,” overlooking incidentally that the 11 were anything but kids, ranging in age from 24 to 35, according to [Mother Jones](#)), and yet sits atop a movement that seeks to punish anyone critical of Charlie Kirk. Packer warns us that “once morality is rotted out by partisan relativism, the floor gives way and the fall into nihilism is swift.”

**Y1, Week Forty-Eight**, on the topic of how low they can go, during the first press briefing post-Thanksgiving, in reference to the attack in D.C. on two West Virginia National Guard troops, White House Press Secretary Leavitt managed to shift the blame to President Biden – “I would just point out one more time that the Biden administration was responsible for the original sin that led to this tragic killing last week, the botched withdrawal from Afghanistan.”

### **The Right Gets Riled**

**Y1, Week Forty-Three**, first Tucker Carlson interviews white nationalist Nick Fuentes, then Heritage Foundation President Kevin Roberts [posted](#) a video defending Carlson. That triggered a backlash from GOP lawmakers, other conservative organizations and Heritage staffers. Roberts then [posted](#) another statement condemning Fuentes’ antisemitism but not apologizing for his defense of Carlson. *See* [The Hill](#) coverage.

## IMPACT ON LEGAL VISITORS IN THE UNITED STATES

- [Policies Impacting Visitors](#)
- [Foreign Tourism Takes a Hit](#)
- [Foreign Students May Look Elsewhere](#)
- [Green Card Holders Worry](#)
- [Audit of Visa Conditions](#)

### Broader Policies Regarding Visitors to the United States

Pursuant to the [Protecting the US from Foreign Terrorists and Other National Security and Public Threats](#) EO, Trump called for **enhanced vetting and screening of all non-American citizens seeking admission into the United States, or who are already here, and potential travel bans**. To be clear, this goes far beyond migrants coming across the southern border, and while the ostensible purpose is to prevent terrorist attacks, the EO is far broader, speaking, for example, of ensuring that “admitted aliens” and “aliens otherwise already present” in the country “do not bear hostile attitudes toward [American] citizens, culture, government, institutions, or founding principles.” The designated Cabinet officers are to:

- identify the resources needed to vet and screen aliens seeking admission or who are already here;
- determine the information needed from any country to adjudicate visas, admissions or other benefits under the INA;
- re-establish a uniform baseline for screening and vetting standards and procedures that existed on January 19, 2021; and
- “vet and screen to the maximum degree possible all aliens who intend to be admitted, enter, or are already inside the United States, particularly those aliens coming from regions or nations with identified security risks.”

The designated Cabinet officers also are to: identify countries “for which vetting and screening information is so deficient as to **warrant a partial or full suspension on the admission of nationals from those countries**” and identify how many nationals from those countries have entered or have been admitted into the United States on or since January 20, 2021. The Secretary of Homeland Security is empowered to exclude or remove aliens based on the foregoing.

The designated Cabinet officers also are to:

- evaluate all existing regulations, policies, procedures and provisions of the Foreign Service Manual to ensure continued public safety;
- ensure that sufficient safeguards are in place to prevent any refugee or stateless individual from being admitted to the United States without undergoing stringent identification verification beyond that required of any other alien seeking admission or entry to the United States;
- evaluate all visa programs to ensure that they are not used by foreign nation-states or other hostile actors to harm the security, economic, political, cultural, or other national interests of the United States;



- “recommend any actions necessary to protect the American people from the actions of foreign nationals who have undermined or seek to undermine the fundamental constitutional rights of the American people, including, but not limited to, our Citizens’ rights to freedom of speech and the free exercise of religion protected by the First Amendment, who preach or call for sectarian violence, the overthrow or replacement of the culture on which our constitutional Republic stands, or who provide aid, advocacy, or support for foreign terrorists; and
- “evaluate the adequacy of programs designed to ensure the proper assimilation of lawful immigrants into the United States and recommend any additional measures to be taken that promote a unified American identity and attachment to the Constitution, laws, and founding principles of the United States.”

These authorities, and in particular the fourth bullet above (*e.g.*, protecting rights of free speech), could be another “stealth” threat, with unintended or intended consequences for non-Americans in the United States.

### **Foreign Tourism Takes a Hit**

In the years following the 9/11 attacks, tourism to the United States suffered, and anecdotally the causes were less fear of another attack, but an inhospitable reception at international airports, where, in short, visitors felt they were being treated as suspected terrorists.

Once again the United States is being viewed as inhospitable to non-Americans, but this time it is not only fear of having electronic devices searched and confiscated, but of being detained and possibly deported. (See, *e.g.*, [“No One Is Safe From America’s Abusive Immigration Authorities Anymore,”](#) [“Nervous about Trump, international tourists scrap their U.S. travel plans,”](#) [“U.S. detention of European and Canadian tourists creates fear over traveling to America,”](#) [“Countries update U.S. travel advisories in response to Trump policies”](#) and [“Immigration officers are becoming ‘extreme’ in how they vet travellers entering the U.S.”](#)) An article in Fast Company ([“Trump is gunning for Canada - and Canadian homeowners in the U.S. want out”](#)) reports that there is a growing trend in Canadians, which represent the largest number of distinct investments in U.S. real estate (13% - \$5.9 billion), selling their U.S. second homes and vacation properties, particularly in the Sun Belt.

The deeper problem is that America increasingly is being viewed as a pariah among democratic nations. The on-again, off-again tariffs on trade partners, the threats against Greenland, Panama and Canada, the appalling treatment of President Zelensky – none has escaped notice of non-Americans.

So, why is this a problem for the domestic situation. According to [Travel Economics](#) (04/03/25), inbound travel to the United States is projected to decline by 9.4% as compared to what had been projected an 8.8% growth in the baseline and overall international visits would be 12.7% lower than the baseline. They forecast international visitor spending in the United States to decline 5.0%, representing a loss of \$9.0 billion in spending this year alone. This loss includes \$6.4 billion of decreased spending on

destinations, plus \$2.5 billion of lost transportation spending. By 2026, the United States could suffer a 1.5 percentage point drop in market share of global travel.

According to International Trade Data (ITA) quoted by the Financial Times, travel accounts for 2.5% of U.S. GDP. ITA data show the total number of overseas visitors travelling to the United States dropped by 12% year-on-year in March, the steepest decline since pandemic-impacted travel in March 2021. Travel from western Europe is down 17% in March year-on-year, with travel from some countries falling more than 20%. ITA data also show that international travellers spent more than \$253 billion in YS travel and related goods and services, representing more than 19% of 2024 US travel spend.

Hardest hit is cross-border travel by Canadians to the United States. According to OAG data [reported](#) by Forbes, summer flight bookings on Canada-US routes are down more than 70% year-on-year.

The World Travel & Tourism Council [projects](#) (05/13/25) that the United States will lose \$12.5 billion in 2025 due to the falloff in visitors from abroad, representing a 22.5% year-on-year decline. The United States is the only country in the WTTC survey of 182 countries expected to report a decline in revenue from foreign visitors. The WTTC release cites Department of Commerce data for March showing UK arrivals down 15%, Germany down 28%, South Korea down 15% and Spain, Columbia, Ireland, Ecuador and the Dominican Republic down between 24-33%.

The US Travel Association [projects](#) (as of April 2025 based on March data) that if year-to-date declines continue, the loss for 2025 due to the falloff in foreign visitors would be \$21 billion. It reported a March decline year-on-year of 14%.

Analysts in particular are wondering what the impact could be on the 2025 Ryder Cup, the 2026 FIFA World Cup and the 2028 Olympic and Paralympic Games.

See [“European travellers cancel US visits as Trump’s policies threaten tourism”](#) (04/11/25). See also [“‘Trump Slump’ Looms as Foreign Visitors Rethink Travel to U.S.,”](#) [“How Trump Is Torpedoing Foreign Tourism To The US—Potentially For Years To Come, Say Analysts”](#) and [“Canadian Road Trippers Boycotting U.S. Could Mean A \\$4 Billion Economic Loss”](#) as well as [Oxford Economics](#) data.

### **Foreign Students May Look Elsewhere**

**Y1, Week Thirteen**, the United States increasingly is being seen as a hostile environment not only for tourists but also for foreign students. And it should come as no surprise. It is widely reported that close to 300 international students have had their visas revoked (*see, e.g.*, [“Nearly 300 Students Have Had Visas Revoked and Could Face Deportation,”](#) [“Visa cancellations sow panic for international students, with more than 1,000 fearing deportation”](#) and [“Anxiety at US colleges as foreign students are detained and visas revoked”](#)).

As the *New York Times* set out ([“Losing International Students Could Devastate Many Colleges”](#)), if that perception continues, it could have a devastating impact on many colleges and universities in the United States. California, New York and Texas had the highest number of foreign students; Missouri, Michigan and Illinois saw the

greatest year-on-year growth. An op-ed ([“Our Foreign Students Are Terrified, and They’re Right to Be”](#)) notes that foreign students with temporary visas and green cards are panicking.

And as above, the administration has targeted foreign students enrolled at Harvard (including through a new program of social media vetting) and Chinese students and has halted foreign student and exchange student visa appointments pending threatened expansion of social media vetting.

**Y1, Week Twenty-Two**, the State Department has restarted interviewing students for foreign student visas, but now with stricter social media guidelines, including a requirement that all applicants have their accounts set to public to be scrutinized by consular officials for hostility toward the United States, and list all social media usernames or handles on every platform used in the prior five years. Omitting social media information could lead to visa denial and ineligibility for future visas.

The new vetting procedures apply to all foreign nationals, regardless of the institution of study, who apply for F visas (primarily for academic students), M visas (for vocational students) and J visas (for educational and cultural exchanges). See [The Hill](#) coverage and [State Department](#) announcement. Incidentally, students from countries on the full or partial travel ban list that did not have valid visas by June 9<sup>th</sup> are out of luck (see, e.g., [Yale University](#) announcement). Consular officers are tasked with reviewing visa applicants’ “online presence” for “any indications of hostility towards the citizens, culture, government, institutions or founding principles of the United States.” Officers are to flag “advocacy for, aid or support for foreign terrorists and other threats to U.S. national security” and “support for unlawful antisemitic harassment or violence.” “Online presence” reportedly goes beyond social media activity and includes information in online databases. See [POLITICO](#) coverage.

The *New York Times* [reported](#) that the clampdown on J visas is threatening patient care at hundreds of hospitals that depend on foreign medical residents recruited from overseas. These medical residents often serve as the frontline caregivers at safety-net hospitals in low-income communities. The NYT notes that the U.S. medical system relies heavily on physicians from overseas – one in five physicians in the United States was born and educated overseas, according to the Association of American Medical Colleges. New doctors from overseas account for one in six medical residents and specializing fellows at U.S. teaching hospitals. The Educational Commission for Foreign Medical Graduates [sponsored more than 15,900 doctors](#) in 2024 from over 150 countries to fill residency or fellowship training spots at 770 hospitals.

**Y1, Week Thirty-One**, Fox News was the first to [report](#) that the State Department had, since Inauguration Day, revoked more than 6,000 student visas for overstays and violations of local, state and federal law, the vast majority of which were assault, driving under the influence of alcohol or drugs and support for terrorism. Approximately 4,000 of the 6,000 were due to actual infractions of laws and approximately 200 to 300 visas were revoked for terrorism-related issues, including providing support for designated terrorist organizations or state sponsors of terrorism.

**Y1, Week Thirty-Two**, NAFSA, the association of international educators [released](#) updated data on foreign student enrolment in U.S. schools. The headlines: scenario modelling based on a potential 30-40% decline in new international student enrolment in the United States this fall could result in a 15% drop in overall enrolment. This drop would result in nearly \$7 billion in lost revenue and more than 60,000 fewer jobs – California, New York, Massachusetts, Pennsylvania and Texas would be hardest hit in terms of absolute numbers, but the proportionate impact would be felt across the country. Various causes are cited for a potential decrease of 150,000 foreign students, including limited interview availability then replaced with enhanced social media vetting, limited appointments in certain countries including India and China (the top two sources), Nigeria (#7) and Japan (#13) and visa bans. See [The Intercept](#) coverage.

### **Green Card Holders Worry**

Permanent residents (otherwise known as green card holders), like citizens, in theory are protected by the Constitution, which includes First Amendment free speech rights and Fifth Amendment due process rights, but unlike citizens they are subject to removal if they violate their status in the United States. It is generally believed that permanent residents can only have their status revoked (and be deported) if they commit a crime, as provided in the INA ([8 U.S. Code § 1227](#)).

The attempted deportations of Mahmoud Khalil and a second green card holder (*see [There Was a Second Name on Rubio's Target List](#)*) as well as the widely reported instances of permanent residents being questioned at border entry points and the [screening](#) of social media posts have heightened concerns among green-card holders. See generally, [“How to Lose a Green Card”](#) and [“What rights do green card holders have?”](#)

Concerns were heightened in late April following a post by USCIS (*see [NewsY1, Week reporting](#)*) “EVERYONE should be on notice. If you're a guest in our country – act like it. Our robust social media vetting program to identify national security & public safety risks never stops. USCIS is on watch to find anything online that poses a threat to our nation & our way of life.” As *NewsY1, Week* reports, the administration “has argued that those who express pro-Hamas or antisemitic views, or other ideas which go against U.S. foreign policy, are a potential national security threat and may face deportation.”

*NewsY1, Week* cites the following statistics: there are around 12.8 million green card holders living in the United States, around 8.6 million of whom are eligible to apply for citizenship (after three or five years of holding green card status, depending on circumstances). Around half a million green card holders seek adjustment of their status each year to citizen.

### **Review of All Visitors for Visa Condition Violations**

**Y1, Week Thirty-One**, the Associated Press was the first to [report](#) that the administration intends to review 55 million visitors for possible violations of visa conditions. In a written answer to a question from The Associated Press, the State Department said all U.S. visa holders, which can include tourists from many countries, are subject to “continuous vetting,” with an eye toward any indication they could be

ineligible for [permission to enter or stay in the United States](#). Should such information be found, [the visa will be revoked](#), and if the visa holder is in the United States, he or she would be subject to deportation.

The State Department said it would be scrutinizing visitors for indicators of ineligibility, including visitors who overstayed their visas, criminal activity, threats to public safety, any form of terrorist activity or providing support to a terrorist organization.

As there were 12.8 million green card holders and 3.6 million in the United States on temporary visas in 2024, the balance of the 55 million presumably includes people outside the United States who hold multiple-entry visas.

Most visitors seeking to come to the United States require visas, particularly those who want to study or work for extended periods. Among the exceptions for short-term tourist or business visits are citizens of the 40 mainly European and Asian countries belonging to the Visa Waiver Program, which grants those nationals a stay of up to three months without having to apply for a visa.

See the Brennan Center's "[‘Continuous Vetting’ of All Visa Holders Is Impossible, but the Threat Alone Chills Free Speech](#)" – expanded "continuous vetting" (meaning vetting beyond those already in the country) represents a dramatic escalation in the surveillance of visitors to the United States while ignoring the technological and practical difficulties. Equally concerning, the threat of vetting "represents an attack on freedom of speech, forcing millions of visa holders to change their behavior by avoiding political protests, deleting social media posts, and refraining from expressing opinions that someone might deem 'anti-American' – even though the First Amendment protects such expression regardless of citizenship."

## SELECTED DOMESTIC CONSEQUENCES

### Financial Institutions in the Crosshairs?

**Y1, Week Twenty-Three**, the *Wall Street Journal* [reports](#) that large banks may be the next target of Trump’s ire as they continue to find themselves in the cross-hairs over DEI, ESG and other “woke” policies that Republican lawmakers have branded as discriminatory and illegal. Talks with lawmakers in Texas and Oklahoma appear to be centered around allegations that the banks are engaged in a boycott of borrowers that are gun manufacturers and oil and gas companies. These issues incidentally are not new, with Red states raising DEI and ESG concerns since the days of Trump 1.0, framing the issue as discrimination in lending based on political grounds. The article reports that the administration is considering a “debanking” EO. See also *Wall Street Journal* [reporting](#) from January.

### Blue States vs. Red States

A post by Governor Newsom on the contributions of California to the overall economy prompted me to dig a little deeper. I am sure there are multiple ways at looking at these figures, but TIME presented a very interesting set of comparisons in its report [“What Republicans Don’t Want To Say: Blue States Are the Ones Bailing Out Red States.”](#)

- From 2018 to 2022, individuals and organizations from Blue states contributed nearly 60% of all federal tax receipts but only received 53% of all federal contributions to states in the form of either direct payments, grants, contracts, or wages. Red states were only responsible for 40% of federal tax receipts but received 47% of all federal contributions to states. This 7% differential equates to a more than \$1 trillion transfer payment from Blue states to red states, amounting to \$4,300 per capita.
- In dollar terms, while federal contributions to Blue states amounted to \$11.6 trillion compared to \$10.3 trillion across red states—or \$71,500 and \$67,000 per capita, respectively—federal receipts from Blue states amounted to \$10.7 trillion compared to \$7.3 trillion from red states – or \$58,500 and \$45,000 per capita, respectively. Among the top 20 states realizing the greatest net flow of funds, calculated as federal contributions to states (inflows) less federal tax receipts from states (outflows), 14 were red states, while 13 of the bottom and are Blue states. Headliners of the top 20 include West Virginia, Mississippi, Kentucky, and Alabama. Leading the bottom 20 are states such as California, Washington, Massachusetts, and New York, all critical hubs of business, investment, and innovation.

### DOGE and the Great Hack

I have cited in various sections above a concerted effort on the part of Musk and six tech engineers ([ages 19-25](#)) to access US government IT systems in what experts have characterized as a hack of catastrophic proportions. Charlie Warzel and Ian Bogost, writing in The Atlantic ([“The Government’s Computing Experts Say They Are Terrified”](#)) spoke to four IT experts, starting off their piece as follows: “Elon Musk’s unceasing attempts to access the data and information systems of the federal



government range so widely, and are so unprecedented and unpredictable, that government computing experts believe the effort has spun out of control. ... each expert was unequivocal: They are terrified and struggling to articulate the scale of the crisis.” One expert went on to say, “this is the largest data breach and the largest IT security breach in our country’s history – at least that’s publicly known.”

A February 13 [post](#) by Bruce Schneier, a lecturer at the Harvard Kennedy School, and Davi Ottenheimer at Inrupt highlight the national security consequences of what they termed “the most consequential security breach in the history of the US government” with implications for national security that they label as profound and staggering. In the sum, they noted the following:

- the systems accessed are not “esoteric pieces of our nation’s infrastructure, they are the sinews of government;
- what makes the hack unprecedented is not just the scope, but the method – this is not a penetration by a foreign adversary, but rather by domestic operators with limited experience and minimal oversight, in plain sight;
- what is most alarming is not just the access but the “systematic dismantling of security measures that would detect and prevent misuse ... by removing the career officials in charge of those security measures and replacing them with inexperienced operators.”
- by modifying core systems, DOGE has not only compromised current operations, but has left behind vulnerabilities that could be exploited in future attacks, giving Russia and China, for example, an [unprecedented opportunity](#).

See also [a conversation](#) between Stanford Law Professors Pam Karlan and Mark Lemley.

Incidentally, various news outlets (*see, e.g., Bloomberg*) have reported that one of the engineers, who has been tapped as an IT advisor for the State Department (alongside his DOGE role) was fired from a prior job for leaking proprietary company information.

NYC Comptroller Brad Lander issued a [statement](#) (2/12/25) accusing the Trump administration of clawing back \$80 million in congressionally-appropriated FEMA funding for shelter and services from New York City bank accounts. Suspiciously coincident to the pardoning of NYC’s mayor. The Homeland Security Secretary was unapologetic in a post on X, “I have clawed back the full payment that FEMA deep state activists unilaterally gave to N.Y.C. migrant hotels. Mark my words: there will not be a single penny spent that goes against the interest and safety of the American people.” According to the [New York Times](#), the \$80 million was disbursed as a grant from the Shelter and Services Program, administrated by FEMA and initiated by Congress in 2023 to issue grants to cities providing services to migrants who had been released from federal custody after crossing the border. In a related incident, four FEMA officials, including its chief financial officer, were [fired](#) for having disbursed congressionally authorized funds.

## Disaster Relief

In their recent [article](#), Sarah Labowitz and Debbra Goh of the Carnegie Endowment for International Peace make the case that ending federal disaster relief will have the greatest negative impact on states across the Gulf South and mid-Atlantic. The Trump administration, they remind us, has promised to “[get rid of FEMA the way it exists today](#),” [fired](#) four senior FEMA officials, and reduced headcount by [84%](#) at the office in charge of long-term recovery funding for housing and community development. The administration has reduced [funding for wildland firefighters](#) and announced major changes in [staffing](#) at NOAA, which oversees the weather forecasting that emergency responders rely on. Taken together, they argue, “these changes will wholly reshape how the country responds to disasters. State and local governments will have to bear enormous costs if the federal government steps back from its forty-year role in disaster recovery.”

They cite data from Carnegie’s [Disaster Dollar Database](#) over the past decade that suggests that states across the Gulf South and mid-Atlantic, including Florida, Texas and Louisiana, will be hardest hit. State legislatures and local governments will have to reconfigure budgets to make up any difference if federal relief is cut off or reduce future costs with spending and regulation to promote resilience. “If they don’t, communities—especially in rural places—will struggle to rebuild, accelerating urbanization and migration out of disaster-prone states.” They warn that no state currently has the ability to absorb the capacity or function of the federal government in disaster relief. Terminating programs that provide help directly to state and local governments will hit hardest in states that already are struggling, where the government currently [does not have the resources](#) to rebuild schools, repave roads, or repair water treatment facilities.

**Y1, Week Seventeen**, the *Washington Post* [reported](#) that, as hurricane and severe weather season looms, NOAA is scrambling to fill vacancies in key weather forecasting positions in coastal Texas and Louisiana and to transfer meteorologists to Alaska, Nebraska, South Dakota and Wyoming. “Without the transfers, there are fears that some offices could struggle to monitor weather threats, issue aviation forecasts and launch weather balloons around-the-clock, according to current and former weather service officials who spoke on the condition of anonymity because they were not authorized to speak for the agency.” The reporting cites 500 National Weather Service staff having been fired or taken early retirement, out of a staff of over 4,200 on Inauguration Day.

**Y1, Week Twenty-Seven**, CNN [reports](#) that NOAA has fired Steve Volz, who led NOAA’s satellite division, and Jeff Dillen, Deputy General Counsel. The two NOAA officials had [led](#) the investigation into whether NOAA’s scientific integrity policies were [violated during](#) the [so-called Sharpiegate scandal](#). The investigation found that then-acting NOAA administrator Neil Jacobs and another NOAA official had violated the scientific integrity policy by backing Trump’s hand-drawn version of the forecast for [Hurricane Dorian](#). CNN quoted a former NOAA official as saying, “It’s an interesting coincidence that less than a Y1, Week before Neil Jacob’s senate committee vote, the two dedicated career civil servants who investigated him for scientific integrity violations around Sharpiegate were dismissed from service.”

**Y1, Week Thirty-Two**, a group of FEMA employees (35 are named and 141 are not) [penned](#) an open letter to Congress warning that the administration has reversed much of the progress made since Hurricane Katrina struck 20 years ago in disaster response and disaster recovery. The letter calls out:

- the reduction in capability of FEMA to perform its missions;
- the ongoing failure to appoint a qualified FEMA administrator, as required by law;
- the elimination of life- and cost-saving risk reduction programs;
- the censorship of climate science, environmental protection, and efforts to ensure all communities have access to information, resources and support; and
- the reduction of FEMA's disaster workforce.

The signatories call on Congress to establish FEMA as a cabinet-level independent agency in the executive branch; defend FEMA from further interference from DHS, including illegal impoundments of appropriated funding, ensuring FEMA retains its full authority, responsibilities, functions, and capabilities to perform its missions; protect FEMA employees from politically motivated firings and ensure continued protection under merit-based personnel systems; and demand transparency from OMB, DOGE, and FEMA leadership regarding internal employment policies and future agency reductions.

### **Great Grift**

One of the stealth moves on Day One, buried among 78 “[harmful EOs](#)” that were rescinded, was EO 13989 ([Ethics Commitments by Executive Branch Personnel](#)), which required all executive agency appointees to sign a pledge, which among other things, included a series of revolving door bans, a ban on accepting gifts from lobbyists and a ban on accepting “golden parachute” payments from a former employer payable upon accepting a position in the federal government. The pledge also includes an undertaking to make hiring and other employment decisions based on a candidate's qualifications, competence and experience.

The pledge also includes in its preamble a commitment “to decision-making on the merits and exclusively in the public interest, without regard to private gain or personal benefit,” a commit “to conduct that upholds the independence of law enforcement and precludes improper interference with investigative or prosecutorial decisions of the Department of Justice” and a commitment “to ethical choices of post-Government employment that do not raise the appearance that I have used my Government service for private gain.”

And, incidentally, recall that Trump fired the holding over IGs responsible for rooting out fraud in government.

### **Make America Read Again**

Charlie English's op-ed “[‘1984’ Hasn't Changed, but America Has](#)” is worth reading. In his op-ed, English charts long-running efforts by the CIA before the fall of the Berlin Wall to flood Eastern Bloc countries with books to undermine Communist Party

censorship. English posits that the program, known as the “CIA book program” offers valuable lessons today not least since some of the authors and titles funnelled behind the Iron Curtain now figure prominently on lists of banned books in the United States, including Orwell’s *1984*. I

In Iowa, Senate File 496 has forced the removal of books featuring LGBTQ characters, feminism, and authors of color, as well as books by Huxley, Vonnegut and Orwell (both *1984* and *Animal Farm* are banned). English cites PEN America having [documented](#) close to 16,000 bans in schools since 2021, including 10,046 in 2023-24 alone. The military education agency at the Pentagon has removed and reviewed more than 500 titles from its school system, including, [according to one report](#), *Brave New World*. Federal funding agencies have a list of more than 350 banned words and phrases, including “women,” “diversity” and “ethnicity.”

Book bans form part of a broader assault on news outlets and independent journalists, covered elsewhere in this tracker, including defunding of NPR, Voice of America, Radio Free Europe/Radio Liberty and Radio Free Asia.

On a positive note, English reminds us of two salient lessons from history – censorship tends to create a thirst for banned books, and the autocrats ultimately lost the Cold War.

### Privacy Concerns

*The Hill* reporting paints a dystopian picture of where we are **Y1, Week Twenty-Three** (“[Trump knocks down barriers around personal data, raising alarm](#)”). In dismantling the protections around personal and private data collected by federal agencies in the name of increasing efficiency and reducing fraud and waste, we are moving far more quickly towards a surveillance state, increasing vulnerability of that data to cyberattacks and increasing the wariness of the public to engage with (and thereby share data with) the federal government.

DOGE continues to seek, and almost invariably receives, access to, among other information, social security numbers, addresses, medical histories, income tax history, welfare benefit information, immigration status, bank account information of tens of millions of Americans. This access has shattered the systems historically in place to ringfence the information within the agencies that collected the information.

*The Hill* [reporting](#) highlights recent examples that underscore the threat:

- the EO on Stopping Waste, Fraud and Abuse by Eliminating Information Silos directed agency heads to rescind or modify guidance that serves as a barrier to inter-agency sharing of non-classified information, including data collected as part of Medicaid, SNAP and block grants;
- the USDA demand directed at states to turn over data of 42 million people receiving SNAP benefits, including names, dates of birth, social security numbers and addresses (which currently is subject to a temporary restraining order;

- the Center for Medicare and Medicaid Services provided DHS personal data of millions of Medicaid enrollees in sanctuary states and cities — including California, Washington state, Illinois and Washington, D.C.;
- the IRS agreed to share with DHS addresses of migrants who are subject to removal orders, which survived a legal challenge;
- USCIS is increasing social media surveillance of visitors to the United States; and
- the Supreme Court (6-3) stayed a lower court injunction that temporarily limited access by DOGE to SSA data (that could have included social security numbers, bank account information, retirement benefits, work authorization status, income histories and medical records of [69 million people](#)) and in the process overturned decades of protections under the Privacy Act of 1974 requiring individual consent for the sharing of identifiable information.

### Public Safety

As the Center for American Progress set out in a recent report ([“Trump’s Rash Immigration Actions Place Cruelty and Spectacle Above Security”](#)), Trumps rash border security and deportations programs are actually harming public safety and national security while offering no concrete policy solutions to fix our admittedly broken immigration system. These theatrical “shock and awe” actions follow a broader pattern of cruelty “as indiscriminate [proposed spending cuts](#) from the White House and congressional Republicans have [forced Head Start facilities to temporarily close, prevented community health centers from accessing funds to serve patients, targeted Medicaid and the Supplemental Nutrition Assistance Program, and shut down lifesaving health programs across the globe](#). The administration’s immigration agenda is just as indiscriminate, ripping apart families and communities while jeopardizing national security and public safety.”

Trump, as the National Immigration Council notes, is [wrongly](#) criminalizing [anyone his administration suspects lacks legal status](#), subjecting them to [arrest by law enforcement](#). [Veterans and U.S citizens](#) have been detained, Native American Tribal members’ [identities](#) have been challenged, and [pregnant women and children](#) have been detained. Worryingly from a public safety perspective, law enforcement time and resources are prioritizing these photo opportunities at the expense of countering [public safety threats](#). We now have “collateral arrests” of people who pose no danger to public safety, tearing apart families and destroying communities, while making the country less safe.

### States Rights?

Jonathan Chait, writing in The Atlantic, [reported](#) on an exchange between Trump and Maine Governor Janet Mills. While explaining his trans EO to a group of governors at the White House, he singled out the Governor. When he asked her whether she would comply with the EO, she responded “I’m complying with state and federal laws.” He replied, “We *are* the federal law.” He then threatened to deny Maine federal funding if she fails to comply.” As Chait notes, “Trump cannot simply cut Maine off financially because the state chooses to challenge federal policy. Distinctions like this,

however, seem totally lost on the president, who sees himself as national king.” Referring to Trump’s “He who saves...” pronouncement, his response to Mills is entirely consistent – “Since Trump cannot violate the law, it follows that the law means whatever he says.”

In her [interview](#) with the *New York Times* (published 03/01/25), Massachusetts Governor Maura Healey characterized the Trump attack on Governor Mills as follows:

“I heard somebody who thinks he’s king. Congress makes the laws. ... The judiciary enforces the laws and determines the application of the law. And the executive, and I’m an executive, my job is to faithfully apply and execute the law. And so, that’s a problem. He doesn’t believe that Congress makes the law. He believes that he makes the law.

And as for cutting off federal funding, again that runs counter to the Constitution. Congress appropriates funding.

Meanwhile, speaking at CPAC, presidential envoy for Special Missions and head of the Kennedy Center Ric Grenell [threatened](#) that there will conditions attached to aid to California to rebuild after the wildfires.

**Y1, Week Fifteen**, Border Security czar Tom Homan [suggested](#) that Wisconsin Governor Tony Evers could be a target over [guidance](#) issued to Wisconsin state employees confronted by federal immigration authorities: “Wait till you see what’s coming. I meant what I said. You cannot support what we’re doing. And you can support sanctuary cities if that’s what you want to do. But if you cross that line of impediment or knowingly harboring and concealing an illegal alien, that is a felony. And we’ll treat it as such.” Following the threat, Evers criticized the Trump administration the next day, calling the administration actions “chilling.”

## **USAID**

According to a 2023 USAID report [cited](#) by Unlock Aid, nearly 90% of USAID expenditures in FY 2022 were disbursed to international contracting partners, most of which are based in or around Washington, D.C., with only 10% going to frontline, local groups. It is therefore not a surprise to see reporting along the lines of this report from the *Washington Post* (“[Gutting USAID threatens billions of dollars for US farms, business](#)”) which notes that efforts to shutter USAID “has left American workers in limbo and threatens billions of dollars the agency spends on American businesses and organizations.”

USAID oversees projects such as food aid, disaster relief and health programs in over 100 countries with a staff of more than 10,000 and a budget of around \$40 billion, but “billions of those dollars flowed back into the American economy” until the freeze ordered by Trump. The article notes that American farms on average supplied around 41% of food aid distributed around the world, representing in 2021 purchases from American farms of \$2.1 billion. “Purchases and shipments of US food aid worth over



\$340 million – including rice, wheat and soybeans – have been paused during Trump’s foreign-aid freeze.”

### **White-Collar Businesses Also Are Worried**

The Trump administration’s crackdown on immigration is not only impacting blue-collar jobs. *Axios* [reports](#) that white-collar employers are likely to be most nervous about foreign employees who have work authorization under humanitarian programs such as TPS, asylum or parole, all targeted by the White House. Apparently there are high shares of undocumented workers in fast-growing sectors such as data science and software development.

### **One Big Beautiful Bill**

Congress passed (218-214 in the House and 50-50, with the Vice President casting the tie break vote), and Trump signed, the [One Big Beautiful Bill Act](#) (OBBBA). Key consequences:

#### **Tax cuts and business incentives:**

- **Extends and expands the 2017 Trump tax cuts**, making most provisions permanent, including lower rates for individuals and businesses.
- **Reduces taxes in total \$4.5 trillion over a decade**, with new breaks for income from tips, overtime, and auto loans.
- **Raises SALT deduction cap** from \$10,000 to \$40,000 for five years, benefiting taxpayers in high-tax states such as California and New York.
- **Increases child tax credit** from \$2,000 to \$2,200 per child, though low-income families may not get the full benefit.
- **Makes permanent immediate expensing for business equipment and research**, benefiting capital-intensive industries.
- **Cuts taxes for middle-income households of \$500–\$1,500 per year**, while the wealthiest benefit most; lowest-income households could see losses of up to \$1,600 annually. The Center for American Progress estimates that the bottom 49% of earners will see a net loss in income, with the bottom quintile losing \$560 per year, and the top quintile gaining more than \$6,000 per year.

#### **Cuts to social safety net programs:**

- **Significantly reduces Medicaid and SNAP** (food stamps) benefits. According to [USAFacts](#), in 2022 (at its peak) nearly [one in four](#) Americans (23.5%) received Medicaid or Children Health Insurance Program (CHIP) assistance. Today, 84.6 million Americans are enrolled in Medicaid. The Congressional Budget Office (CBO) estimates that the proposed changes to Medicaid and health insurance would [increase](#) the number of uninsured people by 16 million in 2034, 5.1 million stemming from policies incorporated into CBO baseline projections and 10.9 million from the OBBBA. The \$1 trillion plus cuts to Medicaid represent the largest cuts in history, by a factor of four. OBBBA allocates \$50 billion over five years for a rural hospital stabilization fund.

According to [USA Facts](#), in FY 2024, 41.7 million (12.3%) of the U.S. population received monthly SNAP benefits.

- **Imposes Medicaid work requirements:** Able-bodied adults 19–64 in Medicaid expansion states must work, volunteer, or study 80 hours/month; parents of children 14+ included.
- **Narrows eligibility for federal benefits** for noncitizens, with new restrictions and application fees for programs like asylum, work permits, and humanitarian parole.
- **Rolls back or eliminates clean energy tax credits and subsidies**, which also will result in millions of jobs lost. Among other things, the OBBBA largely reverses tax incentives under the Inflation Reduction Act for clean energy, electric vehicles (EV) and energy-efficiency programs. It ends tax credits for new and used EV, installation of home EV charging equipment and insulation or energy efficient heating and cooling systems. It also ends the Greenhouse Gas Reduction Fund prospectively.

### Immigration and Border Security:

As set out by Robert McCoy, writing in The New Republic (“[Congress Gives ICE More Money Than It Could Have Ever Imagined](#)”), citing [American Immigration Council](#), ICE will receive more funding than any other agency in the federal government. AIC Senior Fellow Aaron Reichlin-Melnick [notes](#) that each year ICE will have more funding than the FBI, DEA, BAFT, U.S. Marshals Service and Bureau of Prisons combined, making ICE the largest law enforcement agency in American history. *NewsYI*, *Week* [posits](#) that if funding for immigration enforcement each year on average for the next four years were a country’s military budget, that funding would place immigration enforcement as the sixteenth best funded-military, just below Canada and above Israel and Italy. As for the numbers:

- \$46.6 billion for the U.S.-Mexico border infrastructure and wall system.
- \$45 billion for single adult alien detention capacity and family residential center capacity.
- \$2.1 billion for hiring additional CBP agents and related purposes.
- \$29.9 billion for hiring additional ICE agents and related purposes.
- \$3.3 billion for hiring additional immigration judges and related purposes.
- \$5.0 billion for the Bureau of Prisons.
- \$5.0 billion for CBP facilities and checkpoints.
- \$1.0 billion for deployment of military personnel in support of border operations and counter-drug missions.
- \$10 billion for DHS’s State Border Reinforcement Fund.
- \$10 billion for DHS to reimburse it for border security expenditures.

### Federal debt and budget impact:

- The CBO projects the bill will add \$3.4 trillion to the national debt over the next decade – the U.S. debt is currently \$36.2 trillion. Among other consequences, this will lead to increased interest rates.

- The debt limit is increased by \$5.0 trillion. In January, Congress reinstated the debt ceiling at \$36.1 trillion. In May 2025, the total national debt was \$36.2 trillion. In December 2016, the national debt was \$26.6 trillion (adjusted for inflation). At the end of FY 2024, the Debt-to-GDP ratio was 123% (the ratio surpassed 100% in FY 2013 when debt and GDP were approximately \$16.7 trillion).

**Y1, Week Thirty-Nine**, the *Prospect* [cites](#) a Labor Department [rulemaking notice](#) in the *Federal Register* (in respect of lowering wages for seasonal migrants holding H-2A visas) that Trump’s crackdown on undocumented migrants is having an adverse impact on farmers and risks higher food prices. Specifically:

“The near total cessation of the inflow of illegal aliens combined with the lack of an available legal workforce, results in significant disruptions to production costs and threatening the stability of domestic food production and prices for U.S consumers. Unless the Department acts immediately to provide a source of stable and lawful labor, this threat will grow as the tools Congress provided in H.R. 1, *One Big Beautiful Bill Act*, to enhance enforcement of the nation's immigration laws are deployed.”

Moreover, the Labor Department “concludes qualified and eligible U.S. workers, whether unemployed, marginally employed, or employed seeking work in agriculture, will not make themselves immediately available in sufficient numbers to avert the irreparable economic harm to agricultural employers who no longer have access to a ready pool of illegal aliens to fulfil their labor needs”

The *Washington Post* [cites](#) Agriculture Department data showing that between 2020 and 2022 more than 40% of all agricultural workers in the United States were undocumented and around a third were U.S.-born. The Washington Post reporting says that this filing appears to be the first time the administration has publicly acknowledged that the combination of sealing the borders and mass deportations (roughly 150,000 have been deported) threaten labor shortages and higher prices for food. Economists had been warning of these consequences dating back to when Trump unleashed his campaign promises to crackdown on illegal immigration.

**Y2, Week Two**, as the toll of the carnage of ICE deportation operations mounted, Sen. Adam Schiff [asks](#) the salient question: How did we get here? Answer: the OBBBA and the \$170 billion allocated to immigration enforcement, the arbitrary daily quota of 3,000 arrests a day, a target of one million in the first year. Which is how in his words “ICE and Border Patrol ended up out of control.” The hiring spree and reduced training times drive the mayhem. Training is reduced to 47 days. Why: Trump is the 47<sup>th</sup> president.

## SELECTED GLOBAL CONSEQUENCES

- [Upending world order](#)
- [Withdrawal of aid](#)
- [It's contagious](#)
- [China reacts](#)
- [Attack on Iranian facilities/threats against the regime](#)
- [Allies react](#)
- [Palestinian statehood/Gaza](#)
- [Peace Prize scorecard](#)
- [Nigeria](#)
- [Greenland](#)
- [Withdrawal from international organizations and treaties](#)
- [Australian ambassador to leave early](#)
- [Sports](#)
- [Vienna Convention on Diplomatic Relations](#)
- New START stops

### Upending the Global World Order

Europe received its own Trump-led shock and awe with a three-pronged assault upending the global world order during **Y1, Week Four**. Others [cited](#) the “collapse of the transatlantic alliance.” The first salvo was over Ukraine, when Trump in a 90-minute call Vladimir Putin signalled his intention to surrender Ukraine without the Ukrainians or the Europeans at the table, presumably after securing half of its critical minerals as tabled by Treasury Secretary Bessent. The second salvo was Defense Secretary Hegseth’s message that America will no longer prioritize the defense of Europe, and the third salvo, Vance’s endorsement at the Munich Security Conference (MSC) of Europe’s far-right parties and his call to include them in government. **Y1, Week Five** would be worse.

There is no sugarcoating Trump’s performance – the great negotiator gave Putin much of what he wanted, without getting anything in return and before negotiations even started. Trump clearly gave up any pretence of being a supporter of Ukraine, and in the process lost any credibility of being the impartial dealmaker. Art of the deal? Trump only spoke to President Zelensky after the call with Putin. Moreover, Trump seems to be unfazed by having been played by Putin – As The Economist [pointed out](#), Putin is not winning in Ukraine. Russia’s battlefield gains largely dropped off after the first Y1, Weeks of the invasion; it occupies 19.2% of Ukraine at the cost of over 800,000 casualties (compared to 19.6% of controlled territory in April 2022); more than half of its 7,300 tanks are destroyed and it may well run out of T-80 tanks by April. Oh, and the country is experiencing double-digit inflation, and its interest rates are 21%.

In his [address](#) to NATO shortly before the Trump call with Putin, Hegseth first addressed Ukraine: return to pre-2014 borders “is unrealistic,” Ukraine’s NATO membership is not a “realistic outcome,” and US troops will not be part of any security guarantees; instead the guarantee must be backed by European and non-European troops. As for NATO, defense spending should reach 5% of GDP. And finally, he was in Brussels “to directly and unambiguously express that stark strategic realities

prevent the United States of America from being primarily focused on the security of Europe.”

Tortoise Media set out an interesting timeline:

- 1938: British PM Neville Chamberlain promises “peace in our time.” WWII begins 11 months later, with 10 million Ukrainian war dead.
- 1945: FDR, Churchill and Stalin meet at Yalta to set out the post-war world order.
- 1991: President George HW Bush warns Ukraine of “suicidal nationalism” four months after which 92% of voters vote to withdraw from the USSR.
- 1994: the US, UK and Russia sign the so-called Budapest Memorandum, under which the Ukrainians give up the nuclear weapons on their territory (then the third largest nuclear arsenal in the world) in return for guarantees that none of the parties would use military force or economic coercion against Ukraine and would respect Ukraine’s sovereignty and independence.
- 2008: Russian invades Georgia.
- 2014: Russian annexes Crimea and occupies part of the Donbas.
- 2022: Russian launches a full-scale invasion of Ukraine.

As Russian affairs correspondent Pjotr Sauer [wrote](#) in The Guardian, the mood in Moscow’s political circles after the Trump call was buoyant. Trump may well join Putin in Moscow for the annual May 9 Victory Day parade. “The once-unthinkable image of a US leader seated beside Putin, watching Russian soldiers who fought in Ukraine march across Red Square in the country’s grandest display of power, no longer feels so far-fetched. If it came to pass, it would deal a devastating blow to the west’s three-year effort to diplomatically isolate the Russian president.” Guardian journalist Andrew Roth [raises](#) the possibility that Trump might agree to the withdrawal of US forces stationed in the Baltics, Poland and other former Warsaw Pact countries based on Putin’s desire (as set out in the Russian read-out of the call with Trump, that the Ukraine deal also address “the origins of the conflict”). Not farfetched, muses Roth, if Trump is only interested in the rare earth minerals in Ukraine.

If the European audience at MSC was expecting a broader riff on external security threats, they were sorely let down. Afterall, the 2022 MSC was overshadowed by fears that Russia would shortly launch its invasion of Ukraine (which it did days later) and during the 2024 meeting (many believe not coincidentally), opposition leader Alexei Navalny died in a Russian prison camp. Vance’s statement that “The threat I worry the most about vis-à-vis Europe is not Russia, it’s not China, it’s ... the threat from within” was viewed as a direct challenge to democracy in Europe. Ironical that he delivered his [remarks](#), in effect endorsing the far-right Alternative für Deutschland (AfD), after paying a visit to the Dachau concentration camp. In effect, as President Zelensky intimated, once again Putin and his anti-democratic fervor overshadowed yet another MSC, this time courtesy of the Americans.

In what was seen as an ill-advised lecture and reprimand, Vance cited the cancellation of the presidential election in Romania due to strong evidence of Russian interference, the prosecution of an anti-abortion protester in Britain and the exclusion of far-left and

far-right German politicians from the MSC. Equally troubling was Vance's attack on content moderation, accusing European leaders of "hiding behind ugly Soviet-era words like 'misinformation' and 'disinformation.'" Vance continued, "In Britain, and across Europe, free speech, I fear, is in retreat." These accusations not only echo the canard that American internet researchers are engaged in "censorship of conservative free speech," but Vance went on to accuse the Biden administration of "threatening and bullying social media companies to censor so-called misinformation." See generally "[Fact check: JD Vance's free speech claims debunked](#)."

Perhaps the most shocking message came in the juxtaposition of two comments: "If you're running in fear of your own voters, there is nothing America can do for you. Nor, for that matter, is there anything that you can do for the American people who elected me and elected President Trump" and "For years, we've been told that everything we fund and support is in the name of our shared democratic values." The future of defense of Europe is very much in doubt – no "shared values" anymore, then no support.

Vance [chose](#) to meet the co-leader of the AfD Alice Weidel, but not the German chancellor, Olaf Scholz. Parts of the AfD have been under surveillance by Germany's domestic intelligence services for suspected domestic terrorism and extremism for some years. In a post on X, Scholz had this reaction to Vance, "I expressly reject" Vance's message. "From the experience of National Socialism, the democratic parties in Germany have a common consensus: this is the firewall against extreme right-wing parties."

Gideon Rachman aptly [characterized](#) Trump's position over Ukraine and Vance's warning as compelling evidence that "American culture wars, international security and European politics can no longer be disentangled." The Europeans are now scrambling to figure out how to respond to the cascading chain of events, including being excluded from talks over the fate of Ukraine, and more fundamentally, what this all means for the future of European security. Patrick Wintour Guardian diplomatic correspondent [summed up](#) the split in European views – some believing the rupture with the United States is recoverable, while others take a far darker view, that the Trump administration is intent on weakening and dividing the Europeans, and leaving them to fend for themselves.

It is ironic too that Vance chose to lecture (incidentally completely unfairly) about free speech and criticized Europeans for "censoring opponents" and "putting them in jail." Equally ironic, former Russian President and Prime Minister Dmitry Medvedev [praised](#) the remarks. We should not miss the significance of the inflection point, as defense of Europe slips away in favor of an inexplicable rapprochement with Russia.

In a further sign of the intention to disrupt and destabilize, the Trump administration reportedly [has pressured](#) authorities in Romania to lift travel restrictions on [Andrew Tate](#) and his brother Tristan, both facing criminal charges in Romania of sexual misconduct, engaging in organized crime and money laundering.

And that was just **Y1, Week Four**. **Y1, Week Five** would drive a stake into the heart of the Atlantic alliance. Peter Baker would [aptly characterize](#) Trump's revisionism



and pivot to Russia unimaginable since Yalta as follows, “Three years almost to the day, President Trump is rewriting the history of Russia’s invasion of its smaller neighbor. Ukraine, in this version, is not a victim but a villain. And Mr. Zelensky is not a latter-day Winston Churchill, but a ‘dictator without elections’ who somehow started the war himself and conned America into helping. ... the vitriol expressed towards Mr. Zelensky drew gasps of surprise on both sides of the Atlantic.” Trump claimed Zelensky’s popularity rating is 4% (in fact it is [57%](#)).

And shortly after attacking Zelensky, in his assault on New York City’s congestion charge (forgetting for the moment that he has for months championed states’ rights over federal intervention), Trump [called](#) himself “King”

To be clear, the idea that Zelensky “talked the United States of America into spending \$350 Billion Dollars, to go into a War that couldn’t be won” (per Trump’s post on Truth Social) when the entire world saw Russia without provocation and in violation of international law ruthlessly attack Ukraine and commit unspeakable atrocities against its civilian population and infrastructure is the ultimate and shameless distortion of reality. As for being a dictator, Zelensky won over 70% of the vote, against the then incumbent president and his approval ratings are higher than Trump’s. (A poll [conducted](#) February 4-9 in Ukraine shows 57% of the 1,000 surveyed trusting Zelensky, down 90% from May 2022, but up from 52% in December 2024.)

One of the few voices of reason among the Republicans, former Vice President Mike Pence, [was crystal clear](#), Russia “launched an unprovoked and brutal invasion.” Tortoise Media was prescient in its post last week starting its timeline with Neville Chamberlain’s appeasement of Hitler in giving up parts of Czechoslovakia to prevent war. We all know how that ended.

And as for the \$350 billion and his later claim that “Europe has given \$100 billion and [the US has] given \$300-plus [billion], the facts (according to the Kiel Institute): these are factually incorrect. When Trump accused Zelensky of “admitting that half the money is missing,” as CNN [notes](#), what Zelensky was saying was that a large portion of US aid to Ukraine is not handed over to the Ukrainians.

Zelensky is [correct](#). Over the past three years, Europe has allocated €132 billion, and the United States has allocated €114 billion, roughly half of which €120 billion has been military assistance. While Europe and the United States are roughly on par on military aid., Europe has long surpassed the United States on financial and humanitarian aid (€70 billion versus €50 billion). And what Trump glosses over or does not seem to understand, as the Center for Strategic and International Studies [noted](#) last May, the idea of “aid to Ukraine” is a misnomer. Around 72% of money overall and 86% of military aid is spent in the United States – the weapons sent are produced in factories in the United States (and in fact the money is largely spent to replenish US stockpiles with more modern weapons as older systems are deployed), payments to US service members are largely spent in the United States and a portion of humanitarian aid is spent in the United States.

And for Trump to now seek half of Ukraine’s critical minerals, worth three to four times the military, humanitarian and other financial aid expended in defense of

Ukraine (a significant portion of which was spent in the United States and all of which was expended to defend the West from Putin) is reprehensible.

**Y1, Week Six** would vie with **Y1, Week Five** as the most shameful Y1, Week in US foreign policy in decades. On the third anniversary of the February 2022 invasion of Ukraine, the Ukraine government put forward a General Assembly resolution demanding the withdrawal by Russia of its forces from Ukraine and accountability for its war crimes as a basis for peace. The vote: 93 supported the resolution, 65 abstained and 18 voted against (including Russia, North Korea, Nicaragua, Belarus, Equatorial Guinea, Israel and the United States of America).<sup>44</sup> We are now aligned with a war criminal, a leader deemed responsible for the murder of the Russian journalist Anna Politkovskaya, former intelligence officer Alexander Litvinenko and opposition leader Alexei Navalny, and who unleashed the illegal invasion of Georgia, the invasion and seizure of Crimea and the brutal invasion of Ukraine that has witnessed untold war crimes and crimes against humanity against the people of Ukraine. And Trump has driven a wedge between the United States and its closest allies.

And if we needed a reminder of the sway Putin has over Trump and Vance, we have the excruciating [seven minutes](#) of Vance and Trump shamelessly shaking down Zelensky in the Oval Office for the whole world to see. After close to 40 minutes of cordial discussion, and following a question from a Polish journalist, Vance launched into his invectives. It certainly looked like a set-up – an ambush, because even in this chaotic White House, someone should have recognized that anyone schooled in the “art of closing the deal” would never countenance a public shaming, let alone recognize that the absence of security guarantees as part of the minerals deal was a red line for Zelensky.

Michael Smerconish [offered](#) an interesting angle on Trump’s broadsides – he jumped in when he saw that Vance was upstaging him. Note too that Vance contradicted the Trump narrative by stating that “Putin invaded Ukraine and destroyed a chunk of the country.” And ironic that Trump became incensed when Zelensky warned Trump of the threats that Putin poses (“... you will feel it in the future”). Yes, “great television,” but this is not entertaining, it is appalling. And there is only one winner in all of this, Vladimir Putin.

Equally revealing was Trump’s response to a reporter who asked what would happen if Russia violated a Trump-negotiated ceasefire? Trump shot back, “What if anything?” What if a bomb drops on your head right now?” He then continued if with

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<sup>44</sup> The General Assembly also took up a second resolution proposed by the United States that acknowledged the “tragic loss of life” and called for a swift end to the conflict, without mentioning Russian aggression. France proposed three amendments that stated that the conflict was the result of Russia’s “full-scale invasion,” reaffirmed commitment to Ukraine’s sovereignty, independence, unity and territorial integrity, and called for peace that respects the UN Charter. This resolution passed 93-8, with 73 abstentions. The United States abstained and Russia voted against. The vote on the amendments was 60-18, with 81 abstentions. The United States then submitted its initial resolution to the Security Council (with no mention of Russian aggression), where it was approved 10-0, with Britain, Denmark, France, Greece and Slovenia abstaining. See [UN News](#).

his grievance riff over the Russia investigation, “Let me tell you, Putin went through a hell of a lot with me. He went through a phony witch hunt where they used Russia, Russia, Russia, Russia.” See [“The Real Reason Trump Berated Zelensky.”](#)

Not that we needed reminding that Trump plays fast and loose with the truth – as to the facts (see also [PolitiFact](#), of the Poynter Institute and [FactCheck.org](#)):

- “You have not thanked us” – see CNN [fact check](#) identifying 33 expression of thanks or gratitude in English (excluding those in Ukrainian). Most recently, after a call in February 12 with Trump, Zelensky posted on X “I am grateful to President Trump” and “I appreciate his genuine interest.” In a February 19 press conference, Zelensky exclaimed, “I am thankful for all of (Trump’s) support.”
- “We gave you \$350 billion” – *see* above. Note also that Ukraine Oversight (set up by the US government to oversee aid to Ukraine as part of Operation Atlantic Resolve) [estimates](#) the US has provided \$183 billion and provided a further \$20 billion in loans as part of a G7 initiative. Mark Cancian, a senior adviser with the Center for Strategic and International Studies, estimates US aid to Ukraine in the range of \$175-185 billion.
- “You campaigned for the opposition in October” – No, Zelensky visited an ammunitions plant in Scranton where he thanked workers producing munitions for Ukraine. During that trip, Zelensky met with President Biden and Vice President Harris, and also met with Trump in New York City.
- “Zelensky is a dictator” – No, he was [elected](#) in March 2019 to a five year-term and garnered more than 73% of the vote. Following the invasion in February 2022, martial law [was declared](#). Ukrainian law [provides](#) for a suspension of elections during the pendency of martial law. There are a number of reasons why elections would be fraught – first, millions of Ukrainians are living outside the country, second hundreds of thousands of troops are deployed to front lines, third close to 20% of the country is under Russian occupation and fourth lines of voters at the polls would be potential targets of Russian drone attacks.
- “Zelensky has a 4% approval rating” – *see* above.

And now, **Y1, Week Seven** and the day before his address to Congress, not surprisingly, Trump has “paused” congressional authorized military aid to Ukraine, with a White House official reporting that Trump wants Zelensky “committed” to reaching a peace agreement. Recall that this is the second such pause, as five years ago Trump held up congressionally authorized aid, leading to his first impeachment. And like that first pause, this one constitutes “an impoundment” in violation of the [Impoundment Control Act](#) and hence is unconstitutional as a breach of his obligation to [take care](#) that the laws are faithfully executed (Take Care Clause of the Constitution). Recall too that there is no effort to pressure the adversary, Russia, to come to the negotiating table (an adversary that has little incentive to end its illegal war unless there are further concessions from Trump we don’t know about), rather only pressure on our ally, Ukraine.

CNN [reports](#) that the pause only applies to aid not yet delivered to Ukraine, and that Ukraine might have sufficient weaponry to continue fighting, perhaps until summer.

That said, CNN also quotes CSIS adviser Mark Cancian as saying that the impact “could be crippling” in two to four months, aided by continued deliveries of military aid from European countries.

Separately, The Guardian [reports](#) that the State Department and the Treasury Department have been directed to draw up plans for potential sanctions relief for Russia and sanctioned individuals. It remains unclear which sanctions would be lifted first and under what conditions. While some sanctions could be lifted by EO, others would likely need congressional approval. Notwithstanding Secretary Rubio’s exclamation of “incredible opportunities were Moscow to end the war, it is less clear that US businesses would be quick to return to Russia were sanctions lifted, and certainly plenty of reasons to not do so (see [Not in a Hurry](#), [Open Question](#) and [Not Raring to Get Back](#)).

So, for those tuning in late, why did Trump launch his revisionist broadside on Zelensky before the cringeworthy Oval Office exchange? Possibly because he is in such thrall to Putin that he needs to continue to please him as Putin plays him so well, or simply because for Trump lying works. Recall that over 70% of Republicans believed that Trump won the 2020 election and significant numbers of Republicans bought the idea that January 6<sup>th</sup> was a peaceful protest by a group of well-meaning patriots. Putin has one long-term strategic goal to crush the Atlantic alliance, and Trump is now complicit in that endeavor. And he may be more than complicit if the goal is to carve up the world.

George Packer writes an insightful piece (“[The Hollow Men](#)”) on how quickly those around Trump turned on a dime from fawning supporters of Zelensky to brutal detractors when Trump chose to abandon Ukraine in favor of Putin. Packer reminds us of the mid-sentence shift in policy in Orwell’s *1984* as he catalogues not a change in policy but rather insistence that nothing had changed.

I remain convinced that we will weather this storm, though when and how, and with what irreversible damage I do not know. But one thing is clear, the rest of the world will never again look upon the United States of America as it has for at least 80 years. As for the pain for the Ukrainians, consider the following: see [Trump's Ukrainian betrayal](#).

**End of Y1, Week Nineteen**, former Secretary of State Mike Pompeo, speaking at the Black Sea Security Forum in Odesa on May 31, warned Trump against recognizing Russia’s sovereignty over Crimea and other Ukrainian territories seized by force, calling it “a mistake of epic proportions.” (See [The Hill](#) coverage.)

**Y1, Week Eighteen**, the world was treated to another ambush in the Oval Office. South African President Cyril Ramaphosa was subjected to treatment honed some Y1, Weeks ago when President Zelensky was ambushed – “ritualized humiliation” in the [words](#) of the Financial Times Editorial Board. The accusation of a “White genocide” in South Africa is patently false – yes, there is crime in South Africa (the murder rate is 45 per 100,000), but it affects Whites and Blacks alike. And bad as the level of crime may be, to label it as “genocide” betrays a fundamental misunderstanding of what a genocide is. See also [Reuters](#) coverage.)

According to Financial Times [reporting](#), rural crime peaked in the early 2000s and has fallen since. The Transvaal Agricultural Union reported that there were 32 murders and 139 attacks on farms in South Africa in 2024, around a third of the 2017 level, targeting both Black and white people. Please use the sharing tools found via the share button at the top or side of articles. White South Africans represent 7% of the population and it is estimated that White farmers own 47% of South Africa's land and Black farmers 11%, with the balance split between government and urban areas. One often hears in South Africa that the imbalance is due to the economic mismanagement under the ruling party, the ANC. One in three South Africans is unemployed.

The video clips and images shown to the assembled group had they been aired on social media purporting to show genocide against Whites would have been labelled disinformation. Photos of mass graves in fact were crosses erected temporarily by volunteers along a protest route as part of a protest in September 2020 against the reported murder of two farmers. Video images included shots of the firebrand opposition leader Julius Malema and the former president and a leader of the opposition Jacob Zuma. A blog post purporting to be of a mass grave in South Africa in fact was a screen shot of a video reporting on the discovery of a mass grave near Goma in eastern DRC. The video clip had been [filmed](#) by a *Reuters* video journalist of victims of an assault on Goma by Rwandan-backed M23 rebel. This is the *Reuters* [video](#) (warning: disturbing content).

Susan Glasser, writing in *The New Yorker* ("[Donald Trump Stages an Oval Office Mugging](#)") captured it perfectly: referring to both the Zelensky ambush and the Ramaphosa ambush,

"In both cases, the shock was the point for Trump; he's turned his Oval Office into a kind of geopolitical WrestleMania, complete with orchestrated sucker punches designed to make him seem like the strongman that he longs to be. Ramaphosa's denials did not stop Trump any more than Zelensky's had, nor did an effort to correct Trump by one of the white South African golfers whom Ramaphosa had brought along with him in an effort to smooth the meeting with the golf-obsessed American President.

The whole exchange could not have better captured the state of Washington a hundred and twenty-one days into Trump's second term: a manufactured scene of outrage about a non-existent "white genocide," featuring Trump beating up on the first African leader to visit the White House in his second term. At the same moment that the Administration has cancelled the refugee status of tens of thousands of actual refugees fleeing war and persecution across the globe, Trump staged the showdown to justify his policy of granting asylum to a handful of white Afrikaners whose cause has been taken up by Musk."

Speaking of the offer of refuge in the United States to white South Africans, residents of an isolated, Afrikaners-only community founded in 1991 would rather stay in South Africa. See [NZZ](#) and [Daily Maverick](#) reportage.

There is one more irony, which Greg Sargent of *The New Republic* so aptly captures ("[Trump's Lie About Dead 'White Farmers' Just Got Even More Grotesque](#)"). The administration has suspended foreign aid to, and the resettlement of refugees from, the DRC, where there are myriad appalling atrocities, including the one whose image



Trump brandished in the Oval Office purporting to be an atrocity against white South Africans, where no such atrocities in fact are occurring.

**Y1, Week Thirty**, plenty can, and plenty will, be written about Trump's quest to end the war in Ukraine. I start with Anne Applebaum's piece, [Trump Has No Cards](#), which she concludes by saying "The U.S. has no cards because we've been giving them away. If we ever want to play them again, we will have to win them back: Arm Ukraine, expand sanctions, stop the lethal drone swarms, break the Russian economy, and win the war. Then there will be peace." As Applebaum succinctly captured the moment:

- **It was embarrassing to welcome a notorious wanted war criminal on American soil, territory that once belonged to Russia and that some Russian nationalists dream of taking back.** The military literally rolled out the red carpet for an autocratic leader who had invaded another country and is wanted by the International Criminal Court for war crimes, including the kidnapping of Ukrainian children. Following a three-hour meeting and with little to report, Putin took the podium first at a news conference – a break from protocol – and spoke for eight minutes, riffing on "root causes" of the war. Trump, normally loquacious, spoke only for three minutes, and took no questions.
- **It was humiliating to watch an American president act like a happy puppy upon encountering the dictator of a much poorer, much less important state, treating him as a superior.** To remind the Americans that Russia expected to be treated as an equal, harkening back to the days of Cold War superpower competition, and to the days when Ukraine formed part of the Soviet Union, Russian Foreign Minister Lavrov showed up in Anchorage sporting a sweatshirt with USSR emblazoned on it.
- **It is excruciating to imagine how badly Trump's diplomatic envoy, Steve Witkoff, an amateur out of his depth, misunderstood his last meeting with Putin in Moscow if he thought that the Alaska summit was going to be successful.** Heather Cox Richardson [reports](#) that Witkoff had heard through backchannels that Putin might be willing to meet Trump in person. Two days before the August 8 deadline set by Trump to agree to a ceasefire failing which there would be "severe consequences," Witkoff announced Russia was prepared to ready to retreat from some land it occupies in Ukraine. Witkoff either misunderstood or Putin misled him. Richardson, citing former U.S. ambassador to Russia Michael McFaul, notes that Witkoff does not speak Russian and does not use a notetaker from the U.S. Embassy.
- **It is ominous that Trump now says he doesn't want to push for a cease-fire but instead for peace negotiations, because the latter gives Putin time to keep killing Ukrainians.**
- **It is strange that Russian reports of the meeting focused on business cooperation.**
- **As the United States dismantles its foreign policy tools and fires the people who know how to use them (and as political appointees, either accidentally or deliberately, undermine the national security agencies), our ability to act on the global stage with agility will diminish.**



**Y1, Week Twenty-Nine**, there undoubtedly will be plenty to say about the Putin-Trump conclave in Alaska in the days to come.

In the meantime, I note, as Heather Cox Richardson [pointed out](#), Putin is under sanction of the International Criminal Court (ICC) for war crimes, including the kidnapping of Ukrainian children, and subject to arrest if he enters a country that is a member of the Rome Treaty and therefore accepts the authority of the ICC. And, yet, he is being welcomed to the United States by Trump. The United States is not a party to the Rome Treaty and does not recognize the authority of the ICC, but nonetheless this is a massive propaganda coup for Putin and arguably an end to the rightly imposed isolation of a war criminal. Putin last travelled to the United States in 2015 and last met with Trump in 2019.

Richardson referred to a *CBS News* [report](#) that, deploying a classic Russian mind game tactic for which he is famous, Putin gave Trump envoy Steve Witkoff an Order of Lenin medal to pass along to the mother of an American killed in Ukraine fighting for the Russians. The medal was awarded posthumously to Michael Gloss, but the psy-ops aspect of this is that Gloss' mother is a senior official at the CIA. The medal dates back to the Soviet era and has been awarded, among other reasons, for outstanding civilian service, including to British double agent Kim Philby. It is not unreasonable to interpret the move as “needling” Trump, intended to label him as weak.

**Y1, Week Thirty-One**, I commend the article written by Michael Kimmage that appeared in *Foreign Affairs* (“[The Pernicious Spectacle of Trump’s Russia-Ukraine Diplomacy](#)”). Kimmage notes that while Trump insists on being a peacemaker, he has no plan for ending the war – he careens from one position to the next. He has no leverage over Putin, in part because he is loath to impose meaning sanctions on Russia or provide more military aid to the Ukrainians. He has little ultimate leverage over the Ukrainians because its very existence is on the line and many other governments are willing to support it. Kimmage warns that “Trump’s ongoing diplomatic circus will not only fail to stop Russia’s war. It will complicate the job of sustaining and strengthening Ukraine’s capacity to fight, which is the only way to give Kyiv the upper hand in this conflict and, accordingly, to stymie Putin. Ultimately, the pantomiming of diplomacy will diminish American power, which rests on coherent, disciplined, and believable leadership.”

Avoiding a repeat of the ambush in the Oval Office, Zelensky arrived (in a suit) with the leaders of five European countries, the Secretary General of NATO and the President of the European Commission.

So, watch the moving pieces – the ceasefire, the trilateral summit, the security guarantees and the overall deal. Ukraine added a sweetener of a \$100 billion arms deal. Putin’s offer in Alaska has four elements – Ukraine withdraws from eastern Donbas, Russia would cease attacking Kherson and Zaporizhzhia, the international community would recognize Russia’s sovereignty over Crimea, and Ukraine would be blocked from joining NATO. According to *The Economist* (“[Putin’s “land swap” is really a grab for Ukraine’s fortress belt](#)”), what Putin really wants is the western part of Donetsk province, which remains firmly under Ukrainian control, and the reason is that he wants Ukraine to give up its “fortress belt.” That is a 30-mile line of cities and

towns that currently prevents Putin from gaining all of the Donbas region, but also stands in his way of threatening other regions. The only way he is going to gain control of this strategic line is if Trump hands it to him.

**Y1, Week Thirty-Two**, the *Wall Street Journal* [reports](#) that, as the White House has sought to encourage Putin to reach a settlement on Ukraine, the Pentagon has relied on a high-level approval process to prevent Ukraine from firing ATACMs (U.S.-made long-range Army Tactical Missile Systems) against targets in Russia. That same approval process applies to the use of U.K.-supplied Storm Shadow missiles as they use U.S. targeting technology.

**Y1, Week Thirty-Five**, 19 Russian drones [reportedly](#) penetrated Polish air space and NATO jets scrambled. Fourteen reportedly were shot down. Apparently the drones were not armed, leading commentators to [speculate](#) that the incursion was intended to test NATO's response. On Saturday, Romania reported an incursion into its airspace.

Trump had suggested that the incursion was “a mistake,” prompting Polish Foreign Minister Radoslaw Sikorski to say, “You can believe that one or two veer off target, but 19 mistakes in one night, over seven hours, sorry, I don't believe it,” Polish Prime Minister Donald Tusk said that Poland was at its closest to open conflict since World War II.”

**Y1, Week Forty-Seven** sees a 28-point plan leaked, followed by the emergence of a 20-point plan. One separate reporting stream has focused on a leaked transcript of a conversation between Envoy Steve Witkoff and a Kremlin aide and former Russian ambassador to the United States, Yuri Ushakov. In an October 14 audio recording [obtained](#) by Bloomberg, Witkoff is heard advising Ushakov on how Putin should approach a call with Trump. “Compliment him on his great success in Gaza, congratulate the president on this achievement.” Witkoff then advised Putin to impress upon Trump this idea: “The Russian Federation has always wanted a peace deal. That's my belief. I told the president I believe that.”

Witkoff raised the prospect of putting together a “20-point peace proposal” during his call with Ushakov [similar to his efforts in Gaza](#) (recall that the Gaza deal was crafted largely without input from Hamas and so too this initially cut out the Ukrainians and the Europeans). Two days later (16<sup>th</sup>) Putin called Trump, and the following day (17<sup>th</sup>) Trump met with Zelensky. At that meeting, the hoped for Tomahawks were not offered up. The 20-point plan then resulted in the tabling of the [28-point peace plan](#).

Rep. Don Bacon (R) was scathing in his [response](#): “For those who oppose the Russian invasion and want to see Ukraine prevail as a sovereign & democratic country, it is clear that Witkoff fully favors the Russians. He cannot be trusted to lead these negotiations. Would a Russian paid agent do less than he? He should be fired.”

As Anne Applebaum [noted](#), the 28-peace plan is a misnomer as it is not a “peace plan.” On the streets of Kyiv, the plan is referred to as a forced capitulation. The plan negotiated by Witkoff and head of the Russian Sovereign Wealth Fund, Kirill Dmitriev, included many concessions to Russia: Ukraine would recognize Russian control over Donetsk, Luhansk and Crimea, Ukraine would withdraw from those parts of Donetsk that it still controls, Ukraine would promise never to join NATO, must

reduce the size of its military from 900,000 to 600,000, Ukraine must hold elections within 100 days, and must not host foreign troops in the country. In return, Ukraine “would receive security guarantees,” but the plan does not describe what those guarantees would be, and there is no reason to believe that Trump would ever provide them. The United States would lift sanctions on Russia, invite Russia to rejoin the G8 and reintegrate Russia into the world economy.

The New Republic [points out](#) that certain phrases in the Trump peach plan appear to have been translated from Russian.

**Y1, Weeks Fifty /Fifty-One**, it is hard to keep track of the status of the negotiations if one can call them that, and per usual Trump’s pronouncements are of little value. After the United States and Ukraine claimed they had made significant progress on the now 20-point peace proposal put forward by Ukraine, Putin seems to have poured cold water on this endeavor by claiming that Ukraine had targeted one of his personal residences (in the Novgorod region), prompting Putin to exclaim that Russia’s participation in negotiations was “under review.”

And, while Ukraine called the accusation a “complete fabrication,” Trump sided with Putin, and when pressed by a reporter on whether he had proof that the attack had occurred, Trump made clear his source was Putin – “I heard about it this morning. You know who told me about it? President Putin told me about it. Early in the morning, he said he was attacked. That’s no good.” As for evidence, “Well we will find out. You’re saying maybe the attack didn’t take place? That’s possible, I guess. But President Putin told me this morning.” Shades of the [Helsinki summit](#), when Trump sided with Putin and against the unanimous view of the U.S. intelligence community. Hello Tulsi and John, “where are you?”

The *Hill* [reports](#) Tuesday evening that Russia now plans to take a tougher approach to the negotiations based on an attack for which there continues to be no evidence. Reuters quoted the Kremlin spokesman Dmitry Peskov as saying, “The diplomatic consequence will be to toughen the negotiating position of the Russian Federation.” Meanwhile, U.S. Ambassador to NATO Matthew Whitiker appeared to walk back Trump’s alignment with Putin on this, reportedly saying “it was ‘unclear’ what actually happened.” The adding, “it seems to me a little indelicate to be this close at a peace deal and then to do something that would be viewed as reckless.”

### **Withdrawal of Foreign Assistance**

Books could, and no doubt will, be written about the devastating impact of the USAID funding freeze. I was intrigued by *Washington Post* [reporting](#) in **Y1, Week Six** that the acting deputy IG for USAID and his staff have been sitting on two reports out of fear that, if the reports are released, the White House will retaliate against them for being the bearer of bad news. One report chronicles the dire situation in Gaza, with the funding freeze threatening the ceasefire, and the second, a global audit, cites the risks of widespread looting and disease, with dire conditions across southern Africa, Senegal and Sudan. The USAID IG position remains vacant following the firing of IG Paul K. Martin the day after he issued a report on the chaos triggered by the withdrawal of USAID assistance and staff.

## It's Contagious

Media reported (*see, e.g., [Times of Israel](#) coverage and [NYT coverage](#)*) that Ronen Bar, who heads Shin Bet, Israel's domestic security agency, set out in a public affidavit that Israeli Prime Minister Benjamin Netanyahu had repeatedly pressed him to spy on Israeli citizens who had led and funded anti-government protests and had demanded personal loyalty above the rulings of the Supreme Court in the event of a constitutional crisis (04/22/25). The affidavit was submitted to the Israeli Supreme Court as part of a lawsuit brought by Israeli watchdog organizations and opposition parties against Netanyahu's attempt to fire Bar. In March, Netanyahu had [posted](#) a statement aligning his predicament with Donald Trump's.

## China Fights Back

**Y1, Week Seventeen**, condemning “bullying” and “hegemonism” and warning that “[t]here are no winders in tariff wars or trade wars,” Chinese President Xi Jinping [addressed](#) leaders from the Caribbean and Latin America at the China-CELAC (Community of Latin American and Caribbean States) Forum in Beijing. While the meeting was billed as the fourth Ministerial Meeting, the president (and a former president, now head of the New Development Bank, also known as the BRICS bank) of Brazil, the president of Chile and the president of Colombia attended as did President Xi. Long-time military partner of the United States' Colombia [announced](#) it was joining China's Belt and Road Initiative. (*See [Foreign Policy](#) coverage.*) The forum took place the same Y1, Week as Trump backtracked on tariffs on China, reducing them from 145% to 30%.

**Y1, Week Thirty-Four**, I am reminded of one of the consequences of Brexit, namely that in negotiating their exit from the European Union, the British had managed to achieve that which they had spent 300 years avoiding – bringing the continental Europeans together and acting as a single bloc. Well, Trump has now managed to do the same in uniting China, Russia, North Korea and India, and in particular China and India, which have been adversaries for decades.

As Fareed Zakaria noted (“[Trump's tariffs are a gift, just not to America](#)”), it was not only the photos of Xi Jinping, Vladimir Putin and Kim Jong Un standing together in solidarity while [watching](#) a military parade marking the 80<sup>th</sup> anniversary of the surrender of Japan ending the war in the Pacific that were noteworthy, but it was also the image, at the Shanghai Cooperation Organization summit, of regional powers such as Turkey, Vietnam and Egypt, once thought close to Washington, pivoting away from the United States and toward China.

The members of the emerging Axis of Adversaries (what the Center for New American Security [calls](#) the Axis of Upheaval) are reacting to tariffs, hostile rhetoric and ideological demands – all at the hands of Trump. Brazil, India and South Africa have traditionally avoided turning BRICS meetings into an anti-Washington axis. With the highest tariff rate (50%) imposed on India, high tariffs imposed on Brazil and sanctions and visa bans imposed against Brazilian officials, and a 30% tariff and cut-off of foreign aid impacting South Africa and potential sanctions against South African officials, is it any surprise? And as Zakaria notes there is absolutely no strategic

rationale for any of this – Trump is punishing Brazil because its Supreme Court is holding Bolsonaro to account and its judges have pushed back against X, and he has attacked South Africa because of its land reform and the case against Israel that it launched at the International Court of Justice. *See also* [The Y1, Week](#) coverage.

Trump’s allies? Largely strongmen - El Salvador, Hungary, Pakistan and the Gulf monarchies.

Tom Nichols very much captured the moment (“[The World No Longer Takes Trump Seriously](#)”) in writing that the Xi, Putin and Kim have for nearly a decade watched Trump and have concluded that “[t]he president of the United States is not worthy of their respect.” The military parade “is the most recent evidence that the world’s authoritarians consider Trump a lightweight.” Nichols posits that the parade was more than a snub (after all, what role did the United States play in the defeat of Japan), as it follows the humiliation of Trump by Putin (notwithstanding White House spin) in Anchorage.

Trump was left on the sidelines expressing his hurt feelings: “May President Xi and the wonderful people of China have a great and lasting day of celebration. Please give my warmest regards to Vladimir Putin, and Kim Jong Un, as you conspire against The United States of America.”

But what is worse, as Nichols notes, is that the United States has no coherent foreign policy and no team of serious national security professionals [projecting](#) competence, strength and seriousness. And we have a leader whose principal motivation seems to be getting the Nobel Peace Prize.

## **Iran**

### ***Attack Against Iranian Nuclear Facilities***

Trump, during the 2024 Biden-Trump debate:

“I don’t mind being here, but the only reason I’m here is he’s so bad as a president that I’m going to make America great again. We’re going to make America great again. We’re a failing nation right now. We’re a seriously failing nation. And we’re a failing nation because of him. His policies are so bad. His military policies are insane. They’re insane. These are wars that will never end with him. He will drive us into World War Three and we’re closer to World War Three than anybody can imagine. We are very, very close to World War Three, and he’s driving us there.”

### ***The messaging and unanswered questions:***

- [Trump campaigned on ending American involvement](#) in forever wars overseas.
- The bombing by US B-2 stealth bombers of nuclear facilities at Fordow, Natanz and Isfahan [is an act of war against Iran](#), which was not authorized by Congress.
- We are [rushing headlong into a fraught conflict](#) in the Middle East with no vision of what comes next, no strategy and no endgame.
- Trump acted without consulting allies and may even have misled them as negotiations reportedly were still ongoing at the time of the attack.

- There is nothing to suggest that the people that Trump has surrounded himself are [capable of addressing the forces that Trump has unleashed](#).
- [The principal reason we are having this particular conversation is that seven years ago Trump ripped up the JCPOA](#), an admittedly imperfect agreement but an agreement nonetheless that Iran was abiding by that was preventing Iran from building the nuclear weapon that Netanyahu and Trump used to justify first Israeli and then American attacks on Iran's nuclear facilities. That move was compounded by the failure of Trump's negotiators to negotiate a better (or any) deal and Trump's failure to stop Netanyahu from pre-empting any negotiations.
- Trump had said in the days leading up to the strike that he believed Iran was on the verge of being able to build a nuclear bomb, though [U.S. intelligence agencies reportedly disagreed, assessing it would take more than a year for the Iranians to turn enriched uranium into a usable, deliverable nuclear weapon](#). Back to the days of the "doggy dossier"? Was the IC sidelined? Moreover, the statement by the Israeli foreign minister to the effect that the Israeli bombing campaign had set back the Iranian nuclear program by two or three years undermines the argument that there was an imminent threat of an attack by Iran that would justify a U.S. attack under international law.
- [By aligning with Netanyahu, we again are on the wrong side of history](#), and we are putting in harm's way civilians throughout the region, our diplomats and troops throughout the world, and ultimately the homeland? The United States has 40,000 service members deployed across the Middle East at bases in Syria, Iraq, Jordan, Kuwait, Bahrain, Qatar and the United Arab Emirates. Recall that after the killing of the head of Iran's elite Quds Force, Maj. Gen. Qassem Soleimani, Iran retaliated by targeting Al-Asad and another U.S. base in Erbil with 13 ballistic missiles in the largest such attack ever against U.S. forces abroad. While no U.S. troops were killed, more than 100 were later diagnosed and treated for traumatic brain injuries.
- Trump has long been known for having no understanding of the world around him, of thinking he alone knows best and of having no patience. [Rather than continue with negotiation to solve a problem he initially created, he chose a path that could lead to war](#).
- [Trump promised to resolve global conflicts within days of his inauguration](#). None of those conflicts have been solved. In fact, under his watch they have gotten worse.
- Incidentally, in spite of Trump's announcement that Iran's nuclear enrichment program has been "totally obliterated," [we have no proof of that](#) the 30,000-pound so-called "bunker busters," officially known as the GBU-57 Massive Ordnance Penetrators, [penetrated the mountain](#) under which the Fordow facility was built. See [The Fallout](#) below.
- [What might happen to Iranians in the United States](#) – citizens, green card holders, students and other visa holders, and other visitors? If Trump can



invoke the Alien Enemies Act against Venezuelans on spurious grounds, what might he do if the situation escalates?

- [Where is Congress?](#) Rep. Jim Himes [posted](#) on X, “According to the Constitution we are both sworn to defend, my attention to this matter comes BEFORE bombs fall. Full stop.” *See below* regarding the War Powers Resolutions.
- [Let’s not forget Trump’s obsession with getting one global recognition that Obama had received – the Nobel Peace Prize.](#) Just hours before the attack on Iran, Trump [lamented](#) on Truth Social that he was not getting for a litany of conflicts he was resolving. That said, credit where credit is due: Trump has managed to get the DRC and Rwanda to the negotiating table in D.C. and, following the intervention of his special envoy to Ukraine and Russia Lt. Gen. (ret.) Keith Kellogg, Sviatlana Tsikhanouskaya’s husband Siarhei Tsikhanouski, along with 13 other political prisoners (including Natalia Dulina, Igor Losik, Igor Karnei, Galina Krasnyanskaya, Akihira Gayevsky-Khanada and Kirill Balakhonov, as well as three Polish citizens, one Estonian citizen, two Latvian citizens, one Swedish citizen, one US citizen and two Japanese citizens) were released from Lukashenko’s gulag in Belarus. *See [Washington Post](#) coverage.*<sup>45</sup>

## ***The legal considerations***

### **Domestic constraints**

John B. Bellinger III, former State Department Legal Advisor, posted a useful [summary](#) of the legal issues relevant to the attack on Iran’s nuclear facilities. The extent of presidential authority to use force absent a declaration of war by Congress is debatable. Presidential authority is broad. (*See also* his [testimony](#) in 2017 in the context of threats of force against North Korea.)

Presidents of both parties have deployed U.S. forces and ordered the use of military force without congressional authorization on a number of occasions. They have done so on the basis of Article II authority. While Congress has the power under Article I to declare war, that power has not be interpreted as requiring congressional authorization of every military action initiated by a president.

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<sup>45</sup> According to the [Viasna human rights organization](#), over [1,155 political prisoners](#) (many enduring months or even years of solitary confinement) remain imprisoned by President Alexander Lukashenko and his autocratic regime, including [Ales Bialiatski](#), founder of Viasna and a winner of the 2022 Nobel Peace Prize, who was sentenced to 10 years in prison two years ago, [Marfa Rabkova](#), who was the coordinator of Viasna’s volunteer service. Also still imprisoned are [Maria Kolesnikova](#), who was part of Sviatlana’s electoral ticket and another 2020 opposition candidate [Viktor Babariko](#). Journalist and blogger [Ihar Losik](#) had 172,000 subscribers at the time he was detained, before the 2020 vote. Journalist [Katsiaryna Bakhvalava](#) was detained at the time of the protests along with her husband, journalist [Ihar Ilyash](#).

The DoJ's Office of Legal Counsel has taken the view that the power to declare war may constrain the ability of a president to deploy the U.S. military under Article II powers in certain circumstances. Essentially, an Article I declaration of war would be needed for prolonged and substantial military engagements exposing military personnel to significant risk. Bellinger notes that both Democratic and Republican presidents have preferred to obtain congressional authorization, or have taken the position that they are acting under prior authorizations, for substantial and prolonged use of military force. (President H.W. Bush sought and received congressional authorization for the [Gulf War in 1991](#), and President George W. Bush sought and received authorizations in 2001 and 2002 to use force following the 9/11 attacks and [against Iraqi President Saddam Hussein](#).)

Reps. Ro Khanna (a Democrat) and Thomas Massie (a Republican) introduced a War Powers Resolution in the House, and Sen. Tim Kaine introduced a companion resolution in the Senate. The resolutions would have invoked the War Powers Resolution. The resolution in the Senate was defeated 53-47, with Sen. Rand Paul voting with the Democrats and Sen. John Fetterman voting with the Republicans. See [NewsY1, Week](#) coverage. (The long-running feud between Trump and Massie is ramping up – see [The Hill](#) coverage.)

### **International constraints**

Both the UN Charter and customary international law prohibit the use of force against another country except in cases of self-defense or collective self-defense, or if authorized by the UN Security Council. The right to self-defense includes the right to use force to defend against an imminent armed attack. Notwithstanding expansive interpretations of what might constitute an imminent attack, it is hard to see how the situation immediately preceding the bombing of the three nuclear facilities represented an imminent attack on the United States by Iranian forces. Claiming that the attack was needed to prevent an attack on Israel would likely be difficult to sustain unless Israel itself acted in accordance with international law when it first attacked Iran.

Bellinger notes that, in 1981, the Reagan administration joined a UN Security Council resolution unanimously condemning Israel for launching a surprise attack on the Osirak nuclear reactor near Baghdad. The resolution stated that “diplomatic means available to Israel had not been exhausted.” In 2007, the Bush administration declined an Israeli request to participate in destroying a nuclear reactor in Syria, fearing that it would further destabilize the region after the Iraq War. Admittedly, neither Iraq nor Syria posed as serious a threat to Israel and regional security as Iran does today.

### **The Fallout**

Trump, in a Mission Accomplished moment, announced that Iran's nuclear facilities “had been obliterated,” while a leaked Defense Intelligence Agency (DIA) report reportedly [surmised](#) that the attacks had set the nuclear program back by a few months and claimed that much of the enriched uranium had been moved before the attack. On

June 23, ODNI Gabbard and CIA Director Ratcliffe each issued statements indicating that the nuclear facilities had been destroyed.

On June 24, in a press conference given by the Secretary of Defense and CJCS, the focus was on the details of the planning and execution of the attack, rather than on providing assessments of the damage inflicted on the nuclear sites. Questions on damage were referred to the IC. Hegseth, displaying a glaring lack of historical perspective, characterized the attack as “the most complex military operation in history,” overlooking, for example, the D-Day invasion. See [Guardian](#) coverage. See also “[Tulsi Gabbard Chooses Loyalty to Trump](#).”

The Trump administration is seeking to discredit the DIA intelligence and is now targeting by name journalists at CNN and the *New York Times* who have been questioning the administration’s narrative on Iran. See [The Hill](#) coverage. Trump also accused Democrats of leaking the DIA report. Here we are again, an administration seeking to politicize intelligence. See “[Trump is making US intelligence parrot his line on Iran – we’ve been here before](#).”

Beth Sanner, who previously served as Deputy Director of National Intelligence for Mission Integration, overseeing the parts of the IC that coordinate and lead collection and analysis across the IC, brought some much-needed clarity to the obliterated/didn’t obliterate narratives. In an [interview](#) with Amy Mackinnon of *POLITICO*, Sanner first notes that it was far too early for the DIA report to be particularly useful. Moreover, no one outside a small circle have read it.

As for whether, as Trump maintains, the facilities were “obliterated,” Sanner cautioned that “We should probably be focused less on that word and try to develop a broader vocabulary to capture the fact that we can have two things be true. We can have it be true that the bombing campaign was successful in destroying particular facilities or capabilities at particular facilities, and we still have questions about the Iran nuclear program and what might be left outside of these areas that were bombed, because the program is more than these three facilities.” She notes that the subsequent statements by Gabbard and [Ratcliffe](#) that “several key Iranian nuclear facilities were destroyed” were far more nuanced. “I don’t think that these statements say that Iran’s nuclear program has been destroyed. It says facilities.” And the statements do not mention Fordow, Ishfahan or Natanz. Sanner also worries that the administration may be pressured to release more intelligence to back up its narrative, which could lead to revelation of sources and methods, and that she says, “will be a problem in the future for protecting our national security.” Note that Sanner was among the 37 whose security clearances were terminated **Y1, Week Thirty-One**.

It was just a question of time: **Y1, Week Thirty-One**, DIA Director Lt. Gen. Jeffrey Kruse was fired. No explanation was given. See [Washington Post](#) coverage.

### ***Threats Against the Iranian Regime***

**Y1, Week Fifty-Two**, Trump threatened to again strike Iran if the regime continued its crackdown on protesters. The protests, which began in December in reaction to a currency crisis (the collapse of the Iranian currency – the rial – compounded by the regime’s decision to end a subsidized exchange rate for importers that led to soaring

grocery prices, was soon [followed](#) by anti-regime demonstrations across the country over social and political restrictions imposed by the regime), have not abated and in fact [appear](#) to be spreading as more Iranians take to the streets calling for changes to the regime. Human rights groups are reporting demonstrations in over 180 cities across all 31 provinces.

The regime has responded with increased violence, according to a number of sources, killing and injuring protesters, and “disappearing” others. According to [Guardian reporting](#) (01/13/26)), as many as 2,000 may have been killed in the street protests and, according to human rights groups reporting over 10,000 have been arrested – it is impossible for media to verify the casualty figures as the internet remains suspended and telecoms services have been interrupted.

Trump [reportedly](#) is continuing to consider his options, including military strikes, and on Monday announced the imposition of 25% tariffs on countries continuing to trade with Iran. (Interesting timing in light of the fact that there is a growing consensus that the tariffs that are the subject of the appeal to the Supreme Court are likely to be struck down any day now.)

I commend the op-ed written by Nancy Okail and Sina Toosi in *The New Republic* (“[Military Intervention Will Not Liberate the Iranian People](#)”) in which they catalogue how counter-productive U.S. military intervention in Iran would be. *See also*, the International Crisis Group’s “[Iran in Crisis: Time for a Change from Within](#),” in which the NGO also argues that U.S. military intervention would be counter-productive. Instead, the United States should be offering incentives:

“the U.S. does have important leverage it can use to create incentives for players within the Iranian system. Washington could, for example, make clear that major sanctions relief, which the regime needs to address the fury driving demonstrations, and reintegration into the global economy, are contingent not only on the nuclear concessions Tehran is dangling as a negotiation gambit but also on more fundamental political change. Precisely what such reform would look like would be a question for Iranians to answer. While protesters are unified in their disdain for the status quo, what would lie beyond it remains the subject of debate both inside and outside Iran.”

### **Allied Government Reactions**

**Y1, Week Thirty-Two**, *POLITICO* reports (“[We Still Don't Know How Far They Will Go](#)”) on increasing concerns on the part of allied governments regarding the administration’s law enforcement priorities and the conduct of the DoJ. Some worry that cooperation with the U.S. government on law enforcement matters could be compromised. Part of the problem stems from U.S. disengagement from law enforcement partnerships that has weakened coordination on countering corruption, money laundering and cyber threats. For some the issue is potential prospect of having to cooperate in ways that seemingly override international treaty obligations or that could give rise to domestic opposition. The politicization of law enforcement has drawn particular scrutiny.

Monday. What a day to be in Paris! This morning the dominant story in government circles was the “concern over the dramatic rise of antisemitism in France and the lack of sufficient action by [the French] government to confront it” expressed by U.S.

Ambassador to France, Charles Kushner. That concern was set out in a very undiplomatic way - an open letter to President Macron [published](#) in the *Wall Street Journal*. The French Foreign Ministry, which summoned Kushner to appear, [responded](#), “France firmly refutes these latest allegations. The Ambassador’s allegations are unacceptable.” The Ministry cited the prohibitions set out in the 1961 Vienna Convention on Diplomatic Relations on interference in a country’s internal affairs (set out in [Article 41](#)). The contretemps follows President Macron’s rejection of accusations by Prime Minister Netanyahu that France’s announced intention of recognizing a Palestinian state is fuelling antisemitism.

ABC [reports](#) that Foreign Ministry representatives met with the Deputy Chief of Mission later on Monday.

### **Palestinian Statehood/Gaza**

**Y1, Week Thirty-Seven**, a growing number of countries are risking retaliation by Trump by recognizing Palestine as a state. It is unclear though how Trump will react. Twenty-five GOP lawmakers, led by Sen. Rick Scott and Rep. Elise Stefanik, [warned](#) the Prime Ministers of Australia, Canada and the United Kingdom, as well as the President of France, that proceeding with recognition “may invite punitive measures.” *POLITICO* [reports](#) that the U.S. Ambassador to France and the U.S. Ambassador to Israel, in a clear breach of protocol, criticized recognition as a reward to Hamas.

**Y2, Week One**, The *Atlantic* is the first to [report](#) that Trump has invited various heads of government to join his Board of Peace. According to a leaked draft of the governing document (first published by the *Times of Israel*; the White House has not released the charter), the chairman can invite participation for a three-year term. Those wanting a longer term can pay \$1 billion in cash to the Board. The charter makes no mention of Gaza, and speaks of a more nimble and effective international peace-building body,” which appears to be an effort to side-step the United Nations, even though it is a UN resolution that contemplated its formation under a two-year, extendable mandate – as a standalone oversight mechanism to implement the Gaza ceasefire.

The Board of Peace will have an executive board of “leaders of global stature” that sits below the head of state board. The White House this week [named](#) its initial seven members: Secretary of State Rubio; Jared Kushner, former British Prime Minister Tony Blair; Ajay Banga, president of the World Bank; the financier Marc Rowan; Robert Gabriel, a deputy national security adviser and former Fox News producer; and Steve Witkoff. The Board of Peace will have a separate Gaza Executive Board, chaired by Nicolas Mladenov, a former Bulgarian foreign and defense minister) as well as a panel of Palestinian technocrats (the National Committee for the Administration of Gaza), headed by the former Palestinian Authority official Ali Sha’ath. The technocrats are responsible for everyday management of Gaza.

The charter names “Donald J. Trump” as the chairman, not President Trump or the President of the United States. As chairman, Trump can approve or block any decision, unilaterally. He also names the members of the Executive Board.

There is little in the charter that outlines what the Board will do to in pursuit of peacemaking. Note, incidentally, that there is nothing in the charter that suggests the

Board will have powers akin to the U.N. Security Council, especially since those powers are underpinned by Chapter 7 of the U.N. Charter (that authorizes the use of military force).

Trump [has invited](#) leaders of a number of companies to join (the International Crisis Group [estimates](#) 50-60 leaders have been invited to join). So far, the early participants reportedly are dominated by dictatorships (Belarus, Egypt, Hungary, Saudi Arabia, Kazakhstan, Uzbekistan and Turkey) as well as Trump-aligned states (Israel and Argentina). There are also others (Kosovo and Vietnam). There is no evidence that any have agreed to pay the \$1 billion long-term membership fee. Putin reportedly said he would [pay](#) to join if he could use frozen Russian assets to do so. France, Sweden and Spain have declined to take up membership, and Canada has now been [disinvited](#).

**Y2, Week Two**, Max Boot, in his *New York Times* column, [predicts](#) Trump's project to sidestep the United Nations, will likely soon be forgotten.

### **Nobel Peace Prize – the Score Card**

**Y1, Week Forty-Five**, recall Trump has claimed he ended eight wars in eight months, these being Israel-Gaza, Israel and Iran, Pakistan and India, Rwanda and the Democratic Republic of Congo, Thailand and Cambodia, Armenia and Azerbaijan, Egypt and Ethiopia, and Serbia and Kosovo. Thailand [has suspended](#) efforts to implement the ceasefire deal with Cambodia, and tensions that have been simmering between India and Pakistan may escalate further following [bombings](#) in Islamabad and New Delhi that are the deadliest in either city in more than a decade. The risk of escalation between the two nuclear-armed South Asian countries is heightened as the level of communications and diplomatic exchanges are at their lowest in years.

### **Nigeria**

**Y1, Week Forty-Five**, it reportedly came as a surprise to AFRICOM – Trump was setting his sights on Nigeria. Following lobbying efforts by Sen. Ted Cruz and American evangelical leaders, Trump wanted the U.S. military to prepare to go into Nigeria “guns-a- blazing” because Africa’s most populous nation was allowing “our CHERISHED Christians!” to be killed by “Islamic Terrorists.”

As the *New York Times* [notes](#), Nigeria’s population of 237 million is roughly split between Christians and Muslims (in the north), and “while violence has sometimes targeted Christians, it has also deeply affected Muslims.” Trump also addressed this in a video (available [here](#)).

The *Wall Street Journal* [cites](#) two related sets of statistics: A 2021 report from a Nigerian nonprofit estimated that Boko Haram and other groups were responsible for the deaths of 43,000 Christians between 2009 and 2021, with 17,500 attacks on churches recorded. The International Society for Civil Liberties and Rule of Law also estimated that 29,000 Muslims were killed during that same period.

Another Wall Street Journal [raises](#) a separate dimension: citing ACLED, a conflict-monitoring group, more than 12,000 Nigerians have died since 2010 in clashes between the nomadic cattle-herders and settled farmers over lands that both groups claim as their own. Those clashes are separate from the war against the jihadist group



Boko Haram, though ACLED also notes that since the mass kidnapping of schoolgirls in 2014, Boko Haram has splintered and been confined to Muslim-dominated villages of the far northeast, where few Christians remain. But an upsurge of attacks this year by herdsmen on farmers has left at least hundreds of Nigerian Christians dead.

The International Crisis Group [cautions](#) that “reports that seek to reduce Nigeria’s security situation to a single story of widespread persecution and mass slaughter of Christians, all over Nigeria, misinterpret the complexity of violence and inter-faith relations in the country.” ICG notes that:

“Nigeria’s security threats are multi-faceted and overlapping, stemming from among other things religious extremism, banditry, resource competition, communal land disputes and separatist agitation. They also tend to be enmeshed in history, entangled in poverty and exacerbated by political contestation. There is wide acknowledgement that the security situation has gotten worse in recent years. ... Moreover, narratives that focus solely on the killing of Christians tend to ignore the reality that religion is often a secondary factor in Nigeria’s internal violence, rather than its main driver.”

A narrow focus on the “genocide of Christians” narrative misses other considerations as well. One is that the epicentres of instability in Nigeria today include the North East, where Islamist groups have waged a fifteen-year insurgency against the Nigerian state, and the North West, where groups of so-called bandits are continually pillaging rural settlements and terrorising the inhabitants. In both of these regions, the majority religion is Islam, and most of the victims have, by all appearances, been Muslims.

It is also important to take into account that in some regions the perpetrators of violence against Christians may be co-religionists.”

Trump appointed the Chair of the House Appropriations Committee Tom Cole (and Rep. Riley Moore) to lead an investigation. On Friday, Moore introduced a resolution calling on the government to “use all available diplomatic, economic, and security tools to pressure” Nigerian authorities to protect Christian communities.

## **Greenland**

### ***Trump’s Obsession***

**Y1, Week Fifty-One**, were this a risk register, following the attack against Venezuela and Trump’s statements (“We need Greenland from a national security situation”), the possible invasion of Greenland would now have a higher probability, so it merits its own new section.

**Y1, Week Thirty-Four**, the *Wall Street Journal* [reported](#) that, according to Danish broadcaster DR, “at least three Americans in Greenland, with links to Trump and in positions to influence American security and foreign policy, are on a secret mission to collect names of citizens who support the president’s objectives on the island. The influence campaign seeks to recruit people both in Greenland and Denmark to the separatist movement and to sow division between the island and Copenhagen.” The Danish government summoned the U.S. chargé d’affaires (we have no ambassador in Copenhagen) to raise the issue. (This was the second time the chargé was summoned, the first being in May to raise the issue of alleged increased intelligence gathering operations in Greenland.) *See also* [BBC](#) coverage.

**Y1, Week Forty-Nine,** Trump [appoints](#) the first-ever special envoy for Greenland, Louisiana Governor Jeff Landry, and puts Greenland back on the front page, if not the front burner. Trump later told reporters, “We need Greenland for national security, not for minerals ... If you take a look at Greenland, you look up and down the coast, you have Russian and Chinese ships all over the place. We need it for national security. We have to have it.”

Landry, who became governor in January, thanked Trump, “It’s an honor to serve ... in this volunteer position to make Greenland part of the U.S. This in no way affects my position as Governor of Louisiana.” The following day, Landry, in an appearance on *Fox News*, and somewhat at odds with Trump’s threats, said the administration is not going to “go in there trying to conquer anybody” or try to “take over anybody’s country.”

In response, the prime ministers of Denmark and Greenland, [issued](#) a joint statement: “National borders and the sovereignty of states are rooted in international law.... You cannot annex other countries.” French President Emmanuel Macron [reiterated](#) “France’s unwavering support for the sovereignty and territorial integrity of Denmark and Greenland.” Denmark summoned U.S. Ambassador to Denmark, Kenneth Howery, to elaborate on Trump’s remarks.

In the midst of all of this Stephen Miller was interviewed by Jake Tapper of CNN.

- On Venezuela, Miller said: “We are in charge because we have the United States military stationed outside the country. We set the terms and conditions. We have a complete embargo on all of their oil and their ability to do commerce. So, for them to do commerce, they need our permission. For them to be able to run an economy, they need our permission. So the United States is in charge. The United States is running the country during this transition period.”
- On Greenland, Miller said, the “formal position” of the administration is that Greenland “should be part of the United States.” When asked if the United States would use force to take Greenland, he continued, “The real question is, by what right does Denmark assert control over Greenland? What is the basis of their territorial claim? What is their basis of having Greenland as a colony of Denmark? The United States is the power of NATO, for the United States to secure the Arctic region, to protect and defend NATO and NATO interests. Obviously, Greenland should be part of the United States.” He then said, “And so that’s a conversation that we’re going to have as a country. That’s a process we’re going to have as a as a community of nations.” When pressed further about military action, Miller said: “The United States should have Greenland as part of the United States. There’s no need to even think or talk about this in the context that you’re asking of a military operation. Nobody’s going to fight the United States militarily over the future of Greenland.”

The interview prompted Sen. Thom Tillis to exclaim: “I’m sick of stupid. I want good advice for this president, because I want this president to have a good legacy. And this nonsense ... on Greenland, is a distraction from the good work he is doing, and the

amateurs who said this was a good idea should lose their jobs.” Miller’s interview was “horrible execution” on a subject matter he knows nothing about.”

**Y1, Week Fifty-One**, first Greenland’s Prime Minister Jens Frederik Nielsen [rejected](#) Trump’s comments on Greenland, asking for dialogue and respect for international law: “That’s enough now. No more pressure. No more insinuations. No more fantasies of annexation. We are open to dialogue. We are open to discussions. But this must happen through the proper channels and with respect for international law.”

Danish Prime Minister Mette Frederiksen also issued a rebuke. “Annexing Greenland would make absolutely no sense.” She later warned that an attack on Greenland would spell the end of NATO: “I believe one should take the American president seriously when he says that he wants Greenland. But, I will also make it clear that if the U.S. chooses to attack another NATO country militarily, then everything stops, including NATO and this the security that has been established since the end of the Second World War.” She then added: “I therefore strongly urge the United States to cease its threats against a historically close ally, and against another country and another people who have stated very clearly that they are not for sale.”

Spain joined Brazil, Chile, Colombia, Mexico and Uruguay [in expressing](#) “profound concern” over the military actions taken in Venezuela and called them out “as contravening fundamental principles of international law and a dangerous precedent for peace and regional security.” Polish Prime Minister Donald Tusk [warned](#), “No one will take seriously a weak and divided Europe: neither enemy nor ally. It is already clear now. We must finally believe in our own strength, we must continue to arm ourselves, we must stay united like never before. One for all, and all for one. Otherwise, we are finished.”

British Prime Minister Keir Starmer, when asked whether he would say to Trump “hands off Greenland,” responded, “Yes. Greenland and the Kingdom of Denmark must decide the future of Greenland and only Greenland and the Kingdom of Denmark. And Denmark is a close ally in Europe, is a Nato ally and it is very important that the future of Greenland is for the Kingdom of Denmark and for Greenland themselves and only for Greenland and the Kingdom of Denmark.” Starmer, however, declined to answer whether the seizure of Maduro and his wife violated international law. *See* [BBC](#) coverage.

The EU High Representative Kaja Kallas called for “restraint.”

In an unprecedented move, President Macron of France, Chancellor Merz of Germany, Prime Minister Meloni of Italy, Prime Minister Tusk of Poland, Prime Minister Sánchez of Spain, Prime Minister Starmer of the United Kingdom and Prime Minister Frederiksen of Denmark [issued](#) a joint statement on Arctic security. The statement reiterated that Greenland is part of NATO and calls on Arctic security to be “achieved collectively, in conjunction with NATO allies including the United States, by upholding the principles of the UN Charter, including sovereignty, territorial integrity and the inviolability of borders.” It concludes that “Greenland belongs to its people. It is for Denmark and Greenland, and them only, to decide on matters concerning Denmark and Greenland.” *See* [Reuters](#) coverage.

Stateside, Sen. Chris Murphy, [speaking](#) on Meet the Press, also warned that trying to take Greenland by force would spell the end of NATO.

Let's step back for a moment to understand that Trump has all the access to Greenland he should want. The *New York Times* [reminds us](#) that under a [1951 agreement](#) between Denmark and the United States (which replaced an earlier agreement signed in 1941), the United States to “construct, install, maintain, and operate” military bases across Greenland, “house personnel” and “control landings, takeoffs, anchorages, moorings, movements, and operation of ships, aircraft, and waterborne craft.” The 1951 agreement, which was entered into with reference to obligations under the 1949 treaty establishing NATO, [was amended](#) in 2004.

The United States currently operates one base in Greenland. Incidentally, in 1946 Truman had offered to buy Greenland from Denmark. *See generally*, “[Buying Greenland? Trump, Truman and the ‘Pearl of the Mediterranean.’](#)”

The [latest](#) from *POLITICO*, Denmark is ramping up its diplomatic offensive on both sides of the Atlantic to rally support among U.S. lawmakers and E.U. officials against a hostile takeover of Greenland. Trump is reportedly considering offering cash payments to Greenlanders to accept U.S. sovereignty over Greenland (*per* a Reuters [exclusive](#)). GOP Senator Wycker understands, telling *POLITICO*, “There’s no willingness on their part to negotiate for the purchase or the change in title to their land... . That’s their prerogative and their right, and they’ve made that very clear to us.” The Secretary of State [is expected](#) to meet with Danish officials next week.

### **Y1, Week Fifty-Two/Y2, Week One**

The Hill [reports](#) that there is growing concern among Senate Republicans over Trump’s threat to take Greenland by force.<sup>46</sup> Sens. Tillis and Murkowski reportedly are planning to fly to Copenhagen to meet with the Danish Prime Minister and assure her there would be strong Republican opposition to any effort by Trump to seize Greenland by force. The Hill reports that one Republican senator advised reporters that Trump’s talk of taking Greenland by force has generated more opposition from Senate Republicans because such a move would like mean the end of NATO and put Ukraine at greater risk. The Hill quotes Reuters/Ipsos polling finding that only 17% would support a U.S. takeover of Greenland and only 4% said taking Greenland by force would be a good idea.

In other developments this week:

- The foreign ministers of Denmark and Greenland held talks with the Vice President and the Secretary of State at the White House. Speaking to reporters with Greenland’s foreign minister Vivian Motzfeldt, Danish

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<sup>46</sup> As for the origins of Trump’s designs on Greenland, *see* “[Cosmetics Billionaire Convinced Trump That the U.S. Should Buy Greenland](#),” “[These Billionaires Bet Big On Greenland—After Trump Took Interest](#)” and “[President Trump Eyes a New Real-Estate Purchase: Greenland](#).”

Foreign Minister Lars Løkke Rasmussen said there had been a “fundamental disagreement” with the United States but said the hour-long meeting was “frank but constructive.”

- Trump later told reporters in the Oval Office: “We need Greenland for national security.” Before the meeting, Trump had posted that the United States “needs Greenland for the purpose of National Security,” adding: “Anything less than that is unacceptable.” After the meeting, he also said, “If we don’t go in, Russia’s going to go in and China’s going to go in, and there’s not a thing Denmark can do about it,” he said, adding: “But there’s everything we can do. You found that out last week with Venezuela.”
- Denmark [announced](#) plans before the meeting to beef up its military presence “in and around Greenland, in close cooperation with NATO allies,” saying the exercise activities could include guarding national infrastructure, receiving allied troops, deploying fighter aircraft and conducting naval operations.
- Military elements deploy:
  - Germany’s Defense Ministry [said](#) it would deploy a “reconnaissance team” of 13 personnel to Nuuk, Greenland, at the invitation of Denmark.
  - Swedish Prime Minister Ulf Kristersson [announced](#) several officers from Sweden’s armed forces were scheduled to arrive in Greenland from Wednesday.
  - French President Emmanuel Macron [announced](#) on X that France will also participate in the joint exercises organized by Denmark in Greenland, referring to it as “Operation Arctic Endurance,” and that military units were en route.
- In her Facebook post, [the Danish Prime Minister](#) acknowledged the White House meeting was not an easy one. She continued, “A working group is now being established to discuss how security in the Arctic can be strengthened. However, that does not change the fact that there is a fundamental disagreement because the American ambition to take over Greenland is intact.”

Foreign Minister Rasmussen said the working group planned to meet over the coming weeks in a bid to find a compromise. He said Denmark and Greenland were receptive to the possibility of the United States opening more military bases (to which it is entitled, as noted above), but insisted there were “red lines” Washington could not cross.

While the Danes and the Greenlanders viewed the working group as a forum “to explore if a common way forward can be found to address the American security concerns in relation to Greenland,” that hope should have been dashed with the statement by White House press secretary Karoline Levitt that the parties had agreed “to continue to have technical talks on the acquisition of Greenland.” See “[What Did the White House and Denmark Agree to on Greenland? It Depends Whom You Ask.](#)”

- CNBC [quoted](#) Guntram Wolff, senior fellow at Bruegel, a Brussels-based think tank, “If the U.S. president says he can only defend what he owns, well what he is basically saying is he cannot defend Europe under any circumstances because he doesn’t own Europe, right? And, so, that means Article 5 of NATO, the support of the U.S. president for European security, cannot be taken for granted anymore.”
- Sen. Chris Coons led a bicameral, bipartisan delegation to Copenhagen to meet on Friday with Danish and Greenlandic leaders. The delegation includes GOP Sens. Tillis and Murkowski, as well as Sens. Durbin, Shaheen and Welch and Reps. Dean, Hoyer, Jacobs, McBride and Meeks. The delegation is scheduled to continue on to the WEF at Davos.
- Kremlin spokesman Dmitry Peskov [called](#) Trump’s threats to Greenland “unusual, ... even extraordinary from the standpoint of international law.” He added that Trump “has said that international law is not a priority for him. The situation is developing along a different trajectory, and we, along with the rest of the world, will be watching to see which one.” The Arctic Institute [asks](#), if Trump seizes Greenland, would Putin take Svalbard? The Institute notes that while the Svalbard Treaty ([ratified](#) by the United States, Russia and China, as well as 45 other parties) “has safeguarded Norway’s sovereignty for over a century, ... uncertainties about the robustness of international law and Svalbard’s strategic location near the Kola Peninsula mean Norwegian authorities must recognize that major powers may seek influence there.”
- Note that most of the countries sending military elements to Greenland have framed the deployments as efforts to demonstrate cooperation with the United States on Arctic security rather than a warning to Trump not to invade. Trump didn’t see it that way.

Trump, claiming that “we have subsidized Denmark, and all of the Countries of Europe, for many years by not charging them Tariffs, or any other forms of remuneration [and] now, after Centuries, it is time for Denmark to give back – World Peace is at stake” [announced](#) in an unusually lengthy post on Truth Social that he was imposing 10% tariffs on Denmark, Norway, Sweden, France, Germany, the UK, The Netherlands and Finland, increasing June 1 to 25%, which will remain in place until a “Deal is reached for the Complete and Total purchase of Greenland.”

As a reminder, notwithstanding Trump saying, in reference to the threat posed by China and Russia to Arctic security, that “it is imperative that, in order to protect Global Peace and Security, strong measures be taken so that this potentially perilous situation end quickly, and without question,” he has the authority to pour troops into Greenland under the [1951 agreement](#).

It is unclear what the impact of these tariffs will be on the recently reached, but yet to be ratified, trade deal between the United States and the European Union, as tariffs imposed on any EU member state in effect impacts all 27



member states, or on the trade deal announced with Britain.<sup>47</sup> Currently tariffs are imposed on British imports at 10% and on EU goods at 15%.

**Danish foreign minister Rasmussen** [posted](#), “The President’s statement comes as a surprise. Earlier this week, we had a constructive meeting with Vice President Vance and Secretary Rubio. The purpose of the increased military presence in Greenland, to which the President refers, is to enhance security in the Arctic.”

**Rasmus Jarlov, chair of the Danish Defense Committee** [posted](#), “Every insult, threat, tariff and lie that we receive strengthens our resolve. The answer from Denmark and Greenland is final: We will never hand over Greenland. We pray that our true allies will stand with us because we are going to need it.”

**European Commission President von der Leyen** [posted](#) her own statement, leading off with “Territorial integrity and sovereignty are fundamental principles of international law.” She concluded, “Tariffs would undermine transatlantic relations and risk a dangerous downward spiral. Europe will remain united, coordinated, and committed to upholding its sovereignty.”

**British Prime Minister Keir Starmer** [posted](#), “Our position on Greenland is very clear – it is part of the Kingdom of Denmark and its future is a matter for the Greenlanders and the Danes. We have also made clear that Arctic Security matters for the whole of NATO and allies should all do more together to address the threat from Russia across different parts of the Arctic. Applying tariffs on allies for pursuing the collective security of NATO allies is completely wrong. We will of course be pursuing this directly with the US administration.” Even Nigel Farage weighed in, “We don’t always agree with the US government and in this case we certainly don’t. These tariffs will hurt us.”

**French President Emmanuel Macron** [posted](#) a statement which included a veiled comparison of Trump to Putin “No intimidation or threat will influence us—neither in Ukraine, nor in Greenland, nor anywhere else in the world when we are confronted with such situations.” He continued, “Tariff threats are unacceptable and have no place in this context. Europeans will respond in a united and coordinated manner should they be confirmed. We will ensure that European sovereignty is upheld.”

**Swedish Prime Minister Kristersson** [posted](#), We will not let ourselves be blackmailed. Only Denmark and Greenland decide on issues concerning Denmark and Greenland. I will always stand up for my country, and for our

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<sup>47</sup> It is unclear how these tariffs would be applied. Are they imposed on the customs union (all of the eight except Britain and Norway) or the single market (all eight except Britain). It is also unclear what authority Trump would rely on – IEEPA, which may be short-lived depending on how the Supreme Court rules, or Section 301, but unclear how these could be targeted at countries rather than products.

allied neighbors. This is an EU issue that affects many more countries than those now being singled out.”

**Kaja Kallas, head of the European External Action Service,** [posted](#) “China and Russia must be having a field day. They are the ones who benefit from divisions among Allies. If Greenland’s security is at risk, we can address this inside NATO.”

Large [protests](#) against Trump’s desire to grab Greenland were held Saturday in Copenhagen and Nuuk, before the tariffs were announced.

Meanwhile back Stateside:

**GOP Rep. Don Bacon** [posted](#), “Greenland is our ally and threatening an ally is foolish policy, especially when we’d be able to add bases there if we wanted. We sound too much like Putin and it is wrong.” His post also included CNN polling showing 75% of Americans opposing a U.S. takeover of Greenland. And in his interview with Wolf Blitzer, Bacon said, “Just on the weird chance that he’s serious about invading Greenland, I want to let him know it’ll probably be the end of his presidency. Most Republicans know this is immoral and wrong and we’re going to stand up against it.”

**GOP Sen. Tillis** [posted](#) that Trump’s response is “bad for America, bad for American businesses, and bad for America’s allies. It’s great for Putin, Xi and other adversaries who want to see NATO divided. The fact that a small handful of "advisors" are actively pushing for coercive action to seize territory of an ally is beyond stupid. It hurts the legacy of President Trump and undercuts all the work he has done to strengthen the NATO alliance over the years.”

**GOP Sen. Murkowski** [posted](#),

“These tariffs are unnecessary, punitive, and a profound mistake. They will push our core European allies further away while doing nothing to advance U.S. national security. We are already seeing the consequences of these measures in real time: our NATO allies are being forced to divert attention and resources to Greenland, a dynamic that plays directly into Putin’s hands by threatening the stability of the strongest coalition of democracies the world has ever seen. Congress must work together to reassert our Constitutional authority over tariffs so that they are not weaponized in ways that harm our alliances and undermine American leadership.”

**Sens. Shaheen and Tillis**, co-chairs of the bipartisan Senate NATO Observer Group [issued](#) a statement condemning the tariff threat –

“Continuing down this path is bad for America, bad for American businesses and bad for America’s allies. This kind of rhetoric also further helps adversaries like Putin and Xi who want to see NATO divided. Our allies deserve better, and so do the American people who have made their opposition to this flawed policy resoundingly clear. At a time when many Americans are already concerned about the cost of living, these tariffs would raise prices for

both families and businesses. We urge the administration to turn off the threats and turn on diplomacy.”

**GOP Sen. McConnell** earlier in the week on the floor of the Senate [warned](#) “Following through on this provocation would be more disastrous for the President’s legacy than withdrawing from Afghanistan was for his predecessor.”

**GOP Rep. Mike Turner, head of the U.S. delegation to NATO**, appearing on Face the Nation, [acknowledged](#) that Trump does not have the authority to use military force to seize Greenland and “it is problematic” that Trump has made these threats. These threats are putting Trump’s foreign policy agenda and trade negotiations with the European Union “at risk.” When asked if Trump understands NATO, Turner responded that of the allies threatened with tariffs, seven are F-35 partners, three have U.S. nuclear assets on their soil and five have U.S. troops permanently based there.

When asked why Trump’s threats are not playing into the hands of Putin (per Murkowski’s post), Turner noted that the country’s ability to project power globally depends on our European allies (“we aren’t in Germany just to defend the NATO alliance, we are in Germany to defend Israel, Africa and the Middle East”; “almost every operation this president has done over this past year has in part been done out of and with and including the bases that we have in Europe”). Turner was reminded of CBS News polling showing 77% disapproving of the use of funds to buy Greenland and 86% disapprove of the use of force to seize Greenland. He concluded “presidential want doesn’t translate into presidential authority.”

We shall see!

**Treasury Secretary Bessent** did not do much to calm the waters, let alone the markets, when he [told](#) *Meet the Press*, referring to what would happen if the United States did not control Greenland, “So better now, peace through strength, make it part of the United States, and there will not be a conflict because the United States right now, we are the hottest country in the world, we are the strongest country in the world. The Europeans project weakness. The U.S. projects strength.”

On Saturday, Trump sent [a text message](#) (01/18/26) to Norwegian Prime Minister Jonas Gahr Støre, copies of which were forwarded to multiple European ambassadors in Washington by the National Security Council, in which he exclaims that he “no longer feels an obligation to think purely of Peace.” The reason? Norway decided not to give Trump the Nobel Peace Prize, glossing over the fact, which the Prime Minister [noted](#) in response, that the prize is awarded by an independent committee, not the Norwegian government. Trump also questioned Denmark’s claim to Greenland, “There are no written documents.”

Trump’s message was in response to [a text message](#) (01/18/26) by the Norwegian Prime Minister and President Alexander Stubb of Finland (signed “Alex and Jonas”), in which they conveyed their opposition to the latest announcement of

tariffs over Greenland, and suggested de-escalation. Trump responded to the Støre/Stubb message within less than 30 minutes.

As for the written documents claim, the United States has recognized Denmark's connection to Greenland in the [various agreements](#) between the United States and Denmark concerning the defense of Greenland. The [2004 amendment](#) explicitly notes in the preamble the change (since the date of the 1951 agreement) of the status of Greenland from a colony to "that of an equal part of the Kingdom of Denmark."

*See generally* [CNN](#) coverage.

As the week wore on, the threat did not recede. Trump released private messages between himself and President Macron. Separately, Trump [threatened](#) to impose 200% tariffs on French champagne and wine unless Macron joins his [Gaza Board of Peace](#).

Trump also attacked Britain, framing his criticism of a move he once endorsed as a rationale for seizing Greenland. Early Tuesday morning (1:38 am) he [criticized](#) Britain's plan to transfer the Chagos Islands (which includes the island of Diego Garcia on which there is the strategically important U.S.-U.K. naval and bomber base) to Mauritius, and then lease Diego Garcia back. The islands are in the Indian Ocean. The transfer is pursuant to a [May 2025](#) agreement. At the time, the British government justified the transfer as a way to avoid legal challenges, after the International Court of Justice ruled (in a non-binding judgment) that the decolonisation process of Mauritius was not lawfully completed when it was granted independence in 1968 and that Britain was "under an obligation to bring to an end its administration of the archipelago as rapidly as possible." *See* [Guardian](#) explainer.

Trump writes, "the UK giving away extremely important land is an act of GREAT STUPIDITY, and is another in a very long line of National Security reasons why Greenland has to be acquired." The British government responded with a post quoting a spokesperson:

"The UK will never compromise on our national security. We acted because the base on Diego Garcia was under threat after court decisions undermined our position and would have prevented it operating as intended in future. This deal secures the operations of the joint US-UK base on Diego Garcia for generations, with robust provisions for keeping its unique capabilities intact and our adversaries out. It has been publicly welcomed by the US, Australia and all other Five Eyes allies, as well as key international partners including India, Japan and South Korea."

A light aside: following the states of emergency declared in a number of states and the fact that so many affected cities have come to a standstill, an Instagram reel exclaims, "this country thinks it's gonna invade Greenland but enters a state of emergency over 10 cm of snow..."

**Y2, Week Three**, Canada opened a consulate in Nuuk, Greenland. France also opened a consulate, making it the first EU member to open a diplomatic mission in Nuuk. Canada first announced plans to open a consulate in Greenland in December

2024 as part of its Arctic foreign policy; France announced the planned opening of a consulate in June 2025. See [POLITICO](#) coverage and [CNN](#) coverage.

### ***Where Could We have Gone From Here?***

While the crisis was defused quickly, I include this section for the historical record and for chronicling how close we came to a global trade war and disintegration of NATO.

### **Military options**

POLITICO [posted](#) an interesting article on the pressure points that Europe could be considering if they reached the point of a potential military confrontation with the United States over Greenland. Among them would be restricting access by the U.S. military to bases overseas or restricting support from naval assets, air forces and intelligence operations that would hamper the projection by the U.S. military of force across multiple theatres. In addition, the United States benefits from billions of dollars in weapon sales to allied militaries (In 2024, government-to-government contracts with Europe were worth \$76 billion, representing half the total U.S. foreign military sales globally.)

POLITICO notes that as of the end of 2024, the United States had 31 permanent bases and 19 other military sites across Europe under EUCOM (headquartered in Stuttgart). There are approximately 67,500 active-duty troops in Europe, principally based in Britain, Germany and Italy. NATO's largest base in Europe is in Ramstein, Germany, from which the U.S. military launches operations in Africa and the Middle East, and the United States has air force bases at Lakenheath and Mildenhall in Britain. The air base in Aviano, Italy is a key NATO air hub. All are key to enabling the U.S. military to project force globally. And, there are also key intelligence sharing operations across Europe.

And from Trump's perspective, presumably there are a range of non-kinetic options available to him, over and above the tariffs he has announced, including restricting export of sensitive technologies or sanction-like responses such as visa bans, that he could deploy to put further pressure on European governments.

### **Trade retaliation**

The European Union's senior diplomats met in emergency session on Sunday to discuss responses to Trump's threatened tariffs on the eight European countries. See [Guardian](#) coverage. There are at least three possible options under consideration: (i) allowing €93 billion of tariffs to spring into effect, (ii) triggering the so-called "Anti-Coercion Instrument" (formally, the [Regulation on the protection of the Union and its Member States from coercion by third countries](#)) (ACI) also known as its "trade bazooka" that could cut off access by US businesses to the single market representing 500 million consumers, and (iii) walking away from the EU-US trade deal hammered out last summer.

In response to Trump's first round of tariffs last Spring, in July, the EU identified retaliatory tariffs [worth](#) €93 billion (\$108 billion) – officially [characterized](#) as "rebalancing measures." The European Commission identified a list of American

exports, largely from Red states, including bourbon whiskey, soybeans, poultry and airplane components. See [euronews](#) coverage. At the time, there was also talk of triggering the ACI and reporting that the necessary qualified majority (with Germany and France reluctantly onboard) would be willing to do so.

These rebalancing measures [were suspended](#) in August by the European Commission, which suspension automatically lapses February 7<sup>48</sup> unless the European Commission (EC) proposes an extension of the suspension and the Member States agree to the extension. The package targets distinctive U.S. brands as well as products from red states (such as soybeans). In response to Trump's threatened tariffs, the EU could [decline](#) to extend the suspension, in which case the tariffs would spring into life. The *Financial Times* [addressed](#) what these retaliatory tariffs would cover.

A bigger weapon: the day after Trump threatened to impose tariffs on Denmark and the European countries supporting Denmark, President Macron [reportedly](#) raised the spectre of having the European Union activate the ACI

The ACI entered into force in December 2023 and is intended to allow the European Union to deter and obtain the cessation, and if needed as a last resort to counteract, “economic coercion.” It has never been used. It is the result of the rise of geopolitical tensions, weakened international cooperation and an increase in the weaponization of trade and investment in the period leading up to a [joint declaration](#) of the European Commission (EC), the Council of the European Union (which represents the Member State governments) and the European Parliament in 2021. Apparently the ACI was created in reaction to coercion exerted by China against Lithuania due to Vilnius' support for Taiwan

Under the ACI, “economic coercion” “exists where a third country applies or threatens to apply a third-country measure affecting trade or investment in order to prevent or obtain the cessation, modification or adoption of a particular act by the Union or a Member State, thereby interfering in the legitimate sovereign choices of the Union or a Member State.” The ACI sets out a framework for responding to economic coercion and allocates responsibilities between the EC and the Council, as well as a timetable which contemplates a process of some weeks. Triggering sanctions under the ACI requires the Council to act by a “[qualified majority](#)” – support of at least 55% of the 27 Member States (15 Member States), representing at least 65% of the EU population. (See also [EC FAQ](#)).

Per the EC, “the range of potential measures is designed to be broad, in order to allow the selection and design of an effective and efficient response to an individual case of economic coercion with minimal or no impact on the EU economy. The aim of these measures is always to induce the cessation of the coercion. The ACI permits restrictions on imports and exports of goods and services, as well as restrictions on intellectual property rights and foreign direct investment. The ACI also enables the imposition of other restrictions on access to the EU market,

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<sup>48</sup> The European Commission [has authority](#) to act on an urgent basis by means of an implementing regulation that can remain in force no longer than six months.



principally to public procurement, as well as import of products under chemical and sanitary rules. In short, the EU could shut down US access to the EU single market.

A third element is the EU-US trade deal, which was [agreed](#) in August at Trump's Turnberry golf resort and enshrined in a "Framework on an Agreement on Reciprocal, Fair and Balanced Trade." (See [DW](#) reporting at the time.) While the United States has lowered the tariffs on EU exports to 15% as contemplated by the deal (with certain sectors yet to be lowered), the EU has yet to meet its pledge of reducing tariffs on U.S. industrial exports to zero, pending a vote by the European Parliament. That vote was [paused](#) by the major political groups in the European Parliament on Monday due to the latest Trump tariffs announcement. Without that vote, there is no trade deal between the United States and the European Union.

Having left the European Union, Britain has its own options. It could increase its Digital Services Tax, currently set at 2% for platforms with worldwide sales of £500 million and UK sales of £25 million.

POLITICO [noted](#) two other options – the EU could play the China card, as did [Mark Carney](#) last week, and less likely due to the likely ensuing chaos in the markets European governments could direct their banks and pension funds to dump U.S. financial assets. POLITICO quotes Deutsche Bank's chief F/X strategist who estimates that European public and private sector entities hold in the aggregate \$8 trillion of U.S. equities and debt. FT Alphaville, in a piece [arguing](#) that Europe would be unable to effectively leverage its financial assets, estimates the aggregate holding at \$12.6 trillion and that European NATO countries hold \$2.8 trillion of U.S. Treasuries alone (assumed when one adds Canada's holding to exceed China's official holdings).<sup>49</sup>

For a sampling of investor sentiment around potential escalation into a global trade war, see [Alliance Global Investors](#) note.

### At Davos

[Speaking](#) not long after Trump posted an AI-generated image on Trust Social that showed a map with American flags superimposed on Canada, Greenland and Venezuela (with most of the G7 leaders sitting in the Oval Office gazing at it), **Canadian Prime Minister Mark Carney** started out by referring to "the rupture in the world order, the end of the pleasant fiction [of the rules-based international order] and the dawn of a brutal reality in which great-power geopolitics is

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<sup>49</sup> The *Financial Times*' Katie Martin ("Trump's Arctic ambitions torch the most important US asset") warns that we should not be focused as much on the less likely scenario that Europe will "sell America," if for no other reason that there is no other market deep enough to absorb the financial assets that would be dumped, but rather we should focused on the fact that going forward investors will be spreading their purchases more broadly and will be diversifying away from U.S. credit. Underscoring Pimco's [view](#) that Trump's "unpredictable" policies are fuelling Pimco's multiyear shift away from U.S. financial assets, Martin writes, "The US has squandered its most valuable financial asset: trust. It risks paying a heavy price for this for decades to come."

unconstrained.” The middle powers, however, are not powerless. In fact, “they have the power to build a new order that integrates our values, like respect for human rights, sustainable development, solidarity, sovereignty and the territorial integrity of states.” In a thinly veiled reference to Trump, Carney acknowledged that “Canada was amongst the first to hear the wake-up call, leading us to fundamentally shift our strategic posture. Canadians know that our old, comfortable assumption that our geography and alliance memberships automatically conferred prosperity and security is no longer valid.”

Carney called for realism (alluding to Finnish President Alexander Stubb’s ‘values-based realism’) – “stop invoking the ‘rules-based international order’ as though it still functions as advertised. Call the system what it is: a period where the most powerful pursue their interests using economic integration as a weapon of coercion.” He continued, “the old order is not coming back. We should not mourn it. Nostalgia is not a strategy. But from the fracture, we can build something better, stronger, and more just. This is the task of the middle powers, who have the most to lose from a world of fortresses and the most to gain from a world of genuine cooperation.”

Carney catalogued a steady commitment to fundamental values; broad strategic engagement; building strength at home; rapidly diversifying abroad (name-checking the EU, China, Qatar, India, ASEAN, Thailand, Philippines and Mercosur); pursuing different coalitions for different issues; an “unwavering commitment” to Article 5; championing efforts to build a bridge between the Trans-Pacific Partnership and the European Union; forming a buyers club anchored in the G7 for critical minerals; and cooperating with like-minded democracies on AI.

In short, a tour de force. The standing ovation he received after his speech was one of the few in the history of the WEF.

The following day, Trump [addressed](#) the summit and essentially pivoted on Greenland. He blinked, but not before insulting most European governments, questioning their reliability as allies and burying any idea that the foundational world order of the past 80 years, largely created by the United States, has any relevance today.

He first teased out – “I was going to leave [Greenland] out of the speech.” He meandered through the role of America in WWII, remarking “without us, right now you’d all be speaking German and a little Japanese.” And then back to Greenland, “After the war, we gave Greenland back to Denmark. How stupid were we to do that? But we did it. But we gave it back. But how ungrateful are they now?” To be clear, the United States was never given sovereignty over Greenland. Under the [1941 agreement](#), the United States agreed to defend Greenland, but there was no mention to taking it over.

He ruled out taking the island by force, though called for “immediate negotiations,” and then appeared to again threaten Europe’s leaders saying that if they say no, “we will remember.” An hour after his speech, he also dropped his threat to impose an additional 10% tariffs on the eight European countries.

Trump as much admitted the impact of the stock market drop triggered by his threats to NATO, though confused the islands: “Our stock market took the first dip yesterday because of Iceland. So Iceland’s already cost us a lot of money.” (Trump’s threats against Greenland had wiped out over \$1.2 trillion on the S&P alone, per [POLITICO](#).)

Trump trashed Europe over renewal energy (“Here in Europe, we’ve seen the fate that the radical left tried to impose on America” and China sells “windmills” “to the stupid people that buy them, but they don’t use them themselves”<sup>50</sup>), host country Switzerland (the Swiss president “rubbed [him] the wrong way”; the country is only good “because of us”<sup>51</sup>; Somali immigrants (“They turned out to be higher I.Q. than we thought”); and Mark Carney (who, incidentally never mentioned Trump by name: “Canada lives because of the United States. Remember that, Mark, the next time you make your statements”).

He retreated to familiar territory of a real estate developer: “all we’re asking for is to get Greenland, including right title and ownership, because you need the ownership to defend it. You can’t defend it on a lease. Legally, it’s not defensible that way. Totally. And number two, psychologically, who the hell wants to defend a license agreement or a lease, which is a large piece of ice in the middle of the ocean, where if there is a war, much of the action will take place on that piece of ice?”

And he could not resist revisiting the 2020 election with a segue via Ukraine and an ominous warning: “It’s a war that should have never started, and it wouldn’t have started if the 2020 U.S. presidential election weren’t rigged. It was a rigged

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<sup>50</sup> According to Ember Energy and the U.S. Energy Information Agency (as quoted by the [New York Times](#)) in 2024 both China and the United States derived around 10% of their electricity from wind turbines. [According](#) to Ember Energy, in 2024, China generated 18% of its electricity from solar and wind. wind generation was higher by 16% than in H1 2024, and solar generation higher by 43%. In 2024, growth in clean generation (wind, solar, other renewables and nuclear) accounted for 84% of electricity demand growth; in H1 2025, it outstripped demand growth, resulting in a 2% fall in fossil generation compared with H1 2024. Fourteen provinces exceed the OECD average share of 19% for wind and solar generation. If they were countries, four provinces would rank among the top ten solar generators worldwide.

<sup>51</sup> **Y2, Week Four**, Trump told Fox Business that he once had an “emergency call from, I believe, the prime minister of Switzerland, and she was very aggressive. Nice, but very aggressive.” She was the President. Trump recalled that she repeatedly said, “we are a small country.” “Again and again and again. I couldn’t get her off the phone. So [the tariffs were] at 30 percent, and I didn’t really like the way she talked to us, and so instead of giving her a reduction, I raised it to 39 percent, and then I got inundated by people from Switzerland and I figured, ‘Do you know what? We’ll do something that’s a little bit more palatable.’” Democrats [responded](#) that the tariffs have nothing to do with national security.

election. Everybody now knows that. They found out. People will soon be prosecuted for what they did.” Heather Cox Richardson pointed out that the threat is not accidental, as Jack Smith will be testifying publicly the following day about the evidence that led a grand jury to indict Trump and led the veteran prosecutor to conclude that following a trial a jury would convict Trump.

Afterwards, he claimed he had gotten great reviews for the speech, and then claimed the reviews were from media, which usually say “‘he’s a horrible dictator-type person’; I am a dictator. But sometimes you need a dictator.”

### The Framework

Capping off the day, Trump announced that he and the NATO secretary-general Mark Rutte had “formed the framework of a future deal with respect to Greenland and, in fact, the entire Arctic Region.” No other details were provided publicly. One participant in the conversation likened the proposed solution to the bases maintained by the British in Cyprus ([Akrotiri and Dhekelia](#), which comprise the Sovereign Base Areas) over which Britain has sovereignty.<sup>52</sup> CNN [reports](#) that the framework also contemplates renegotiating the 1951 agreement. Presumably, Greenland will need to be involved in the negotiations.

Sweden’s Deputy Prime Minister Ebba Busch [told](#) CNN that NATO is “not out of the woods” after Trump’s reversals. “And let’s be very clear. The last few weeks – apart from a very turbulent first year – have been very damaging for the relationship between the European Union, Europe as a whole, and the US.”

It is expected that the details of the framework will be addressed by the working group set up among the United States, Denmark and Greenland. CNN [set out](#) what it thinks a deal would entail, including updating the 1951 agreement, somehow providing access for the Golden Dome defense system, provisions barring China and Russia from operating in Greenland, and an enhanced role for NATO in Greenland. It is unclear if access to the critical minerals will be part of the package. And, yes, looks very much like the rights we now have under the 1951 deal (updated in 2004).

### Implications for Our Allies

Thomas Wright, writing in The Atlantic (“[What the Greenland Crisis Teaches Europe About Trump](#)”), echoes the sentiments of many in noting that a crisis among allies may have been averted, but it remains open to debate as to how to handle Trump – be conciliatory or stand firm? And the clear hero in this in his opinion is Denmark – “If the framework sticks, it will be a triumph of Danish diplomacy. For the past year, Copenhagen has offered to work with the Trump administration on all of its policy demands. But it imposed two red lines and never wavered: The Danes wouldn’t compromise on territorial integrity or Greenland’s

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<sup>52</sup> **Y2, Week Two**, Naaja Nathanielsen, Greenland’s minister of industry, raw materials, mining, energy, law enforcement and equality, [told](#) USA Today that Trump’s proposal to acquire sovereignty over land on which U.S. bases are situated is a “red line.” This was the same position [articulated](#) by the Danish and Greenlandic Prime Ministers.

right to self-determination. Otherwise, though, the president had wide latitude to get what he wanted.”

Wright believes Trump ultimately agreed to the framework because the Danes’ red lines meant Trump had few options: “If he had used force in Greenland, he could find himself in a war with one of America’s closest allies. Such a war would be clearly illegal under U.S. law, and it could trigger a civil-military crisis, presenting military officers with plainly unlawful orders.” Add to that EU threat for the €93 billion tariffs to spring back and the potential triggering of the ACI (while the European leaders may have been split, the seriousness of the discussion meant Trump would run a real risk that it would be triggered), as well as the possible sell-off of Treasuries and the depth of the sentiment among voters against a land grab.

The Wall Street Journal [reported](#) that the threats over Greenland and related increased tensions were likely to accelerate European efforts to reduce their reliance on U.S. technology. From the perspective of the Europeans, the greatest vulnerability is to be cut off from data centers and email software that are critical to the functioning of government as well as businesses.

According to *France 24* (“[Europe’s digital reliance on US Big Tech: Does the EU have a plan?](#)”), companies like Amazon, Microsoft and Google [own](#) over two-thirds of the European market, while OpenAI and Anthropic are leading in AI innovation. The reporting cites a European Parliament report that [estimates](#) that the European Union “relies on non-EU countries for over 80 percent of digital products, services, infrastructure, and intellectual property.” Not a surprise then to have heard stories last summer of Nordic governments directing national security agencies to consider alternatives to Microsoft and Google. Only a failure of imagination!

While the Europeans may be scrambling to reduce their dependence and hence their vulnerability to U.S. tech, the headwinds are significant. *France 24* cites an analysis by Bertelsmann Stiftung that [estimates](#) it will take Europe a decade and €300 billion for Eurostack (the initiative established in 2024 intended to build an independent European digital infrastructure) to achieve its goal, while a less conservative estimate by US trade group Chamber of Progress [estimates](#) that the cost to be far higher at over €5 trillion.

### More Accusations of Akin to “Suckers” and “Losers”

To underscore the depth of the anger at the United States these days, look no further to reactions on Friday. As CBS News [exclaimed](#), “Trump leaves NATO allies ‘dumbfounded’ and ‘disgusted’ with remarks dismissing sacrifices in Afghanistan.”

Britons, including British Prime Minister Starmer, Prince Harry and the families of British soldiers killed in Afghanistan, reacted furiously to Trump’s statement in an interview with Fox News, referring to NATO allies and in echoes of his insults of Gold Star families, “We’ve never needed them. We have never really asked anything of them. You know, they’ll say they sent some troops to Afghanistan, or this or that, and they did, they stayed a little back, a little off the front lines.” Recall

that 457 British personnel were killed in Afghanistan, second only to U.S. casualties.

Tory leader Kemi Badenoch called Trump's remarks "flat-out nonsense," saying that "British, Canadian, and NATO troops fought and died alongside the US for 20 years. This is a fact, not opinion. Their sacrifice deserves respect, not denigration." Reform UK leader and longtime Trump ally, Nigel Farage, posted on social media: "Donald Trump is wrong."

Oh, and he also asserted that NATO allies would not defend the United States if called up, forgetting that Article 5 has only been triggered once – by then Secretary-General of NATO George Robertson, following the 9/11 attacks. (Recall that in May 2017 when Trump [first addressed](#) NATO members he purposefully left out a reference to Article 5 in his speech – the speech [was delivered](#) outside NATO headquarters during the dedication of a 9/11 memorial.)

Starmer reacted more strongly than he has in the past, "I consider President Trump's remarks to be insulting and frankly appalling, and I am not surprised they have caused such hurt to the loved ones of those who were killed or injured and, in fact, across the country." "If I had misspoken in that way or said those words, I would certainly apologize."

### ***What this Could Have Meant for the U.S. Military***

The *Atlantic's* Tom Nichols, in an essay ("[The Military Is Being Forced to Plan for an Unthinkable Betrayal](#)") urging Americans and their elected officials to stop the insanity and echoing a similar plea from Anne Applebaum "[Trump's Letter to Norway Should Be the Last Straw](#)"), warns that orders to attack Greenland will put the U.S. military in an untenable position. Any such orders, which may or may not be legal, though "clearly immoral and illogical," will:

"force U.S. military minds to step into a horrifying mirror universe [a la Star Trek] where the United States is the aggressor against NATO, a coalition that includes countries that have been our friends for centuries. Should Trump pursue this scheme of conquest, the military's training will have to be shattered and reassembled into a destructive version of itself, as if doctors were asked to take lifesaving medicines, reconstitute them as poisonous isomers, and then administer them to patients."

Former General Counsel of the Department of the Navy Alberto Mora, in an essay published in *Just Security* ("[How Congress Can Preserve NATO and Greenland: Using 22 USC 1928f to Protect the Peace](#)"), argues that Congress has the power to rein in Trump over Greenland under [22 U.S. Code § 1928f](#), which was adopted as part of the 2024 NDAA to, in effect, attempt to Trump-proof NATO. The provision is intended to prevent a president from undermining the United States' relationship with NATO and the North Atlantic Treaty without prior congressional authorization. Mora argues that a U.S. seizure of Greenland by force would constitute an attack on Denmark and by extension the other members of NATO, which in turn invariably would trip up each of the prohibitions of Section 1928f (the suspension, termination, denunciation and withdrawal from the treaty). These



then require prior Senate authorization and would lead to a suspension on the ability of the government to use any congressional authorized or appropriated monies.

Michael Schmitt and Tess Bridgeman, writing in Just Security (“[The Insurmountable Legal Obstacles to U.S. Acquisition of Greenland](#)”), argue that any acquisition of Greenland by the United States, whether by force or through coerced agreement, would directly violate fundamental principles of international law, including

- the prohibition on the threat or use of force (under customary international law and Article 2(4) of the U.N. Charter);
- the principle of non-recognition of territorial acquisition by such means;
- the invalidity of agreements secured through coercion; and
- the right of the people of Greenland to self-determination.

A [hypothetical legal review of the use of the military in Greenland](#), written by Daniel Maurer, Steven J. Lepper, Eugene R. Fidell, Alberto J. Mora and Franklin D. Rosenblatt, concludes that seizure of Greenland would:

- violate both constitutional and statutory law<sup>53</sup> and, therefore, “any order issued outside the legal authority of the President or Secretary of Defense to employ the U.S. military to occupy or annex Greenland by force or threat of force without the consent of Denmark would be an unlawful order.”
- constitute an act of “aggression” and “use of force” in violation of Article 2(4) of the UN Charter (and Trump’s obligation under the Take Care Clause) and, therefore, “any order to employ the U.S. military to occupy or annex Greenland by force or threat of force without the consent of Denmark would be an unlawful order.”

A question worth pondering: was there resistance among senior military leaders to the possible use of force to seize Greenland and might that have factored into Trump’s decision to pull back from that threat?

**Y2, Week Three**, Alberto Mora [updated](#) his [Section 1928f analysis](#), arguing that:

- Trump has violated the U.N. Charter, the North Atlantic Treaty, and Section 1928f by threatening the use of military force against Greenland;
- his threats against Greenland equally constitute threats, through the operation of Article 5 of the North Atlantic Treaty, against Denmark, NATO, and each of NATO’s member nations;
- his continuing threats to the sovereignty of Canada may also may constitute violations of the North Atlantic Treaty and Section 1928f;
- the administration remains in breach of the requirements of Section 1928f;

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<sup>53</sup> The operation would violate domestic law by breaching the separation of powers by encroaching on Congress’ Article I power to declare war and would violate 22 U.S. Code § 1928f and, potentially, the Anti-deficiency Act.

- Trump’s renunciation of the use of force against Greenland, even if sincere, does not cure or moot these violations; and
- it is in the national interest for Congress to trigger enforcement of Section 1928f and hold the administration accountable.

Mora calls on Congress to:

- condemn the administration’s threats to use force to annex Greenland, preferably by means of a concurrent congressional resolution;
- declare that the administration violated Section 1928f by levelling its threats to use force and continues in violation of the Section;
- establish when the administration’s obligation to consult with the Foreign Affairs Committees first attached. The latest date it could be is Jan. 9, 2026 (the date of his first threat), but the date when the first “deliberation” occurred is certain to be much earlier;
- require that the administration provide the written notification required by Section 1928f(c)(2) covering the period from the first “deliberation” until the present, to include an explanation of the purported legal basis for the threats;
- declare that the limitation of funds prohibiting the use of funds for the prohibited activities attached at least as of January 9 (subject to revisions of this date based on the receipt of further information) and will continue until Congress provides its advice and consent to such expenditures;
- request the GAO and relevant IG to investigate possible [Anti-deficiency Act](#) violations arising from the failure to comply with the limitation of funds requirement of Section 1928f;
- declare that the any tariffs (such as those announced by Trump on January 17 and subsequently withdrawn against the eight NATO members) would be unlawful by reason that they would be imposed in furtherance of, and for the sole purpose of, engaging in prohibited acts;
- declare that any negotiations between the administration and Greenland, Denmark, or NATO and its member countries for the purpose of securing any territory, or any form of territorial concessions, relating to Greenland are subject to the funds cutoff and are to be suspended pending the restoration of funding upon the advice and consent of the Senate;
- identify the federal agencies and departments involved directly or indirectly in the commission of the prohibited act and request that they provide a report on any involvement in the prohibited acts and request the relevant IG investigate and report on any use of frozen funds;
- request the State Department to provide an explanation as to why the administration’s threats to Canada’s territorial integrity and political independence should not constitute violations of Section 1928f; and

- conduct hearings, as appropriate, including on the administration’s record of, and policies and practices regarding, compliance with Senate advice and consent treaties.

### *What this Means for U.S. Power*

There is plenty of commentary out there on where the world stands at the end of a week that started with threats to invade a NATO ally. CAP’s article ([“Trump’s Greenland Threats Reveal the Costs of Overt Aggression”](#)) captures the moment well:

“American strength should rest on the ability to shape environments rather than dominate them—to build alliances that others choose to operate within. That approach multiplies power and lowers costs by aligning interests, sustaining cooperation, and preserving flexibility. ‘Might makes right’ reverses that logic. It empowers autocrats, distracts from real threats, and demands constant kinetic demonstration. Over time, it leaves the United States weaker on the world stage and less able to protect the American people and secure their interests.

The question, then, is not whether the United States can wield force. It is whether it chooses to treat force as a tool within a strategy—or as simply the strategy itself. A foreign policy that mistakes domination for leadership will exhaust American power rather than extend it.”

Ian Bremmer, of Eurasia Group, offered an analysis, some of the key highlights of which are:

- By week’s end, Trump remained the leader of the most powerful country, Xi Jinping remained the world’s most powerful leader and Mark Carney emerged as the leader of the free world. Bremmer raises the question though as to what the free world looks like after the “rupture.” What countries and institutions does it encompass, who supports them, and to what end? How powerful is the free world? How long does it remain free?
- Trump’s shift to American unilateralism that rejects the existing international order comes in the absence of any country or group of countries able and willing to replace the America. It is one thing to want to hedge, but hedging will not fill the gap left by the Americans, as a consequence of which rogue states and nonstate actors have more space to operate (Russia, North Korea, ISIS/JNIM), an evolving environment where regimes can take disruptive actions with greater impunity (including, first and foremost, the United States), and conflicts are more likely to escalate and persist without consequence.
- American allies and partners have no choice but to diversify American risk. They will likely seek to ensure the multilateral institutions continue to exist and function. As Mark Carney set out, these countries will need not only to prioritize these institutions but will need to enhance the diplomatic, economic and security architecture that includes smaller, but trusted and reliable partners.

- China is the largest beneficiary of the moment. No surprise then that Beijing rejected Trump's invitation to join his Board of Peace and, by default, China is becoming the most powerful country in the United Nations.
- China will also likely benefit from a derisking of U.S. financial assets. While "sell America" is hampered by the inability of the rest of the markets to absorb global excess investments, and sovereign wealth funds, insurers, pension funds and other institutional investors will find it impossible to fully decouple from the "world's marginal profit engine," insuring against the "currently underpriced governance risk of the United States" can only benefit one market: China.
- As for Trump's TACO trade on Greenland, Bremmer cites pressure from inside the administration and from Republicans in Congress (two members did join the CODEL to Copenhagen and apparently five others tried to go but logistics did not work out). The markets play a role and, ultimately, do did the European hardline.
- Trump probably intended his Board of Peace to grab headlines and attention, but instead it was merely a sideshow, further confirming the end of the US-led global order.
- Finally, Bremmer touches on a development that few noticed – the purge of China's highest-ranking military official below Xi, vice chairman of the Central Military Commission (CMC), Zhang Youxia (the *Washington Post* [described](#) the first-ranked vice chairman as combining elements of the secretary of defense, the chairman of the joint chiefs and the national security adviser). The surprising (China watchers would say "shocking") announcement that Zhang had been placed under investigation for "grave violations of discipline and law" caps three years of purges that have reduced the CMC from seven members to two (Xi and his anti-corruption czar; the other five were all handpicked by Xi) and represents an unprecedented consolidation of military power under one man. Former Senior China Analyst at the CIA, Christopher Johnson, writing in *Foreign Affairs* ("[The Unsettling Implications of Xi's Military Purge](#)"), characterized the purge as "the biggest political earthquake to hit the top brass of the People's Liberation Army since the 1989 Tiananmen Square crackdown. It also marked the zenith of Xi's latest officer purge, which has touched every corner of the PLA and claimed all but one top officer over the last few years."

The charges against Zhang are the same as the charges recently lodged against Gen. Liu Zhenli, the head of the military's Joint Staff Department. Bremmer notes that there were rumors making the rounds that Zhang was involved in a failed coup attempt against Xi, while a *Wall Street Journal* [report](#) suggests Zhang leaked nuclear secrets to the United States. Some experts suggest neither is correct. Bremmer posits that this shakeup extends any timeline Beijing may have for an invasion of Taiwan. Johnson is not so sure.

## Withdrawal from International Organizations, Conventions and Treaties

**Y1, Week Fifty-One**, Trump issued a presidential memorandum, [Withdrawing the United States from International Organizations, Conventions, and Treaties that Are Contrary to the Interests of the United States](#), finding that it was contrary to U.S. interests to participate in 66 international organizations, conventions and treaties. Of the 66, 31 are associated with the United Nations. These efforts span a range of global threats from climate change to internet freedom.

In a statement, the Secretary of State lauded the withdrawals, stating that many international organizations served a “globalist project rooted in the discredited fantasy of the ‘End of History’” and that their real objective was to “constrain American sovereignty” – to counter the “NGO-plex” and the “elite networks” who ran it.

### *Climate Change*

Among the 66 are the UNFCCC and the Intergovernmental Panel on Climate Change IPCC. The UNFCCC is the principal global effort coordinating action to counter climate change, the U.S. withdrawal from which means the United States is the only country not a member. The IPCC is the body of climate scientists and other experts tasked with assessing the impact of climate change, whose research and policy guidance form the scientific basis for climate negotiations and policy development at the global level. Recall that early in the Second Term, Trump already [had limited](#) U.S. involvement in the IPCC and UNFCCC.

The United States is also walking away from other global efforts focused on climate, environment and energy policy, including

- the 24/7 Carbon-Free Energy Compact
- the International Union for the Conservation of Nature;
- the Renewable Energy Policy Network for the 21st Century;
- the International Renewable Energy Agency;
- the International Tropical Timber Organization;
- the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services;
- the Intergovernmental Forum on Mining, Minerals, Metals, and Sustainable Development; and
- the Commission for Environmental Cooperation.

Recall too that Trump set in motion the withdrawal of the United States from the Paris Agreement and has dismantled or largely gutted the National Weather Service and NOAA. Scientific information about climate change has largely disappeared from U.S. government websites. Offshore wind farms have been shut down.

Climate Rights International [points out](#) that the withdrawal of the United States from the UNFCCC does not eliminate the country’s responsibility under international law to address the harms caused by climate change. CRI cites a 2025 advisory opinion issued by the [International Court of Justice](#) (Obligations of States in respect of Climate Change) that “made explicit that states that knowingly pursue policies driving climate destruction are in breach of their legal obligations, including under international

human rights law, climate law, customary international law, and the prohibition on transboundary harm.”

Fiona Harvey and Oliver Milman, writing in the *Guardian* (“[“A colossal own goal’: Trump’s exit from global climate treaties will have little effect outside US”](#)”), first note that the U.S. withdrawal from global climate change efforts will have no impact on the facts on the ground – [rapidly rising temperatures](#), rising sea levels, still-rising GHG emissions, [burgeoning costs from extreme weather](#) and the imminent danger that the world will trigger [“tipping points”](#) in the climate system that will lead to catastrophic and irreversible changes. Second, the withdrawal will not, at least in the short term, sideline the race to achieve a low-carbon world that has become an engine of economic growth for a number of countries.

Harvey and Milman conclude that, “While the political aspect of climate action struggles to gain top-level attention in a world beset by conflict, the economics of the low-carbon transition [have taken on](#) a life of their own.” Consider the figures they cite:

- investment in low-carbon forms of energy is now above \$2tn a year, dwarfing the \$1tn spent on fossil fuels;
- renewable energy alone grew 15% last year, accounting for more than 90% of all new power generation capacity;
- electric vehicles now account for about a fifth of new cars sold around the world; and
- low-carbon power makes up more than half of the generation capacity of China and India; China’s exports of low-carbon goods and services topped \$20bn in a single month last year.

This is where Trump’s actions may prove to be totally counter-productive. They quote the U.N.’s climate chief, Simon Steill, who warns that American companies and the American public will bear the impact of “a colossal own goal which will leave the US less secure and less prosperous. It will mean less affordable energy, food, transport and insurance for American households and businesses as renewables keep getting cheaper than fossil fuels, as climate-driven disasters hit American crops, businesses and infrastructure harder each year and as oil, coal and gas volatility drives more conflicts, regional instability and forced migration.”

### ***Internet Regulation***

Another significant casualty of this move, as [reported](#) by TechPolicy.press, was the withdrawal from the [Freedom Online Coalition](#) (FOC), the “only alliance explicitly committed to defending human rights and openness on the Internet.” The FOC was launched in the heady days of the internet, and has grown from the initial 15 members to a coalition of 42 countries.

The reporting added, “This was not an obscure bureaucratic adjustment. It was a declaration. The United States has now formally stepped away from a core element of the normative architecture it helped build to shape the global Internet. Whatever



rhetoric Washington continues to use domestically and internationally, the message is unmistakable: Internet freedom is no longer a pillar of US foreign policy.”

### **Australian Ambassador Bows Out**

Former Australian prime minister Kevin Rudd, who had been serving as Australia’s ambassador to the United States, announced he would leave post in March, a year early. Media reports [cite](#) the fact that, in October, during a meeting at the White House with Australian Prime Minister Anthony Albanese on the occasion of the signing of a rare earths deal, Trump reportedly said to Rudd “I don’t like you..., and probably never will.”

### **Sporting Events**

Word that a component of ICE, HSI (incidentally far less problematic than the ERO elements), would accompany the U.S. delegation to the winter Olympics has triggered a furious outcry in Italy, including outraged voiced by various politicians, and prompted a request for clarification from the United States.

### **Diplomatic Relations**

#### ***Breach of the Vienna Convention on Diplomatic Relations***

**Y2, Week Two**, Ecuador’s foreign ministry reportedly lodged a formal diplomatic protest with the United States after an ICE agent attempted to enter the Ecuadorian consulate in Minneapolis without permission. The agent was blocked from entering by consulate employees. Under the [Vienna Convention on Diplomatic Relations](#), a country’s embassies and consular facilities overseas are its sovereign territory and are off-limits to law enforcement and other authorities of the host country without authorization from that country. [Video footage](#) shows a member of the consulate’s staff rushing to an entrance to the consulate, where a federal agent appears to have opened the door. The employee can be heard saying, “This is the Ecuadorean consulate, you’re not allowed to enter.” The agent responds by saying, “If you touch me, I’ll grab you.” The agent must not have [watched](#) the consulate scene in Lethal Weapon 2.

### ***South of the Border***

**Y2, Week Two**, a successful operation undertaken by the FBI’s Hostage Rescue Team in Mexico to capture a Canadian Olympian who ended up on America’s Ten Most Wanted Fugitive List for allegedly running a cocaine-trafficking operation was intended to be kept secret, because Mexican laws ban foreign agents from being physically present in law-enforcement operations on its soil and taking part in raids or arrests. Scheinbaum’s ruling party, understandably, is particularly sensitive to foreign interference. However, FBI Director Patel did not get the memo and [posted](#) on X, “Our FBI HRT teams executed with precision, discipline, and total professionalism alongside our Mexican partners to bring Ryan James Wedding back to face justice.” Mexican President Sheinbaum had to scramble to mitigate the damage, challenging Patel’s description of the operation. See [Wall Street Journal](#) coverage.

### ***Embassy Removes Flags, then Backtracks; Danes March in Silent Protest***

The U.S. Embassy in Copenhagen faced a backlash from Danes and U.S. veterans when staff from the embassy removed 44 flags placed in flower plots at the embassy, with the names of the fallen, to commemorate Danish military casualties in Afghanistan. The flags [reportedly](#) were reinstalled after the outcry and ahead of a silent protest by veterans at the embassy this weekend.

At that silent protest ([#No Words](#)), veterans who had fought along side U.S. forces and supporters [marched](#) from the site associated with Denmark's armed forces, the citadel, to the U.S. Embassy, laying a wreath at the entrance with the inscription "In eternal respect for those who fought when the United States activated Article 5."

### **New START Expires**

**Y2, Week Three**, Trump has [announced](#) he will let the last remaining nuclear arms control treaty between the United States and Russia, the New Strategic Arms Reduction Treaty (New START), lapse after declining a Russian offer to continue observing the limits for an additional year to permit negotiations to continue. The treaty, which was signed in 2010 and replaced START I signed in 1991 by President George H.W. Bush and Russian President Mikhail Gorbachev, capped the number of strategic warheads that the United States and Russia could deploy at 1,550 each, and capped the number of deployed launchers at 700.

This is the first time in more than 50 years that there is no significant bilateral nuclear arms control treaty in place between the two countries. New START was extended in 2021 and, since by its terms it cannot be extended again, the United States would need to negotiate a new treaty that would require a two-thirds vote of the Senate.

According to [NPR](#) reporting, New START not only put limits on warheads, it also established a system by which the United States and Russia notified each other every time they moved a nuclear weapon. Each side sent inspectors to nuclear sites of the other. *NPR* quotes Matt Korda, associate director of the Nuclear Information Project at the Federation of American Scientists, "Over the 15-year lifetime of the treaty, more than 25,000 of those notifications were exchanged."

Axios was the first [report](#) that the two countries may yet agree to observe informally the New START limitations, pending negotiation of a new agreement. Stay tuned!

## NATIONAL SECURITY AND FOREIGN POLICY RISKS

Imagine you are an ambitious officer in the Main Intelligence Directorate that forms part of the Russian Federation's General Staff of the Armed Forces (otherwise known as the GRU), and with Orthodox Christmas 2025 a month away you hit upon the idea of drawing up a wish list of actions that would degrade the ability of the “main enemy” to counter Russian operations directed at it.

You know that Russian secret service and military operations in Ukraine, in particular, have evolved into a strategic warfare campaign that is interconnected across multiple domains – FIMI (foreign information manipulation and interference), cyber, subversion and kompromat largely online, combined with supply chain disruption, conventional military operations, critical infrastructure attacks, migration manipulation, lawfare, political influence and interference and broader cognitive domain operations. (The growing threat of cognitive warfare being waged by your services - warfare that focuses on influencing the opponent's reasoning, decisions, and ultimately, actions to secure strategic objectives without fighting or with less military effort than would otherwise be required – is well documented in ISW's “[Primer on Russian Cognitive Warfare](#).”)

In short, your services have an ever-expanding toolkit at the intersection of hybrid, cognitive and digital warfare, now augmented by AI. You doubt many of your proposed actions would be successful, but the effort is worth a try. ... Little did you know how many of your goals would be realized, beyond your wildest expectations.

### National Security

Hybrid warfare is not limited to Ukraine. Sabotage operations have been spreading across Europe. You know operations can be directed at the United States, and the question you are pondering is how to weaken the defenses. Six months later, you survey the national security landscape:

Efforts to counter the bedrock of Russian hybrid warfare – malign influence operations, including disinformation, **have been severely degraded**. The State Department's Global Engagement Center (GEC), which was tasked with identifying and assisting foreign countries in countering malign operations was [disbanded](#) in December and its replacement R/FIMI was also [disbanded](#). Trump administration officials continue maintain that the GEC was engaged in suppression of conservative free speech in the United States, even though it was focused exclusively on operations abroad. VOA and Radio Free Europe/Radio Liberty, which for decades have been indispensable tools to counter Soviet/Russian propaganda, are on life support and will be shut down if the courts do not save them.

**Kremlin talking points continue to be amplified in Washington, D.C.** Trump envoy and real estate developer Steve Witkoff, who appears to be the principal negotiator with Russia, has repeated a number pro-Russia statements (see “[Witkoff Praises Putin As U.S. Apparently Favors Russia Over Ukraine](#)”):

- In March, Witkoff characterized the unwillingness of the Ukrainians to recognize the regions that Russia invaded and now occupy to varying degrees as the principal obstacle to peace, not Russia.

- He repeated Putin's views on Ukraine: "There's a sensibility in Russia that Ukraine is just a false country, that they just patched together in this sort of mosaic, these regions, and that's what is the root cause, in my opinion, of this war, that Russia regards those five regions as rightfully theirs since World War Two."
- He cited referendums held during military occupation to justify giving the territories to Russia, even though international authorities condemned the votes, and the State Department called the referendums "shams," where "Ukrainian civilians were forced to cast ballots under the watch of Russian soldiers."
- After meeting with Putin, Witkoff praised Putin and excused the invasion of Ukraine as a "complicated situation." He said, "I don't regard Putin as a bad guy. That is a complicated situation, that war and all the ingredients that led up to it. You know, it's never just one person, right?"
- Witkoff has said that he takes Putin "at his word" that the Russian leader does not want to take more of Ukraine or parts of Europe.

As David V. Gione and Michael V. Hayden wrote in Foreign Affairs (["Trump is Breaking American Intelligence"](#)), Trump not only dismisses intelligence but, like Putin and other authoritarian leaders, **he is fostering a climate in which senior military and intelligence officers are tailoring assessments to please him, or at least not displease him.** Trump dismissed DNI Gabbard's congressional testimony to the effect that Iran was not close to developing a nuclear weapon, with "I don't care what she says." After the strike, Secretary of Defense Hegseth bought into Trump's "obliteration" narrative, dismissing a DIA report to the contrary.

Gione and Hayden also note that **the IC is increasingly being staffed based on personal loyalty rather than experience or competence.** Thomas Fugate, a 22-year-old with no apparent national security experience or expertise, leads the DHS counter-terrorism office that oversees the Center for Prevention Programs and Partnerships (CP3). According to ProPublica [reporting](#), that office is down from 80 staff to fewer than 20, and the mission has shifted from focusing on domestic extremism, particularly far-right movement (*see also* ["Trump administration is minimizing white supremacist threat, officials warn"](#)).

FBI Director Kash Patel reportedly has restructured the FBI "to divert special agents and analysts toward immigration enforcement and the reduction of violent crime, **leaving law enforcement investigations into threats with more serious national security implications – counterterrorism, cybercrime, Chinese or Russian intelligence activity in the United States—under-resourced.**"

Asha Rangappa [highlighted](#) a post by NBC justice and intelligence correspondent Ken Dilanian reporting that Patel is seeking to transform the FBI into a national police force focused on violent crime, at the expense of countering terrorists, hackers and spies. At a time when FBI agents are being allocated to immigration enforcement and now patrolling the streets of D.C., not to mention the internal purges, the latest shifts can be highly destabilizing. Violent street crime historically has been the responsibility of state and local law enforcement. As Rangappa noted, FBI agents are authorized by

law to enforce *federal* criminal law, with the vast majority of criminal laws being state crimes.

Focusing valuable intelligence gathering resources on politically motivated operations can only mean **fewer resources are being devoted to threats from Russia, China and Iran:**

- The *Wall Street Journal* [reported](#) that an aide to CIA Director Ratcliffe had said that CIA would increase its focus on the Western Hemisphere, for example, to give Trump greater leverage in trade negotiations.
- DNI Gabbard in May directed the IC to increase intel collection in Greenland, an autonomous territory belonging to Denmark, a NATO ally.
- On her first day in office as Attorney General, through a series of memos, Pam Bondi:
  - [cut back](#) on enforcement of the Foreign Corrupt Practices Act and [narrowed](#) enforcement of the Foreign Agents Registration Act;
  - [disbanded](#) Task Force KleptoCapture, a law enforcement initiative created to enforce sanctions on Russia and facilitate civil and criminal forfeiture actions against sanctioned Russian individuals, the creation of which President Biden announced at his 2022 State of the Union address (see [“How to Hide a 350-Foot Megayacht”](#)); and
  - [disbanded](#) the FBI’s Foreign Influence Task Force, created by FBI Director Christopher Wray during Trump 1.0 and housed within the FBI’s Counterintelligence Division, to [counter](#) foreign influence campaigns targeting the United States, including cyberattacks and malign influence operations targeting U.S. elections (see [July 2024 Evaluation](#));

**Purges of the intelligence agencies, random polygraph tests, leak inquiries, abrupt performance reviews and pressure to produce intelligence assessments** that support policy outcomes are taking their toll.

- The Director and Deputy Director of NSA [were fired](#), for no apparent reason, leading the former NSA head Gen. Paul Nakasone to [comment](#) that the loss would “cause disruptions” (Laura Loomer posted that the officials were fired for being “disloyal” to Trump).
- NIC leaders [were fired](#) for reporting on Venezuela that undercut the rationale for the invocation of the Alien Enemies Act, after the ODNI Chief of Staff [pushed](#) the NIC to revise the intelligence “so this document is not used against the DNI or POTUS” – the Deputy Chief of Staff in ODNI [described](#) the fired officials as “Biden holdovers [who] were dismissed because they politicized intelligence.”
- DNI Gabbard set up the [Director’s Initiatives Group](#) with the mission of “rooting out deep-seeded politicization leaks, exposing unauthorized disclosures of classified intelligence,” and addressing bureaucratic inefficiencies.

- DNI Gabbard announced that the NIC and the team responsible for preparing and presenting the President's Daily Brief (PDB) would relocate from CIA headquarters to the ODNI's Liberty Crossing campus.
- DEI officers at intelligence agencies were fired simply because of the jobs they were assigned to before January 20.
- Six NSC staffers were fired apparently for perceived disloyalty in the eyes of Laura s, and in a move [characterized](#) by one official as a “gutting of the Deep State,” the overall NSC is to be restructured and its staff cut by more than a half (on top of which the National Security Advisor position is filled by Secretary of State Rubio, who is also acting head of the National Archives and acting administrator of what is left of USAID).
- NSA and CIA announced RIFs following visits by DOGE to Langley and Fort Meade; the CIA in February [reportedly](#) extended the buy-out offer to the entire agency workforce.
- FBI agents, many with years of experience and expertise, including counter-intelligence agents that worked on Russia and China penetration and counter-terrorism agents on Joint Terrorism Task Forces, have been fired, forced into retirement or taken voluntary retirement because they were tarred with being [disloyal](#).
- The General Counsel of the NSA, April Falcon Doss, was removed, reportedly for having worked on the Senate Intelligence Committee during the time of the Russia investigation and that fact came to the attention of Laura Loomer.
- The Director of DIA [was removed](#). DIA is the principal intelligence office for the Joint Chiefs of Staff and provides tactical intelligence to U.S. military personnel in the field. DIA also runs a classified information-sharing network, the Joint Worldwide Intelligence Communications System, or JWICS. While no official reason was given for the firing, the assumption in the IC is that he was removed as a result of the release by DIA of its findings on the bombing of the Iran nuclear facilities that contradicted Trump's “obliteration” pronouncement.

Rep. Jim Himes, the Ranking Member on the House Intelligence Committee, said: “If the Administration has cause to fire Director Kruse, they must provide that information to Congress immediately. Otherwise, we can only assume that this is another politically motivated decision intended to create an atmosphere of fear, something that chills the ability of the Intelligence Community to do its job and protect national security.”

- Security clearances of 37 current and former intelligence officers and others were terminated, some because they had tangential involvement in the Russia investigations. Others appeared on a list circulated by Loomer.

The Economist [reports](#) that among the 37 was a serving senior CIA officer, a veteran of more than 20 years. In 2016, she was the senior intelligence officer for Russia and Eurasia and oversaw the production of a report describing Russian efforts to meddle in the 2016 election. She later returned to CIA as a



senior manager, overseeing its operations and analysis relating to Russia and the former Soviet Union.

Also among the 37 was Joel Willett, [reportedly](#) a military veteran and former CIA officer who spent time in the White House Situation Room under then-President Barack Obama before leaving the government 10 years ago.

The *New York Times* [reported](#) that the acting director of the NSA had tried to protect Vinh Nguyen, the NSA's chief data scientist and one of the 37 who also worked on the 2016 Russia report, but was rebuffed by Gabbard. Nguyen reportedly had been in charge of developing AI systems to improve the gathering of foreign communications and also had been involved in the IC's work on quantum computing, which has the potential to break current encryption systems and revolutionize espionage.

Former CIA Director Bill Burns remarked in his open letter published in The Atlantic ("[A Letter to America's Discarded Public Servants](#)") that "[i]f intelligence analysts at the CIA saw our rivals engage in this kind of great-power suicide, we would break out the bourbon. Instead, the sound we hear is of champagne glasses clinking in the Kremlin and Zhongnanhai."

A few friends were on the list of 37 – one [published](#) a Substack article about the effect on her of being included on an enemies list. I commend the article because it is an important reminder that behind all of these stories are real people, real patriots, real damage.

- FBI agents raided the home and office of John Bolton. Shane Harris, writing in The Atlantic ("[The Bolton Raid Feels Like a Warning](#)"), posits that the raid, together with the action on the security clearances, "may be remembered as the week Trump's campaign against the 'deep state' kicked into high gear." Equally troubling it suggests that there had been a tectonic shift in the apolitical work of the American intelligence community." Harris found that characterizing the events as a "purge" or as "having a chilling effect" were too mild. The consensus seemed to coalesce around an "effort to terrorize the workforce" – going forward, intelligence officers would keep quiet or say what they thought Trump would want to hear.

The *Wall Street Journal* Editorial Board [issued](#) a scathing response to the raid: "The real offender here is a President who seems to think he can use the powers of his office to run vendettas. We said this was one of the risks of a second Trump term, and it's turning out to be worse than we imagined."

- DNI Gabbard [announced](#) that, in order to counter "unauthorized intelligence leaks, politicization and weaponization of intelligence," she would restructure the ODNI (ODNI 2.0) and cut its staff by close to one-half. The rationale: the memo said that the affected individuals had engaged in some or all of the following actions:
  - politicization or weaponization of intelligence to advance personal, partisan, or non-objective agendas inconsistent with national security priorities;

- failure to safeguard classified information in accordance with applicable laws, regulations and agency policies; failure to adhere to professional analytic tradecraft standards; and
- other conduct detrimental to the trust and confidence required for continued access to national security information.

Units being disbanded include:

- the **Foreign Malign Influence Center** (FMIC), allegedly because it and its predecessor entities “were used by the previous administration to justify the suppression of free speech and to censor political opposition”;
- the **National Counterproliferation and Biosecurity Center**;
- the **Cyber Threat Intelligence Integration Center**;
- the **External Research Council**, allegedly because it “consisted of politically appointed partisans who brought their external biases and politics into the intelligence process from a senior advisor role”;
- the **Strategic Futures Group**, allegedly because elements of the IC’s “deep state used [it] to push partisan political agenda” and the draft of its 2025 Global Trends Report was “found to violate professional analytic tradecraft standards in an effort to propagate a political agenda that ran counter to all of the current President’s national security priorities.”

*POLITICO* [quotes](#) a former NSA analyst who pointed out that, “The ODNI was created to address obvious failures in coordination between intelligence agencies. It’s incomprehensible to think they can continue that work with half the staff.”

Imagine the impact of firing or forcing the retirement of senior officers with years of experience and expertise and the cancellation of jobs for probationary employees and candidates. Think of the time and expense of recruiting, vetting and training young intelligence officers. Think of the impact of a distracted, nervous and demoralize workforce focused on heading for the exits.

Professor Brian O’Neill, writing in *Just Security* (“[When Intelligence Stops Bounding Uncertainty: The Dangerous Tilt Toward Politicization under Trump](#)”), warns that “When senior analysts are sidelined, when assessments are filtered to support policy, when the institutions that coordinate long-range warning are pulled under political control – failures cease to be accidental. They become manufactured. In that system, the next intelligence failure will not be a surprise. It will be a choice.”

Dave Salvo, writing in *Just Security* (“[What Just Happened: Dismantling the Intelligence Community’s Foreign Malign Influence Center](#)”), lays out the implications of the shuttering of the FMIC. Salvo warns that Gabbard has now taken down the last remaining U.S. federal government team dedicated to tracking and analyzing state-sponsored efforts to interfere in U.S. institutions, elections and society. With the shuttering of related units at the State Department, DHS, FBI and DoJ earlier this year, this latest announcement “is a particular blow to U.S. national security and a gift to America’s adversaries,

who have no interest in slowing down malign influence operations that harm U.S. national interests.”

Salvo notes that the FMIC did not focus on one specific malign actor (namely Russia) and it did not focus only on efforts intended to uplift Trump at the expense of Democrats. Moreover, the FMIC did not recommend censoring specific sources of information, nor did it tell citizens what to read or what to believe. There was no deep-state plot to deplatform conservative voices or denigrate the Trump campaign.

**Conspiracy theories have gone mainstream and have taken hold in the administration in staggering ways.** Loomer has [promoted](#) the unsubstantiated claim that the attacks on 9/11 were an “inside job”; Deputy Director of the FBI Dan Bongino has amplified a range of conspiracy theories accusing the “deep state” of lying to the American people, had called for investigating and imprisoning Presidents Obama and Biden, had called for the disbanding of the FBI because it had become a fully corrupt organization, had called FBI Director Ray a “totalitarian despot” and a “jack-booted thug” and had suggested that FBI employees could “be criminally and civilly responsible” for “crushing” civil liberties of Americans (see [NPR](#) coverage). Loomer is believed responsible for the firing of a number of experienced, well-respected national security officials on the basis of her say so alone.

**It is hard to discern any national strategy security and there appears to be no coherent policy-making process.** Read the [transcript](#) of David Frum’s interview with Bridget Brink, who recently resigned as our Ambassador in Ukraine to protest Trump’s refusal to acknowledge Russia’s responsibility for the war it started. Brink describes the chaos of the policy-making process, “which is not conducive to our ability to execute and implement a strategic foreign policy that deters Russia, sends the right signal to China, and advances American interest for Americans here at home. ... I did not sense that there was an ability to inform the president in a way that would help us advance our policy. And that’s an untenable position for an ambassador, an ambassador in a war zone, an ambassador has a thousand people to protect and make sure are safe, and that is trying to accomplish one of our top foreign-policy goals.”

**Efforts at congressional intelligence oversight have been stymied.** Apparently as a result of another Loomer [post](#), Sen. Mark Warner’s classified visit to the National Geo-Spatial Intelligence Agency was abruptly cancelled. The visit, which included a meeting with NGA Director, Vice Admiral Frank Whitworth, was part of regular intelligence committee oversight of the intelligence agencies. Loomer accused Warner of being a “Russia Hoaxer” and a “rabid anti-Trump Democrat.” In an interview, Loomer reportedly accused Warner of spreading the unproven theory that Trump had worked with Russian intelligence to steal the 2016 election and said he should “be removed from office and tried for treason.” In a separate post, Loomer also [called for](#) the removal of Whitworth.

In contrast to efforts to thwart congressional oversight of immigration facilities, the Warner visit would have been part of intelligence oversight. In comments made to reporters, Warner had this to say: “Is congressional oversight dead. This is a dangerous time. If we are not doing oversight, if the intelligence is potentially being cooked or

being bent to meet the administration's needs, and we end up in a conflict – the American people have the right to say, 'How the hell did this happen?'" Commenting on Loomer's influence, he asked: "When is the purge going to end? This is the kind of thing that happens in authoritarian regimes. You purge your independent IC and make them loyal not to a constitution but something else." See [New York Times](#) coverage.

## Foreign Policy

And then there are the statements and actions that represent a sharp break in U.S. policy towards Russia and stunning realignment of U.S. foreign policy that appear largely for the benefit of Russia:

- Trump **ended the West's isolation of Putin** with a 90-minute phone with Putin (February 12);
- Secretary of Defense Hegseth **ruled out NATO membership for Ukraine** (February 12);
- Vice President Vance **lectured European allies** at the Munich Security Conference on their suppression of European far-right parties, many sympathetic or directly supportive of Russia's invasion of Ukraine, claiming that the true threat to Europe came not from Russia or China, but from a retreat from fundamental values of protecting speech (February 14);
- Senior U.S. and Russia officials met in Saudi Arabia to end the war in Ukraine **without including Ukrainian officials** (February 18), including a meeting between Secretary of State Rubio and Russian Foreign Minister Sergei Lavrov;
- the United States **sided with Russia in the UN General Assembly** (joining Russia, Belarus, North Korea) against an EU-Ukrainian resolution condemning Russia on the third anniversary of the invasion (February 24);
- Trump and Vance **orchestrated the public humiliation of President Zelenskyy** in the Oval Office (February 28);
- Trump **paused on military aid and intelligence sharing** for Ukraine and curtailment of offensive cyber operations and information operations targeting Russia (March 3 and 5)
- Trump again **accused Ukraine of being responsible for the Russian invasion** and of starting the war with Russia (most recently, in April following Russia's attack on Sumy "you don't start a war you know you can't win" though the inversion of facts dates back to at least last October "But he should never have let that war start.");
- Witkoff, who does not speak Russian, met with Putin for several hours on three separate days **relying on Kremlin translators** (February 11, March 13 and April 11). Videos of one meeting suggest that Witkoff was not accompanied by any advisers or experts that typically support negotiators;
- Witkoff reportedly has been **advocating lifting energy sanctions** on the Nord Stream 2 natural gas pipeline that remains operable after the 2022 explosion that destroyed one line of Nord Stream 2 and both lines of Nord Stream 1) and

- possibly other Russia energy assets in Europe (reported most recently July 4, but goes back to at least April); and
- At the June G7 summit, Trump **blocked an initiative to lower the price cap** on Russia Oil (\$60 to \$45 per barrel) and criticized fellow participants for expelling Russia from the G8 following the seizure of Crimea.

Trump, in the words of John E. Herbst writing for the Atlantic Council ([“Trump’s approach to Russia and its war on Ukraine is evolving, not in one big leap, but in several smaller steps”](#)), sees a shift as Trump loses patience with Putin. The Hague Summit Declaration (June 25) reaffirmed NATO members’ commitment to Article 5 of the Washington Treaty (an attack on one is an attack on all) and to investing “5% of GDP annually on core defence requirements as well as defence-and security-related spending by 2035 to ensure our individual and collective obligations, in accordance with Article 3 of the Washington Treaty.” Importantly, the 5% threshold was expressly linked to the “long-term threat posed by Russia to Euro-Atlantic security and the persistent threat of terrorism.” Members also reaffirmed “their enduring sovereign commitments to provide support to Ukraine, whose security contributes to ours, and, to this end, will include direct contributions towards Ukraine’s defence and its defence industry when calculating Allies’ defence spending.”

But not so fast...

Secretary of State Rubio [told](#) *POLITICO*’s Dasha Burns on the sidelines of the NATO summit that this was not the time to ramp up sanctions on Russia, and Russia continues to target Kyiv with missile and drone attacks, [most recently](#) with a record number of missiles and drones [pummelling](#) Kyiv as well as four other cities only hours after a call between Trump and Putin on July 3. The European Union is expected to impose new sanctions on Russia, which may resurrect a price cap on Russian oil revenue.

No new sanctions have been imposed on Russia by the United States this year (see [New York Times](#) coverage, which also found that Trump’s policy sanctions had created more opportunities for sanctions-evasion – for example it found more than 130 companies in China and Hong Kong that are advertising immediate sales of restricted computer chips to Russia, none of whom is under sanctions.). Senators Shaheen, Warren and Coons [have announced](#) (07/03/25) an investigation into the pause on sanctions, citing not only the pause on sanctions, but also the pause on critical military assistance to Ukraine and blocking of regular updates on sanctions and export controls.

Anne Applebaum, in her July 4<sup>th</sup> Atlantic article ([“The U.S. Is Switching Sides”](#)), characterizes Trump’s actions/inactions as giving Putin “every incentive to keep killing Ukrainians.” While Russia is suffering massive casualties every month as well as extraordinary losses of equipment on the battlefield, and its economy, beset by inflation and soaring interest rates is likely heading for recession, Putin appears to have no interest in a negotiated settlement or ceasefire. He thinks he can win, posits Applebaum, thanks to U.S. government action/inaction. “[T]hanks to quieter decisions by members of [Trump’s] own administration, people whom he has appointed, the American realignment with Russia and against Ukraine and Europe is gathering pace – not merely in rhetoric but in reality.”

**Y1, Week Twenty-Four,** weapons that had been funded during the Biden administration, some of which are already in Poland and including interceptors for Patriot air defense batteries, will now not be sent to Ukraine. The administration attributes the abrupt halt to depleted U.S. stocks, but that excuse is disputed. Applebaum adds an important dimension to the no-new-sanctions issue – sanctions can only be effective if counter measures are adjusted regularly as Russian companies change suppliers and tactics to end-run sanctions. The Biden administration regularly issued new sanctions for this reason. So, no new sanctions are tantamount to lifting sanctions. The *New York Times* reports that the Biden administration placed, on average, over 170 new sanctions per months on entities linked to Russia, with more than 6,200 blocks imposed on individuals, companies, aircraft and vessels.

End of **Y1, Week Twenty-Six,** apparently the British did not receive the memo to ease up on Russia. The British government announced sanctions against three GRU intelligence units (26165, 29155 and 74455) for involvement in a campaign to destabilize Ukraine and other European countries. They also named 18 intelligence officers. See [UK government](#) press release and [Wall Street Journal](#) coverage.

**Y1, Week Twenty-Eight,** It is not a stretch to believe that the Epstein saga and the shock of the May-July jobs numbers prompted Trump to announce Friday afternoon that he was ordering two nuclear submarines “to be positioned in the appropriate regions,” in response to “highly provocative statements” of former Russian president Dmitry Medvedev. If it was meant to distract, the sabre-rattling failed, but as Tom Nichols, [writing](#) in The Atlantic reminds us, there is a grave danger lurking here:

“Nuclear-missile submarines are not toys. No one understood this better than Trump’s predecessors, the 11 presidents who have been the only other people in American history with the authority to order the use of nuclear weapons. They treated any declarations about nuclear weapons with utter gravity and sobriety. They avoided even mentioning such things unless they were articulating a carefully planned policy and communicating it to allies and enemies alike. They did not engage in petty spats with nuclear-armed foreign powers. And they considered using nuclear [signals](#) only when faced with crises that involved America’s vital interests.

Trump, however, has now discarded all of these red lines. He has initiated a new era in which the chief executive can use threats regarding the most powerful weapons on Earth to salve his ego and improve his political fortunes. Once upon a time, America was governed by serious people. No longer.”

**Y1, Week Thirty-Four,** the *Financial Times* [reports](#) that the United States will no longer fund programs that train and equip militaries in eastern European countries that are on the frontline of any conflict with Russia, including Estonia, Latvia and Lithuania. The programs, which are funded under [10 U.S. Code § 333](#), have a worldwide budget in excess of \$1 billion and the affected programs represent hundreds of millions of dollars. According to the GAO, the program allocated \$1.6 billion to Europe. The cuts should be seen in the context of a broader [effort](#) led by Under Secretary for Defense Policy Elbridge Colby to shift resources away from the European theatre to the Indo-Pac region. Among the programs to be cut is one to enhance the effectiveness of the militaries in the Baltic states, the Baltic Security Initiative.



**Y1, Week Thirty-Seven,** *ABC reports* on analysis undertaken by the Center for Internet Security (CIS) and the Institute for Strategic Dialogue (ISD), both of which monitor online extremism, that found widespread posts coming from Russia-backed groups in the aftermath of the Kirk assassination spreading disinformation and designed to inflame passions among both *conservative* and LGBTQ+ audiences. Many are amplified by broad bot networks.

**Y1, Week Forty-Six,** a *new analysis* from Ryan Mulholland and Damian Murphy at the Center for American Progress concludes that Trump's rejection of international cooperation is isolating the United States, undermining its long-term security and eroding its ability to shape a world that benefits American consumers and manufacturers. As world leaders prepare to gather for the annual G20 summit in South Africa at the end of November, without Trump or any US government representative *in attendance* (which was also the case for the Asia-Pacific Economic Cooperation leaders' meeting in Korea and COP30 in Brazil), the analysis warns that the administration's attacks on multilateral organizations such as the United Nations, the World Health Organization, and NATO have left the United States weaker and less secure. The authors argue that global challenges such as climate change, pandemics and migration cannot be solved by any single country acting on its own.

### **Intelligence Sharing**

**Y1, Week Forty-Three,** the directors of the Dutch civilian (AIDV) and military (MIVD) intelligence services, in an interview with *De Volkskrant*, *acknowledged* that the Dutch intelligence services are sharing less intelligence information with the United States and are working more closely with their European allies. *See also POLITICO* coverage.

**Y1, Week Forty-Five,** CNN *reports* the British intelligence is cutting back on the intelligence it is sharing the United States that bears on operations in the Caribbean because it does not want to be complicit in the killings being conducted by U.S. forces. For some time, intelligence assets based on territories in the Caribbean controlled by the British, have assisted in drug interdiction operations conducted by the U.S. Coast Guard.

### **Where Does This All Lead?**

**Y1, Week Forty-Two,** David Ignatius pulls together a number of the foregoing themes in his op-ed ("*Trump is ignoring the real threat matrix*"), which he starts as follows: "'Why America Slept.' That might be the title of a future book examining the Trump administration's shift of national security focus away from a mounting Russian threat against Europe and toward a noxious but relatively impotent network of drug gangs in Venezuela." The administration's priorities are inexplicable: while Trump is focused on halting the flow of drugs into the country and may be about to launch kinetic operations to bring about regime change in Venezuela, the FBI's most experienced national security resources and the CIA's veteran analysts and operations officers have been purged, the of cyber defense capabilities at key agencies (in particular CISA and the State Department) have been downsized or eliminated and alliances within the Five Eyes and with other intelligences allies have been weakened.

Ignatius cites [Bill Burns](#)' recent article in the Atlantic ("Great-power suicide." "We've put at risk the network of alliances and partnerships that is the envy of our rivals"). Ignatius also cites German defense analyst Nico Lange, who [posted on X](#) a litany of actions Russia is taking to infiltrate the German armed forces and undermine the stability of NATO. An April 2025 paper by the Center for the Study of the Presidency & Congress ("[Risk of Contagion: Will Russian 'Mayhem' Campaigns Spread to U.S. Infrastructure](#)") provides an insight into the hybrid warfare being conducted by Russia, largely aimed at Europe, for now.

**Y1, Week Forty-Three**, meanwhile back on the home front, the *New York Times* [reports](#) that the FBI (in an unsigned letter, but sent presumably with the approval of Director Patel) has pushed back on efforts by the ODNI to encroach on its bureaucratic territory. The letter reportedly informed Congress that it "strongly" opposed a proposal that would make ODNI the lead counter-intelligence agency in the federal government. The reporting also cites [examination](#) ordered by Gabbard ally Joe Kent, who leads the National Counterterrorism Center, of FBI files related to the Kirk assassination apparently to determine whether the assassin had support from a third party, a foreign power or other entity. The bureaucratic tug-of-war is playing out as House and Senate staff hammer out the final version of the [Intelligence Authorization Act for FY 2026](#).

**Y1, Week Forty-Four**, *Stars & Stripes* [carried](#) a curious report that the U.S. Army now is deploying the 1st Theater Information Advantage Detachment, headquartered at Fort Shafter in Hawaii, to counter disinformation and malign influence aimed at the United States. Historically, efforts of this kind operated under special forces commands and focused on theaters of operations such as Afghanistan and Iraq.

### **National Security Strategy 2025**

**Y1, Week Forty-Eight**, while much of the national security establishment was fixated on the fallout from reporting on the double tap killings in the Caribbean, the administration issued without the customary fanfare that accompanies these releases the National Security Strategy (NSS). It could have been called the "World According to Trump."

Eliot A. Cohen, writing in The Atlantic ("[Trump's Security Strategy Is Incoherent Babble](#)") described it, in part, as follows:

"Most of the document consists of bombast, sycophancy, lies, inconsistencies, and grotesque self-contradictions. But it also—and this is something missed by the deservedly contemptuous reviews it has received—clarifies some policy preferences and touches on real problems. Like the babble of a thrashing sleeper who alternates between fantasy-laden dreams and cold-sweat nightmares, it is a window into disturbing encounters with the world's realities. ...

This is a populist document. It expresses an undifferentiated loathing of traditional foreign-policy elites, which the administration has shunned. Its intellectual incoherence is that of the angry autodidact, the anti-vaxxer activist, and the anti-Biden conspiracy theorist. This helps account for its ambivalence. The document, like the administration, is split between internationalist and isolationist impulses—

offering a commitment to American alliances and a forward presence in Asia on the one hand, and indulging proclivities for “America First” isolationism on the other. In some respects, the NSS reflects the peculiar nature of the Trump coalition, which is composed of different and occasionally mutually antagonistic factions, and above all of the muddled enthusiasms, resentments, insecurities, and vanities of the president himself.

The one thing the NSS does not present is a coherent picture of America’s adversaries. China is portrayed chiefly as a commercial rival, Russia as a Eurasian power that requires a vague kind of stability, Iran as a menace that has been definitively dealt with by B-2 bombers. Jihadist movements and North Korea are either touched on in passing or ignored altogether.”

Similarly, Anne Applebaum, in her Atlantic analysis ([“The Longest Suicide Note in American History”](#)), put it this way, “The one genuinely new, truly radical element in this faction’s thinking is its absolute refusal to acknowledge the existence of enemies or to name any countries that might wish America ill.”

- Russian cyberwarfare, political intervention, and information war inside the United States go unmentioned. Russian [acts of sabotage across Europe](#), Russian [support](#) for brutal regimes across the Sahel, and Russia’s invasion of Ukraine are not important either. None of these Russian acts of aggression gets a mention except for the war in Ukraine, which is described solely as a concern for Europeans.
- China is characterized not as a geopolitical competitor but as a trading rival. “It is as if Chinese hacking and cyberwar did not exist, as if China were not seeking to collect data or infiltrate the software that controls U.S. infrastructure. China’s propaganda campaigns and business deals in Africa and Latin America, which could squeeze out American rivals, don’t seem to matter much either.”
- “Finally, although they do not name any states that might threaten America, the authors do focus on one enemy ideology. It is not Chinese communism, Russian autocracy, or Islamic extremism but rather European liberal democracy. This is what this radical faction really fears: people who talk about transparency, accountability, civil rights, and the rule of law.”

I was in Europe the day it was released and the reaction of my interlocutors easily could be summed up as: the NSS represents a direct attack on Europe – attacking the European Union, appeasing Russia and supporting the rise of national far right parties.

Max Bergman, writing for CSIS ([“The NSS That Could Destroy NATO”](#)) states that the NSS “effectively declares war on European politics, Europe’s political leaders, and the European Union.” It proclaims that Europe is at risk of “civilizational erasure,”

“from activities of the European Union and other transnational bodies that undermine political liberty and sovereignty, migration policies that are transforming the continent and creating strife, censorship of free speech and suppression of political opposition, cratering birthrates, and loss of national identities and self-confidence. Should present trends continue, the continent will be unrecognizable in 20 years or less. As such, it is far from

obvious whether certain European countries will have economies and militaries strong enough to remain reliable allies.”

It identifies a loss of self-confidence that it then frames in the context of the threat from Russia, blaming the Europeans for viewing Russia as an existential threat. The clear implication is that the authors do not share that view.

Looking ahead, the authors warn that “over the long term, it is more than plausible that within a few decades at the latest, certain NATO members will become majority non-European. As such, it is an open question whether they will view their place in the world, or their alliance with the United States, in the same way as those who signed the NATO charter.” They then call for the following:

- re-establishing conditions of stability within Europe and strategic stability with Russia;
- enabling Europe to stand on its own feet and operate as a group of aligned sovereign nations, including by taking primary responsibility for its own defense, without being dominated by any adversarial power;
- cultivating resistance to Europe’s current trajectory within European nations;
- opening European markets to U.S. goods and services and ensuring fair treatment of U.S. workers and businesses;
- building up the healthy nations of Central, Eastern, and Southern Europe through commercial ties, weapons sales, political collaboration, and cultural and educational exchanges;
- ending the perception, and preventing the reality, of NATO as a perpetually expanding alliance; and
- encouraging Europe to take action to combat mercantilist overcapacity, technological theft, cyber espionage, and other hostile economic practice.

Max Bergman goes on to lay out three troubling ways in which the United States could intervene directly in European domestic politics:

- money historically deployed via USAID and units at the State Department to support democracy could be redeployed to support far-right political parties and groups, and campaign financing limits mean that not much money could have a significant impact on upcoming elections;
- as noted above, the administration and far-right adjacent groups in the United States would like nothing better than to see the EU regulation of social media platforms rolled back to make it easier for election-related disinformation and other far-right content to flow unimpeded to EU social media feeds (Bergman points out that “the only time ‘democracy’ is mentioned in the NSS is in the context of reversing supposed constraints on speech in Europe. In other words, efforts to prevent antisemitic hate speech online or Germany’s prohibition against explicitly pro-Nazi parties is an affront to the United States); and
- could intelligence tools deployed during the Cold War in support of pro-democracy and anti-Communist political figures and movements be re-purposed to support far-right parties and movements.

Some additional takeaways to ponder (based in part on *War on the Rocks*' [Ten Jolting Takeaways from Trump's New National Security Strategy](#)):

- The NSS is *overtly about Trump*. The authors place Trump and partisan division front and center, characterizing Trump 2.0 as an expansion of his first term – a “necessary, welcome correction” – that began “ushering in a new golden age.” Trump is labelled “The President of Peace,” “leveraging his dealmaking ability” to personally secure “unprecedented peace”
- The sole strategy outlined in the NSS boils down to *protecting the country's “core national interests.”* The NSS explicitly disavows the post-Cold War liberal order built and led by the United States and criticizes “American foreign policy elites” for chasing “permanent American domination of the entire world” and for tying the United States to “so-called ‘free trade,’” globalism, and “transnationalism” that it claims hollowed out the American middle class and eroded sovereignty.
- Trump's last NSS described China and Russia as “revisionist powers” bent on countering American dominance in the world. As David Sanger noted in his column (“[Superpower Competition: The Missing Chapter in Trump's Security Strategy](#)”), a reader of the current NSS would be hard pressed to find much about superpower competition.
- The NSS elevates *immigration as the central national security* threat. It declares that “the era of mass migration must end” and that “border security is the primary element of national security.”
- The NSS introduces a “Trump Corollary” to the Monroe Doctrine intended to keep the Western Hemisphere free of “hostile foreign incursion or ownership of key assets” while ensuring stability sufficient to prevent mass migration and protect critical supply chains. Asia, Europe and the Middle East are expressed to be important but are pre-empted by the strategic priority accorded the Americas.
- Forget about traditional concerns over American values. The NSS elevates protecting American culture, “spiritual health,” and “traditional families” as core national security requirements. The authors view “restoration and reinvigoration of American spiritual and cultural health” as prerequisites for long-term security and ties this to a society that “cherishes its past glories and its heroes” and is sustained by “growing numbers of strong, traditional families” raising “healthy children.
- The NSS attaches strategic importance to ideological and cultural wars. DEI is called out for particular opprobrium. Europe is taken to task for its failing political leadership, public dissatisfaction with policy toward the war in Ukraine, and supposed structural weaknesses of European democracy. Culture and ideology are the new litmus test for trustworthiness, with Europe characterized as adrift both in cultural terms as well as ideological terms and with the United States having jettisoned embrace of democracy and the rules-based order. The

authors have no problem with wading into domestic political debates, aligning with the far right, while decrying any attempt to criticize U.S. policy.

- The NSS shifts the conversation around defense spending from increased burden-sharing to burden-shifting. “The days of the United States propping up the entire world order like Atlas are over,” pointing to the “Hague Commitment” under which NATO countries “pledge...to spend 5% of GDP on defense,” a standard that allies “must” meet.
- There is nothing nuanced about the suspicion of international institutions. The authors uplift the “primacy of nations” and call out “sovereignty-sapping incursions of the most intrusive transnational organizations,” promising to “reform” them so they “assist rather than hinder individual sovereignty and further American interests.”
- In a particularly hypocritical and unprecedented warning, the NSS calls out foreign efforts to “manipulate our immigration system to build up voting blocs loyal to foreign interests within our country.” The double standard is unmistakable – Vance et al. can uplift far right allies in Europe, including the AfD, but our allies are warned to not interfere in our politics, including by exploiting diaspora groups.
- The NSS places economic nationalism and rebuilding the country’s industrial strength as central pillar of national security.

On Saturday, Hegseth delivered a keynote address at the [Reagan National Defense Forum](#), leading off with “out with idealistic utopianism. In with hard-nosed realism.” The country “should not be distracted by democracy building, interventionism, undefined wars, regime change, climate change, woke moralizing and feckless nation-building. We will instead put our nation’s practical, concrete interests first.” As for the homeland, Hegseth highlighted security at the southern border, “by surging forces, where troops partner with DHS and CBP to seal the border.” He also highlighted the support of law enforcement in deportation operations. Forgetting that there is a world of difference between the targeting of Al-Qaeda and ISIS (*see* most recently the op-ed by former DoD General Counsel Jeh Johnson (“[Not All Targeted Killings Are the Same. Hegseth’s Boat Strikes Are Illegal](#).”)), Hegseth said, referring to drug smugglers, “These narco-terrorists are the al-Qaida of our hemisphere, and we are hunting them with the same sophistication and precision that we hunted al-Qaida.”

**Y1, Week Forty-Nine**, Trump [spoke](#) to POLITICO’s Dasha Burns following Trump being named by POLITICO as the [most influential person](#) shaping European politics and policy (of the 28 on the list, Trump is the only non-European). Trump reiterated twice his oft-stated claim that the invasion of Ukraine would not have happened were he president. He accuses President Obama of forcing Ukraine to give up Crimea, As for Europe, he said many of the countries will not be “viable” any longer, due to immigration. He called Europe “weak” and attributed that weakness to wanting to be “politically correct.” Most European nations, he said, are “decaying.” When Burns noted that European leaders were a “little freaked out” by the views on Europe set out in the NSS, he says “they should be freaked out by what they’re doing to their



countries. They're destroying their countries." As for the war in Ukraine, he claims that Europe is not handling the war well.

Various outlets report that, in their 2025 [annual assessment](#), the Danish Defense Intelligence Service (DDIS) for the first time classified the United States as a threat to Denmark. DDIS accused the United States of "using its economic and technology strength" to assert its will, including against its allies and partners. It cited the Arctic as a specific theatre of operations. See [Guardian](#) and [POLITICO](#) coverage.

**Y2, Week One**, I refer back to the tensions building over Greenland, as well as the world envisioned by Trump and his enablers enshrined in the 2025 NSS, and I pause after reading Robert Kagan's essay ("[America vs. the World](#)"). Kagan warns that "Americans are entering the most dangerous world they have known since World War II, one that will make the Cold War look like child's play and the post-Cold War world like paradise. In fact, this new world will look a lot like the world prior to 1945, with multiple great powers and metastasizing competition and conflict. The U.S. will have no reliable friends or allies and will have to depend entirely on its own strength to survive and prosper."

Kagan goes on to say that "Trump's megalomania is transforming the United States from international leader into international pariah, and the American people will suffer the consequences for years to come." Trump's "pursuit of self-interest and the exercise of strength for its own sake, with gleeful disregard for the interests of others ... rests on profound ignorance of the true sources of American strength. So much of America's influence in the world has derived from treating others as part of a community of democratic nations or of strategic partners." He concludes:

"For decades, much of the world supported a United States that acted on these principles and accepted America's power, despite its flaws and errors, precisely because it did not act solely out of narrow self-interest—much less in the narrow, selfish interest of a single ruler. That era is over. Trump has managed in just one year to destroy the American order that was, and he has weakened America's ability to protect its interests in the world that will be. If Americans thought defending the liberal world order was too expensive, wait until they start paying for what comes next."

### **Whistleblower Complaint Against the DNI**

**Y2, Week Three**, a curious story worthy of a David McCloskey novel, which first was [reported](#) by the *Wall Street Journal*, raises more questions than answers. The administration has provided the Gang of Eight (Sens. Thune and Schumer and Reps. Johnson and Jeffries, plus the chair and ranking member of each of the Senate and House select intelligence committees) with a classified government whistleblower complaint against Tulsi Gabbard, on a "read-and-return basis," but significant portions reportedly were redacted due to claims of executive privilege. The accompanying memorandum states that only one previous whistleblower complaint filed in 2020 required such tightly controlled security parameters. As explained below, that complaint should have been turned over within 21 days, not eight months.

The whistleblower report, filed last May with the IG for the intelligence community, was so highly classified, [according](#) to the first *Wall Street Journal* reporting (02/02/26)

which cited an unnamed official that said the contents could cause “grave damage to national security,” that it led to months of discussion on how to share it with Congress and the whistleblower’s counsel was unable to view it. In November, the whistleblower’s counsel, in a [letter](#) to the DNI, asked the DNI to provide guidance on the security protocols for delivering the complaint to Congress because to date the requested guidance has not been provided. That letter was shared with the Senate and House select intelligence committees. (See [Whistleblower Aid](#) press release.)

As explained by the *Wall Street Journal*, the delay in delivering the whistleblower complaint to Congress “is without known precedent, according to watchdog experts and former intelligence officials.” The intelligence community IG generally is required to assess whether the complaint is credible within two weeks of receiving it, and share it with Congress within another week if it determines it is credible. A whistleblower may share a complaint directly with Senate and House select intelligence committees as long as the DNI provides instructions on how to securely transmit it. There is no precise timeline on doing so, but typically that process occurs within a matter of weeks.

The ranking member on the House intelligence committee, Rep. Jim Himes, said he had ongoing concerns about the contents of the complaint and its delay. “I will continue to pursue this matter to ensure that proper oversight is conducted.”

To add to the mystery, Sen. Ron Wyden, who has a storied history of taking his oversight over the intelligence community very seriously and using short, cryptic public statements to signal, [in the words](#) of Patrick Eddington of the CATO Institute, to “the privacy & civil liberties community & the press that something really, really bad is going on in secret,” [sent](#) a cryptic two-sentence *public* letter to CIA Director Ratcliffe, “expressing deep concern about CIA activities” described in an incoming classified *private* letter. See also [tech dirt](#). And to put this into historical context, see [Spencer Ackerman’s](#) post. Whether these two stories are connected is unclear.

And now on Saturday comes a scoop (and more granular details) from Cate Brown at the *Guardian* – [“NSA detected phone call between foreign intelligence and a person close to Trump,”](#) which alleges that the subject of the whistleblower report is an intercept by the NSA of a phone call “between an individual associated with foreign intelligence and a person close to Donald Trump.” According to her reporting, last spring the NSA intercept was brought to the attention of the DNI, who blocked NSA officials from distributing the information further and took a paper copy of the intelligence to Susie Wiles. After that meeting, Gabbard directed NSA to transmit further details to her office. A whistleblower contacted the IG (reporting as a “matter of urgent concern”) in April, notifying him that the classified information had been blocked from routine distribution and then filed a formal complaint in May.

For eight months the report reportedly was kept in a vault and not disseminated, despite a [further push](#) this week (02/03/26) by the whistleblower’s counsel. This week, a day after the February 2<sup>nd</sup> *Wall Street Journal* reporting, the ODNI [acknowledged](#) the report and blamed the “Biden-era IC IG for not informing Gabbard of the requirement for transmittance to Congress.”

The mystery endured, but it would not be unreasonable to conclude that the reliance on executive privilege as a basis for heavy redactions suggests that the complaint relates to presidential action. (See [interview](#) with the whistleblower's counsel, Andrew Bakaj.) In the meantime, Bakaj continues to push for the release of the full report and failing a response, citing [50 U.S. Code § 3033\(k\)\(5\)\(D\)\(ii\)\(I\)](#), will provide an unclassified briefing to the House and Senate committees on "Ms. Gabbard's conduct and the underlying intelligence concerns." See [letter](#) to Gabbard (02/03/26).

Speaking to journalists, Sen. Warner [slammed](#) the DNI for delaying and potentially covering up a whistleblower complaint. The relevant statute mandates disclosure within 21 days, and here it took from May to now to get it. This, Warner [notes](#), represents a direct contradiction of Gabbard's confirmation testimony that she would protect whistleblowers and share the information in a timely manner. As for the excuse that Gabbard was unaware of the obligation, he says, it suggests she is either incompetent or has incompetent legal advisers.

**Y2, Week Four**, prompted by Bakaj's [letter](#), the ODNI general counsel [sent](#) a letter back to Bakaj warning him not to share the complaint with Congress (02/07/26). *NBC News* [reported](#) that the intercept that is the subject of the whistleblower complaint is of a conversation between two foreign nationals discussing a person close to Trump and that the complaint maintains that distribution of the intercept was restricted for political reasons.

Then the *New York Times* and other newsrooms [reported](#) that the complaint focused on a telephone intercept provided to the NSA by a foreign intelligence service of a conversation between two foreign nationals about Iran and that the person close to Trump that was mentioned in the call was Jared Kushner. The *New York Times* noted that some officials who read or were briefed on the report believed that had Gabbard not moved to restrict access to the report, it would have been forgotten as one of many intelligence reports that recount intercepted conversations that touch on people around Trump.

## THE EPSTEIN SAGA

I have created a separate chapter for the Epstein saga because I think there is something deeper here that we all should be mindful of. Moreover, this saga appears to be a story that is not going away, not least because the *Wall Street Journal*, which after having to pay \$787.5 million to Dominion Voting System in settlement of a defamation lawsuit is unlikely to have made the same mistake again, has stood up to Trump. John Mac Ghlionn, [writing](#) in *The Hill*, commented:

“For the first time in his presidency, Trump isn’t fighting the media, the Democrats or “the deep state.” He’s fighting his own base. The MAGA faithful — who stood by him through porn actress payouts, impeachments, indictments and insurrections — are now asking if they were played. When your most loyal believers start calling you a liar, the ground doesn’t just shift. It cracks.”

None of this makes sense, or does it? Chris Truax, also [writing](#) in *The Hill*, asks the key question of the day: why is Trump willing to risk the wrath of his base at this point. What is he so scared of? Is he protecting himself or someone else?

### The Domestic Dimension

**Y1, Week Twenty-Five**, Trump grows increasingly frustrated that Epstein is dominating the news, and not in a way that is helpful to him. He was clearly agitated when Epstein came up in one of Trump’s televised Cabinet convenings this week – “are people still talking about this guy? This creep? That is unbelievable.” People still want to speak about Epstein, and frustratingly for Trump, those people are his MAGA base, which has been up in arms since the DoJ and FBI [acknowledged](#) in a joint memorandum (07/07/25) that the long-discussed “client list” did not exist and that Epstein died by suicide (meaning, by implication, that he was not murdered on the orders of powerful elite clients, including prominent Democrats to keep him quiet).

The problem for Trump is that the right-wing conspiracy theories spawned by Epstein’s crimes and ultimately his death, and fomented by Trump and his enablers, form one of the bedrocks of Trump’s appeal – he would expose the cabal and shed light on the whole sordid affair. The narrative that the Biden administration had been withholding evidence about prominent political figures had been amplified for months by JD Vance, Pam Bondy, Kash Patel and Dan Bongino.

Recall in February during an [interview](#) with Fox News, Bondi said the Epstein client list was “sitting on my desk right now to review. That’s been a directive by President Trump. I’m reviewing that.” A Y1, Week later, DoJ released a “first phase” of Epstein files, and administration officials brought right-wing influencers to the White House to collect the report in person – the files contained no new information. In March, Bondi assured that “everything’s going to come out to the public,” and accused the Biden administration of “sitting” on the files. See [CNN](#) coverage.

Trump would not only purge the ranks of the elites following their unmasking but would replace them with MAGA-heroes. The DoJ’s failure to serve up the client list, confirmation of the suicide, closure of the case and the absence of new, explosive revelations are seen in MAGA world as a betrayal – a failure to fulfil a critical campaign promise and, as he was exploiting his insider status as an elite to take down

the elite ecosystem, potentially as evidence of a cover up of Trump's own involvement with Epstein.

Laura Loomer, Tucker Carlson and Elon Musk are all amplifying the anger of the MAGA base. The timing could not be worse for Trump as it comes on the heels of the passage of OBBBA, with its massive transfer of wealth from the poor and middle class to the elites. That the story was potentially spinning out of control was evident when Trump felt compelled to deflect questions aimed at his Attorney General. By Y1, Week's end, Dan Bongino [reportedly](#) had a tense exchange with the Attorney General and there were [rumors](#) he had threatened to resign.

On Saturday, Trump pivoted again, to blaming, you guessed it,

“Obama, Crooked Hillary, Comey, Brennan, and the Losers and Criminals of the Biden Administration, who conned the World with the Russia, Russia, Russia Hoax, 51 “Intelligence” Agents, “THE LAPTOP FROM HELL,” and more? They created the Epstein Files, just like they created the FAKE Hillary Clinton/Christopher Steele Dossier that they used on me, and now my so-called “friends” are playing right into their hands. Why didn't these Radical Left Lunatics release the Epstein Files?” ... The Left is imploding! Kash Patel, and the FBI, must be focused on investigating Voter Fraud, Political Corruption, ActBlue, The Rigged and Stolen Election of 2020, and arresting Thugs and Criminals, instead of spending month after month looking at nothing but the same old, Radical Left inspired Documents on Jeffrey Epstein. LET PAM BONDI DO HER JOB — SHE'S GREAT! The 2020 Election was Rigged and Stolen, and they tried to do the same thing in 2024 — That's what she is looking into as AG, and much more.

For the record, Epstein was [arrested](#) on July 6, 2019 and his mansion was raided the same day. Obama had been out of office for over two years, and Jim Comey had been fired over two years earlier (May 2017) as well.

On Sunday (07/13/25), Fox News [reported](#) “Longtime conservatives and supporters of Trump sounded off on social media this weekend, as well as in person during a convention in Florida, with various messages pledging that the Epstein scandal will not ‘go away.’” Fox quoted Mike Flynn's post: “@realDonaldTrump please understand the EPSTEIN AFFAIR is not going away. If the administration doesn't address the massive number of unanswered questions about Epstein, especially the ABUSE OF CHILDREN BY ELITES (it is very clear that abuse occurred), then moving forward on so many other monumental challenges our nation is facing becomes much harder.”

*Newsweek* also cited a far-right backlash, [reporting](#) that Trump had been ratioed for the first time on Trust Social, meaning there were more replies than likes and shares, indicating disagreement or criticism, with his Saturday defense of his Attorney General. Steve Bannon [called](#) for the release of all sealed and unsealed evidence or the appointment of a special counsel to review and release the evidence.

What this all could mean is that, in short order, to distract and mollify the base, Trump will unleash lawfare to vindicate his defining obsessions – the allegation of Russian influence on the 2016 election was a hoax and that the 2020 election was rigged and stolen from him.

In the meantime, on Saturday, at Bondi's direction, charges against a Utah plastic surgeon [were dropped](#). The surgeon had been accused of destroying COVID-19 vaccines, giving children saline shots instead of the vaccine and selling faked vaccination cards in exchange for either a cash or a donation to a specified charitable organization. He faced up to 35 years in prison after being charged with conspiracy to defraud the government; conspiracy to convert, sell, convey and dispose of government property; and aiding and abetting in those efforts. The trial had begun on Monday. Rep. Majorie Taylor Greene [issued](#) a statement in support of the charges being dropped, and Bondi thanked Greene for bringing the case to her attention.

**Y1, Week Twenty-Six**, in a departure from hewing closely to the Trump line, Speaker Mike Johnson stepped out of line. In a surprise move, he said that the Attorney General needs to explain what she meant when she announced in February that the Epstein client list was “sitting on my desk right now for review” – “She needs to come forward and explain that to everybody,” he [said](#) in an interview with Benny Johnson.

In his article “Jeffrey Epstein is a Policy Issue,” Prospect Executive Editor David Dayden points to a more fundamental explanation for the blowback among the MAGA faithful. While Democrats applaud from the sidelines, they may be missing the point. The policy issue, in Dayden's view, is that the reaction to the Epstein announcement should not be seen as a conspiracy theory run amok but rather an anger that has boiled over at a “two-tier system of justice and accountability in America, and the impunity we afford the nation's elites.”

The failure to hold Epstein accountable mirrors a litany of failures to hold power to account, outlined in part by Chris Hayes' *Twilight of the Elites* – the failure to stop 9/11, the lies used to justify the invasion of Iraq, the failure of bankers to be held accountable for the global financial crisis, the competing explanations for the origins of the pandemic, the shambolic withdrawal from Afghanistan, the failure to hold Donald Trump accountable for violations of law and the attempted overthrow of the 2020 election. There is no shortage of examples.

Dayden notes “You don't even have to believe that Trump is hiding some sort of self-incrimination, though it certainly feels that way, to understand MAGA's disappointment. They wrongly built up Trump as someone other than just another politician. They failed to understand that there's a big difference between accountability and revenge, and that Trump is only interested in the latter. Accountability suggests a punishment that fits the crime, and in 21st-century America we have never seen such a thing.” At the heart of this is elite immunity, and Dayden argues that “only when someone is actually held accountable for their actions will this sorry cycle be broken.” The danger is that this sentiment tarnishes both parties.

July 14, Republicans on the House Rules Committee (6-5 – one Republican voted with the four Democrats) blocked a procedural motion to attach to the GENIUS Act or the defense spending bill an amendment directing the Attorney General to release of all of the Epstein files that do exist. July 15, Reps. Thomas Massie and Ro Khanna launched a long shot bid for a discharge petition that would force a floor vote if it receives 218 signatures (a majority of all 435 districts per the House's procedural rules).



**Y1, Week Twenty-Six**, the Epstein affair continues to dominate headlines. In brief,

- Ranking Senate Judiciary Committee Member Durbin [sent](#) the Attorney General a list of questions regarding her actions and the FBI's review of the Epstein files, including, among others, why the DoJ-FBI memorandum of findings contradicted her earlier statements, why it took an additional three months to release the DoJ-FBI memorandum, why close to 1,000 FBI agents were pressured to review close to 100,000 Epstein-related documents in 24-hour shifts and asked to flag any mentions of Trump (*see* [The Hill](#) coverage) and why the DoJ-FBI memorandum was unsigned (07/18/25). Sen. Durbin also sent letters to [FBI Director Patel](#) and [Deputy Director Bongino](#).
- Trump directed the Attorney General to release “pertinent” Epstein files, subject to court approval, posting on Truth Social: “Based on the ridiculous amount of publicity given to Jeffrey Epstein, I have asked Attorney General Pam Bondi to produce any and all pertinent Grand Jury testimony, subject to Court approval. This SCAM, perpetuated by the Democrats, should end, right now!” Two minutes later, Bondi tweeted: “President Trump—we are ready to move the court tomorrow to unseal the grand jury transcripts.” The DoJ [filed](#) a motion to unseal the Epstein grand jury transcripts, characterizing the Epstein and Maxwell cases as “a matter of public interest.” But as Heather Cox Richardson [noted](#), this is a feint – the grand jury transcripts are a very small part of the story (the *Wall Street Journal* [reports](#) that the grand jury testimony represents only a “portion of the more than 300 gigabytes of Epstein-related material the FBI compiled as part of the recent review”), and release will likely be a slow process. She quotes far-right influencer, white nationalist and former Trump dinner companion Nick Fuentes [as saying](#), “[W]e are going to look back on the MAGA movement as the biggest scam in American history. And the liberals were right. The MAGA supporters were had. They were.”
- The *Wall Street Journal* [reported](#) that Trump had sent Epstein a bawdy birthday card, prompting Trump to [sue](#) Dow Jones, News Corporation, Rupert Murdoch and the two reporters who wrote the story for libel (07/17/25). He is seeking \$10 billion in damages. Trump called the “letter” “printed” by the WSJ “fake,” claiming he does not draw pictures. Richardson notes that when the WSJ reporters contacted Trump before publication, he denied writing the card and threatened to sue, then hours later told reporters that Presidents Obama and Biden had made up the story, neither of whom was in office when the FBI investigated Epstein. She also notes that the alleged drawing is not dissimilar from photos of sketches he has auctioned off over the years (*see* [New York Times](#) coverage). The *New York Times* also [published](#) an in-depth story on the friendship between Trump and Epstein.

As Joyce Vance [reminds us](#), to succeed, under the *Sullivan* standard, Trump would have to establish that the WSJ acted with “reckless disregard” for the truth or falsity of the story, proving either that they knew it was false when they ran it or that they carelessly ignored facts they should have taken into account. Trump would also have to prove damages from the article. Presumably this is

all about negotiation, as Trump would open himself up to civil discovery and answering questions under oath were the suit proceed.

See also [Russia Investigation](#), as it is likely that the threats against President Obama and other is an effort to distract from the Epstein files.

- The Economist [cites](#) polling showing that almost 80% of Americans think the government should release all of the Epstein files that it has, including over 75% of Republicans, and more than two-thirds, including half of Republicans and 70% of independents, think the government is covering up evidence. A YouGov poll [shows](#) 73% saying the Epstein story is very important or somewhat important, with only 18% saying it is not very important or not important at all.

**Y1, Week Twenty-Seven**, a House Oversight and Government Reform subcommittee has voted on a [bipartisan](#) basis to issue a subpoena to Ghislaine Maxwell presumably to testify on matters relating to Epstein. The move came as part of a broader push by House Republicans to get more information about Epstein. The House remains in disarray for a second Y1, Week over the Epstein affair, and will shut down Wednesday for the August recess [to avoid](#) any floor votes on Epstein before the recess. Prior Democratic efforts to gain access to more information on Epstein had been shut down.

Trump's case against the *Wall Street Journal* has been [assigned](#) to District Judge Darrin Gayles, an Obama-appointee, who also oversaw the lawsuit brought by Trump in 2013 against Michael Cohen for allegedly violating the attorney client privilege. Trump [abandoned](#) the lawsuit against Cohen just before he was to be deposed under oath. If past is prologue, the suit against the *Wall Street Journal* is not a case for which Trump would allow himself to be deposed under oath. The attorney who represented Trump in the Cohen case also is representing Trump in the *Wall Street Journal* case. By filing in the Miami division of the south Florida district, the attorney ended up with Gayles, rather than Aileen Cannon, who sits in the Fort Pierce district. See [POLITICO](#) coverage.

The *Wall Street Journal* also [reported](#) that when DoJ reviewed Epstein files they discovered multiple references to Trump and that Trump was informed of this in May by the Attorney General accompanied by Deputy Attorney General Todd Blanche. This was the first reporting of that meeting. Trump, when [asked](#) by a journalist, whether the Attorney General had told him that his name had appeared in the files, responded "no, no, she's given us just a very quick briefing," then added "these files were made up by Comey, they were made up by Obama, and made up by the [sic] Biden" and then raised the "Russia hoax." The *Wall Street Journal* also reported that FBI Director Patel had "privately told other government officials that Trump's name had appeared in the files."

Just before the House broke for its August recess, the Republican-led House Oversight Subcommittee on Federal Law Enforcement approved a motion from Democratic Rep. Summer Lee (8-2 vote, with three Republicans joining the Democrats) to subpoena the DoJ to release the Epstein files. See [POLITICO](#) coverage.

As **Y1, Week Twenty-Seven** ended, Deputy Attorney General (and one of Trump's former personal lawyers) Todd Blanche spent a second day interviewing Maxwell. As *POLITICO* [notes](#), the interviews, while understandable as a diversion tactic, as a prosecutorial matter make little sense and raise multiple red flags. It is also highly unusual for the Deputy Attorney General to be conducting these interviews. In fact, it is beyond imaginable. As Jen Rubin [noted](#) in an interview on The Daily Blast, "there is no universe in which that is acceptable." A line prosecutor [yes](#), but the number 2 political appointee in the DoJ – no. Moreover, as experts have noted, any interview with a cooperating witness would typically be conducted with law enforcement agents present (e.g., from the FBI). Statements made by Blanche and the DoJ since suggest no such agents were present.

Recall that DoJ had charged her with two counts of perjury, which were dropped following her conviction, and [accused](#) her of being willing to willingness to brazenly lie under oath about her conduct, including some of the conduct charged in the indictment." Moreover, it may be challenging to corroborate any statements she may provide, which could be exacerbated any incentive she may have to tell the DoJ what the administration would like to hear and by the additional challenge for the administration in these circumstances to offer any deal – either by way of a Rule 35 motion, which is a request to lower a prison sentence, but that would be subject to the discretion of District Judge Paul Engelmayer, whom the Trump administration has attacked for his ruling on DOGE access to the Treasury's payment systems, or by way of a pardon or commutation.

After Trump landed in Scotland and was asked on the tarmac whether he was briefed on his name appearing in the Epstein files, rather than referring again to the "quick briefing," he [responded](#) "no" he "was never briefed." Two days later, he is talking about Epstein's island. He claims he never visited it, then refers to Bill Clinton and Larry Summers, then curiously says "I never had the privilege of going to his island." Trump later said Epstein was PNG'ed from Mar-a-Lago from "hiring away" spa attendants, and when pressed admitted that one of the staff members was Virginia Giuffre - "I don't know. I think she worked at the spa. I think so. I think that was one of the people. He stole her. And by the way, she had no complaints about us, as you know, none whatsoever." Last week's statement from the White House was that the Trump-Epstein relationship ended because Epstein was a "creep."

Maxwell has indicated she is not willing to testify before Congress without a grant of immunity or clemency.

**Y1, Week Twenty-Eight**, Democrats in the Senate invoked [5 U.S. Code § 2954](#), which sets out the so-called "Rule of Five." The law obligates government agencies to provide to the Senate Committee on Governmental Affairs any information within the jurisdiction of the committee if five members of that committee request it, and the so-called "Rule of Seven," which obligates government agencies to provide the Senate Committee on Government Operations any information within the jurisdiction of the committee if seven members of that committee request it. As [set out](#) by Greg Sargent of The New Republic, the law, and its counterpart in the House, were passed in 1928 following the Teapot Dome scandal.

All eight Democrats on the Homeland Security and Governmental Affairs Committee [sent](#) the DoJ a letter requesting release of all the Epstein files held by DoJ or the FBI. The 1928 provision has been rarely invoked, and it is unclear how it would fare if challenged in court. See [New York Times](#) coverage.

Citing congressional scholar Norman Ornstein, Sargent notes that, if the DoJ ignores the demand, the Senate Democrats should sue the Attorney General and the DoJ for failure to comply with the law. Sargent also points out that House Democrats invoked the 1928 law in 2017 to force the first Trump administration to divulge information related to the Trump International Hotel. An appellate court ruled that the House Democrats had standing to sue to enforce the request for information and the Supreme Court agreed to hear the case. The House Democrats voluntarily [dismissed](#) the lawsuit when the documents were produced.

*CBS News* [published](#) the results of its analysis of the video of the area in front of Epstein's cell the night he died that was made public by the FBI and addressed the discrepancies it found.

**Y1, Week Twenty-Nine**, the House Oversight Committee reportedly has sent subpoenas to Bill and Hillary Clinton, former AGs Jeff Sessions, Alberto Gonzales and William Barr, who served in the George W. Bush and Trump administrations, and Merrick Garland, Loretta Lynch and Eric Holder, who served in the Obama and Biden administrations, and former FBI Directors Comey and Mueller. The bipartisan discharge petition surfaces in September, as signatures continue to be gathered.

End of the week, Maxwell reportedly was moved from a detention facility in Florida, to a lower-security facility in Texas.

Democracy Forward sued the DoJ and FBI to compel expedited compliance by them with Democracy Forward FOIA requests seeking communications among administration officials regarding the Epstein matters, including correspondence between Trump and Epstein, as well as records concerning agency review of the Epstein matter (08/08/25). See [Court Listener](#) docket.

**Y1, Week Thirty**, District Judge Paul A. Engelmayer [denied](#) the government's motion to unseal grand jury transcripts and exhibits (08/11/25) in the case against Maxwell. A separate [proceeding](#) is underway before Judge Richard M. Berman, who was overseeing the case against Epstein before his death, to unseal grand jury transcripts relating to that case.

The Court said that, "Contrary to the Government's depiction, the Maxwell grand jury testimony is not a matter of significant historical or public interest. Far from it. It consists of garden-variety summary testimony by two law enforcement agents. And the information it contains is already almost entirely a matter of longstanding public record, principally as a result of live testimony by percipient witnesses at the 2021 Maxwell trial." Moreover, "[t]he Government's invocation of special circumstances ... fails at the threshold. Its entire premise – that the Maxwell grand jury materials would bring to light meaningful new information about Epstein's and Maxwell's crimes, or the Government's investigation into them – is demonstrably false." Ouch, quite scathing.

In a letter to District Judges Berman and Engelmayer (08/08/25), the Attorney General, the Deputy Attorney General and the US Attorney for SDNY [had requested](#) release, in addition to grand jury transcripts, of grand jury exhibits as well. Judge Engelmayer's ruling covered the exhibits as well.

And recall that District Judge Robin L. Rosenberg had [ruled against](#) the release of grand jury materials from the investigation in Florida in 2005 and 2007 (07/23/25).

**Y1, Week Thirty-One**, Missouri Attorney General Attorney Andrew Bailey [has been named](#) co-Deputy Director of the FBI, presumably after Dan Bongino's star began to fade over the Epstein saga. Fast forward to **Y1, Week Forty-Eight**, Bongino [announced](#) he would step down as co-Deputy Director in January.

**Y1, Week Thirty-Four**, as expected, the furore does not appear to have died down. Last week, House Speaker Johnson [told](#) reporters that Trump "was an FBI informant." On Sunday, he walked that statement back. Shortly after survivors [held](#) a news conference on Capitol Hill demanding release of more information on Epstein (also attended by Reps. Ro Khanna, Thomas Massie and Marjorie Taylor Greene), Trump [called](#) the demands for the release of more information a "Democrat hoax that never ends."

DoJ lawyers [asked](#) a federal judge (Richard Berman, SDNY) overseeing the Epstein case to deny a [request](#) from NBC News (08/26/25) to divulge the names currently under seal of two Epstein associates who received payments from him days after the Miami Herald began publishing stories about survivors criticizing the 2008 plea deal.

Reps. Massie and Khanna [believe](#) they have the votes for a discharge petition to force the release of unredacted Epstein files held by DoJ. The additional two votes are expected to come from two Democrats [expected](#) to win special elections later this month.

**Y1, Week Thirty-Seven**, the special election in AZ-7 delivered the last needed signature (218<sup>th</sup>, which includes four Republicans) for the discharge petition to push for the release of the Epstein files. Adelita Grijalva overwhelmingly won in a landslide (with over 70% of the vote) the seat held by her father until he died in March from cancer. Both Grijalva and her GOP opponent had committed to sign the petition if elected. Grijalva becomes the first Latina to represent Arizona in Congress. *See* [CNN](#) coverage. Her election narrows the Republican majority in the House 219 seats to 214, with two remaining vacancies. Harris won the AZ-7 by 20 points, but Grijalva carries the district by nearly 40 points.

**Y1, Week Thirty-Eight**, Democrats are increasingly vocal about the failure of Speaker Johnson to swear in the 218<sup>th</sup> vote on the discharge petition. Grijalva was elected last Tuesday and is yet to be sworn in. Recall that the House is "gavelled in" during out-of-session Y1, Weeks to prevent recess appointments – these are called "pro forma sessions." Apparently two GOP members were sworn in during a pro forma session 24 hours after they won their special elections. *See* [Axios](#) coverage.

**Y1, Week Forty**, the State of Arizona and Grijalva [sued](#) the House, the Clerk and the House Sergeant-at-Arms seeking declaratory relief, including a declaratory judgment that if Speaker Johnson fails to administer the oath of office, that the oath may be



administered by any other person authorized to do so under the laws of the United States, the District of Columbia or the State of Arizona (10/21/25).

**Y1, Week Forty-Five**, with the ending of the shutdown, Speaker Johnson no longer has an excuse to refuse to swear in Grijalva, which he should do on Wednesday. And not surprisingly, the floodgates are opening. Democrats on the Oversight Committee [released](#) three emails with Maxwell and author Michael Wolf suggesting Trump “knew about the girls,” after which Republicans on the Oversight Committee [released](#) 23,000 pages of documents from the Epstein estate (*see* Courier searchable [database](#)). The documents were obtained by Oversight Committee Chair James Comer from the estate via subpoena in August.

These releases follow the revelations of a few days ago about Maxwell angling to have her sentence commuted and receiving special favorable treatment in her minimum-security facility. *See* [Commutation](#), below.

Note that the material released by the Oversight Committee come from the Epstein estate, and presumably differ from the materials in the possession of the DoJ that would be the subject of the discharge petition. DoJ did [release](#) 100 pages of documents, including flight logs and contacts, back in February.

Very shortly after Trump (at 10:35 am) [asked](#) the Attorney General to investigate Epstein’s involvement with Bill Clinton, Larry Summers, Reid Hoffman, JPMorgan Chase, the Attorney General, presumably displaying awesome superpowers to conduct a blitz review, [complied](#) (post at 2:12 pm) and appointed SDNY U.S. Attorney Jay Claytom to take the lead on the investigation. In his rant about the “Epstein Hoax,” Trump also riffed on the “Russia, Russia, Russian Scam, with all arrows pointing to the Democrats.” When asked by reporters aboard Air Force One about the investigation, Trump called himself the “chief law enforcement officer of the country.” Not sure that he was referring to his constitutional duty under Article II, Section 3 to Take Care that the laws are faithfully executed.

Recall the July memorandum from the FBI that said, “We did not uncover evidence that could predicate an investigation against uncharged third parties.” *See* [NPR](#) coverage.

The House is expected to hold a floor vote next Tuesday (11/18) on the discharge petition. If approved by the House, the Senate would then take up the matter, which it is unlikely to do. Were both the House and the Senate to approve the petition, it would go to Trump for his signature or veto. The Republican House members who signed the discharge petition are Reps. Thomas Massie, Lauren Boebert, Marjorie Taylor Greene and Nancy Mace. POLITICO [reports](#) “mass defections” of House Republicans are expected on the Epstein vote.

Rep. Boebert [reportedly](#) was summoned to the White House Situation Room to meet reportedly with the Attorney General and the FBI Director, a meeting that White House Press Secretary Karoline Leavitt later acknowledged, perhaps unintentionally. For a moment, consider the iconic photographs of those gathered in the Situation Room during the SEAL raid against Usama Bin Laden’s compound. Boebert [responded](#), “It’s just an easy SCIF to get to. I guess I’m pretty high profile.”



As **Y1, Week Forty-Five** winds down, the rift between MGT and Trump is anything but winding down. Trump attacked MGT, and she [responded](#) with a fiery rebuttal Friday night – “he’s coming after me hard to make an example to scare all the other Republicans before next week’s vote to release the Epstein files.” She also [reports](#) threats to her safety (“I am now being contacted by private security firms with warnings for my safety as a hot bed of threats against me are being fuelled and egged on by the most powerful man in the world. The man I supported and helped get elected”).

Who would have thought with the government shutdown behind us (and Trump accusing Democrats of misleading voters who are concerned about the economy and high costs, and [insisting](#) there is no affordability crisis) and potentially a looming invasion of Venezuela, the Epstein files are dominating the Sunday talk shows and the news headlines.

**Y1, Week Forty-Six**, Trump’s sensitivity to questions about Epstein hit another low point when he responded aboard Air Force One to Bloomberg reporter Catherine Lucey’s follow-up question (Trump had deflected the first question about the Epstein email that said he “knew about the girls”) by pointing his finger at her and saying “quiet, quiet, piggy!” Trump followed up this misogynist insult when he [unleashed](#) another attack on a female journalist who dared to ask MBS about Khashoggi, and asked Trump about his family’s ties to Saudi Arabia and the Epstein files.

**Y1, Week Forty-Nine**, Judge Berman granted DoJ’s latest request to federal grand jury records of the Epstein investigation, one day after Judge Engelmayer granted a similar request for the records relating to the Maxwell investigation. The orders cover grand jury transcripts as well as other investigative materials, which were provided to defense lawyers in the discovery process and kept confidential for years under court protective orders. These presumably include materials gathered from physical locations, contents of computers and other electronic devices, arrest reports and post-arrest statements, bank and other financial records, private airline passenger logs, and reports from interviews with victims. Both judges had denied similar requests last summer, and granted the requests based on the provisions of the Epstein Files Transparency Act.

**Y1, Week Fifty-Two**, Will Gottsegen, of *The Atlantic* (“[What’s Going on With the Epstein Files?](#)”), reports that DoJ has delivered [less than 1%](#) of the millions of documents that are subject to disclosure under the Epstein Files Transparency Act. See [letter](#) (01/05/26) from Attorney General, the Deputy Attorney General and the SDNY U.S. Attorney. A second [letter](#) (01/15/26) from the Attorney General, the Deputy Attorney General and the SDNY U.S. Attorney blames the delay on a “time-intensive process due to the voluminous materials, the idiosyncratic nature of many of the materials, and the need to protect victim-identifying information.” The delay is a clear violation of the Act. Meanwhile nineteen survivors reportedly [have asked](#) the DoJ IG to review the release of files, saying that the release to date has failed to protect them and calling on the IG to review how the redactions were conducted.

## Overseas Dimension

**Y1, Week Thirty-Five**, the birthday book is released. Thursday, British Ambassador Peter Mandelson is fired (“sacked” in SW1 parlance) just days before Trump returns to Great Britain to visit the King. The firing follows the publication of emails between Mandelson and Epstein evidencing a far deeper relationship with Epstein. [POLITICO reports](#) that Trump was irritated that he was not personally notified by Starmer of the removal and is worried that the most recent revelations could mar his state visit.

Recall that Mandelson is no stranger to controversy, having been sacked twice before during the Blair years over ties to wealthy figures. Mandelson gave very different interviews regarding his relationship with Epstein, a combative one in February with the [Financial Times](#) and a contrite one yesterday with [The Sun](#). Wednesday, Starmer issued a defense of the Ambassador during PMQs, saying he retained confidence in him. The following day, after Bloomberg [released](#) an in-depth report on over 100 previously unreported Mandelson-Epstein emails, the British Foreign Office released a statement announcing his removal, “The emails show that the depth and extent of Peter Mandelson’s relationship with Jeffrey Epstein is materially different from that known at the time of his appointment.”

The Mandelson affair is terrible news for the PM and his new senior team at No 10 on the eve of the launch of his “phase two” of his government, and the Trump visit. Starmer has been struggling with a series of domestic challenges, and then found himself defending not one but two colleagues only to see them sacked in short order – the other being the former deputy PM Angela Rayner. *See generally* [BBC](#) coverage and [The Independent](#) coverage. There is plenty of talk in SW1 that Starmer might not survive past May if as expected Labour is trounced in local council elections.

**Y2, Week Four**, the pressure on Starmer has been building by the day following revelations in the Epstein email files that Mandelson and Epstein had far greater dealings with one another than previously publicly known. Among other revelations, Mandelson allegedly provided market-sensitive information to Epstein between 2008 and 2010, and the Met Police have announced a criminal investigation (of alleged misconduct in public office). The information reportedly included advance notice of a €500 billion Eurozone bail-out, discussions around reversal of a one-off tax on bankers’ bonuses, advance notice of Gordon Brown’s resignation and a slew of internal No 10 memos. The files also reveal that Epstein wired Mandelson a total of \$25,000. *See* [Tax Policy Associates](#) summary.

The brewing scandal culminated in a development few expected, namely the resignation of Morgan McSweeney, Starmer’s chief of staff. Only days before, Starmer had described McSweeney as an “essential part of my team.” He had been credited with being the mastermind behind the clawing back of the “red wall” voters who had defected to the Tories when Boris Johnson ran, giving Labour the massive margin of victory in the 2024 general election, and by some accounts was the one who propelled Starmer up through the party ranks. McSweeney’s departure is a huge blow for Starmer and some say this merely allows the focus to shift back to Starmer and his decision-making.

McSweeney had pushed for the appointment of Mandelson as ambassador in spite of his then known ties to Epstein and, in his resignation statement, took full responsibility for the Mandelson debacle. Following backbench pressure, the government has agreed that documents relating to Mandelson's appointment as ambassador will be referred to the Intelligence and Security Committee in Parliament.

With record-low approval ratings, U-turns on policy and continued cost-of-living pressures, it is not surprising that, in the past weeks, there has been an increasing drumbeat of predictions as to whether Starmer will continue to serve as PM. The Mandelson affair raises serious questions around judgment. Incidentally, it is more difficult, as a procedural matter, for the Parliamentary Labour Party to dislodge its party leader than it is for the Tories, and there is no obvious challenger at the moment (Manchester Mayor Andy Burnham has been blocked from running for Parliament, making it impossible for him to launch a leadership challenge, Health Secretary Wes Streeting had ties to Mandelson and former deputy PM Angela Rayner has an ongoing tax investigation hanging over her. On Monday, Streeting [provided](#) Sky News with his texts with Mandelson (which it then published in full), perhaps as a precatory move to challenge Starmer.

One of Britain's two press regulators, IPSO (the Independent Press Standards Organization), sent out a privacy notice on behalf of Mandelson warning the media about their coverage of the Mandelson scandal, prompting the second regulator, Impress, [to warn](#) about the "misuse" of privacy notices to avoid "legitimate press scrutiny of matters squarely within the public interest."

IPSO, referring to Clause 2 (Privacy) and 3 (Harassment) of the [Editors' Code of Practice](#), and in particular Clause 3 that states that journalists must not persist in questioning, telephoning, pursuing or photographing individuals once asked to desist, unless justified in the public interest, warns, "Mr Mandelson's representatives state that he does not wish to speak to the media at this time. He requests that the press do not take photos or film, approach, or contact him via phone, email, or in-person. His representatives ask that any requests for his comment are directed to [REDACTED]." Ironically, these clauses are associated with grieving families wishing to avoid harassment from the press.

Monday kicked off with the resignation of the No 10 head of communications, Tim Allan, adding to the air of crisis, and some suggest more will follow.

\* \* \*

A reminder that, throughout this saga, Trump has never expressed any sympathy for the survivors of Epstein's horrific crimes.

And whatever this moment produces, let us decouple this story from politics, and stop to understand how damaging these crimes were for [the thousand](#) (the DoJ [figure](#)) women and children ensnared in the crimes perpetrated by Epstein and his enablers, and let us remember that this moment was thanks in large part to the courage and persistence of a group of survivors – they call themselves the [Survivor Sisters](#) – in bringing public pressure to bear for justice.

Let us remember the power of an independent free press – for it was the yearslong investigation by Miami Herald reporter Julie K. Brown who, after tracking down 60 survivors, published [\*Perversion of Justice\*](#) in November 2018. That report led to a federal judge ruling that the secret non-prosecution agreement and sweetheart deal negotiated by then South Florida U.S. Attorney Alexander Acosta (and then Trump Labor Secretary) was illegal, and the arrest of Epstein in July 2019 on sex trafficking charges in New York state. Epstein's death would rob the survivors' ability to confront him in court.

Let us also remember that the pursuit of justice was stymied for years by a criminal justice system (under both Democratic and Republican administration) that sheltered the powerful and repeatedly failed the survivors who when they came forward in the 1990s often were ignored, dissuaded from filing police reports and threatened to not go public.

And let us also not forget that the algorithm-fed machine of hate and harassment is now turning its ugly [attention to the survivors](#) with death and other threats and other forms of intimidation.

## FUTURE ELECTIONS – UNDER THREAT?

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### Texas Democrats Take a Stand

**Y1, Week Twenty-Nine**, fifty Democratic members of the Texas House fled the state to deny the Republican majority the quorum necessary for the House to pass a Trump-inspired congressional map that potentially could give the Republicans an additional five seats in the House of Representatives. Many went to Illinois (where one of the hotels in which some were staying had to be evacuated due to a bomb threat), while others went to Massachusetts and New York. Again, let's be clear what this represents: Trump fears that the Democrats will regain control of the House in 2026 and is desperate to stop that by any means possible. So far, all legal.

Republicans responded by [voting](#) (85-6) to civil arrest warrants for the members who fled (empowering the sergeant-at-arms and the state police to arrest and return to the Capitol recalcitrant legislators), and Texas Governor Abbott [ordered](#) the Texas Department of Public Safety to apprehend them. However, the state police can only act in Texas. That constraint prompted Senator John Cornyn to [request](#) the assistance of the FBI to locate or arrest Democrats who had fled to Illinois.

Abbott also directed Texas law enforcement to investigate whether lawmakers who fled had violated bribery laws, claiming without much legal basis that they and anyone who provided financial assistance to them in their flight could be liable. Texas AG Paxton [threatened](#) to have their legislative seats declared vacant. This unprecedented act likely would not work as it would require individual lawsuits against each member and a new election under [Texas law](#) to fill the vacancies. See [POLITICO](#) coverage.

The current map has yielded 25 Republican seats in the last two elections. Pressure from the White House caused Abbott to direct lawmakers to redraw the map during a special legislative session designed to create five new GOP seats by carving up districts in Austin, Dallas and Houston.

This end-run around redistricting has now triggered a far broader scramble to alter congressional maps in a number of states, both Democratic-controlled and Republican-controlled.

**Y1, Week Thirty**, Texas Attorney General Ken Paxton filed complaints in [Illinois](#) and [California](#), in each case, in small counties that Trump won in 2024, seeking enforcement of arrest warrants signed by Texas House Speaker Dustin Burrows against the House Democrats who fled Texas. Paxton had based his complaints on the Full Faith and Credit Clause. Judge Scott Larson of the Eight Circuit Court of Illinois found that the court did not have subject matter jurisdiction to initiate contempt proceedings and rejected the Full Faith and Credit argument. The Court also ruled that it “does not have the inherent power to direct Illinois law enforcement officers, or to allow the Sergeant-at-Arms of the House of Representatives of the State of Texas, or any officer appointed by her, to execute Texas civil Quorum Warrants upon non-residents temporarily located in the State of Illinois.” The Texas Supreme Court declined to rule immediately on a motion by Paxton and Abbott, setting September 4 as the deadline for responses from both parties.

The California court has yet to rule on the motion before it.

**Y1, Week Thirty-Eight**, Democracy Docket [reports](#) that a federal court has begun hearing a [case to decide whether Texas can use its new gerrymandered congressional map](#) in the 2026 midterms. Pro-voting groups argue that the Texas congressional map, which was drawn after pressure from President Donald Trump, discriminates against Black and Latino Texans. Unlike most lawsuits in federal court (heard initially by a single district court judge), redistricting challenges initially are heard by two district court judges and one circuit court judge, and their rulings can only be appealed directly to the Supreme Court.

**Y1, Week Forty-Six**, District Judge Jeffrey V. Brown writing for the majority (2-1) on the three-judge panel, in a stunning ruling that represents a significant blow to Trump and Republicans in the race to redraw maps ahead of the midterms, [granted](#) a preliminary injunction enjoining the redrawn 2025 maps in Texas and ordered that that the 2026 congressional elections in Texas use the 2021 maps (11/18/25). Key to the ruling was the finding that the administration had framed its request as a demand to redistrict seats based on their racial markup, citing a [letter](#) from Civil Rights Division head Harmeet Dhillon which targeted only majority-non-white districts.

The Court noted that “Any mention of majority-white Democrat districts – which DOJ presumably would have also targeted if its aims were partisan rather than racial – was conspicuously absent.” The Court also noted that the Dhillon letter was “challenging to unpack ... because it contains so many factual, legal, and typographical errors. Indeed, even attorneys employed by the Texas Attorney General -- who professes to be a political ally of the Trump Administration -- describe the DOJ Letter as “legally[] unsound,” “baseless,” “erroneous,” “ham-fisted,” and “a mess.” See [POLITICO](#) coverage.

Following the Supreme Court ruling in *Rucho v. Common Cause*, federal courts have been unable to block gerrymandering for partisan purposes but gerrymandering for racial purposes remains illegal.



The Texas Attorney General has [appealed](#) to the Supreme Court (11/18/25). As to possible outcomes, see “[What Comes Next for Texas’ Blocked GOP Gerrymander](#).” See also [Texas Tribune](#) coverage.

Late Friday, Justice Alito (who oversees urgent matters arising in the Fifth Circuit) [granted](#) an administrative stay of the lower court injunction, pending further order (11/21/25). This has the effect of temporarily reinstating the challenged congressional map. The challengers have until Monday afternoon to file a response. See [Axios](#) coverage.

**Y1, Week Forty-Eight**, the Supreme Court [granted](#) the government’s request to stay lower court order (6-3), allowing the heavily gerrymandered redrawn map to be used for the midterms on the ground that Texas had engaged in partisan gerrymandering, rather than racial gerrymandering (12/04/25). As noted above, partisan gerrymandering is permitted, while racial motivations are illegal.

## Indiana

Separately in Indiana, lawmakers rebelled against Trump’s directive that Indiana also redraw their maps. Rodric Bray, president *pro tem* of the Indiana Senate announced that there were insufficient votes to move the redistricting forward and so the Senate will now not meet until January, which likely has the effect of leaving in place two Democratic-leaning congressional districts. The Senate’s adjournment [resolution](#) was [approved](#) by a 29-19 margin, with all 10 Democratic senators supporting the resolution, and Republican senators split 19-19. Indiana Gov. Mike Braun said he would look for ways to “compel” the Senate to act and vowed to recruit, endorse and finance primary challengers for recalcitrant senators. See [Indiana Capital Chronicle](#) coverage.

**Y1, Week Forty-Seven**, Russell Berman, writing in The Atlantic (“[The Fear Taking Hold Among Indiana Republicans](#)”), quotes a GOP member of the Indiana legislature who opposes Trump’s mid-decade demand that the state redraw its congressional map to gain two Republican seats. The legislator is not worried about Trump’s wrath as he is not planning to run again; instead, his fear is for his person “I’d rather my house not get firebombed.” Other lawmakers report swatting and doxxing incidents, including hoax deliveries of pizzas, a tactic apparently favored by MAGA supporters seeking to enforce loyalty to the MAGA agenda. (Marjorie Taylor Greene [reported](#) that she and her family had received hoax pizza deliveries and pipe bomb threats, blaming Trump’s “vicious attacks” for inciting the danger against her and her family.)

A Republican Indiana state senator, who has a daughter with disabilities, announced he would vote against the redistricting plan after Trump [used](#) a slur demeaning people with disabilities in an online exchange with Gov. Walz. The lawmaker posted, “This is not the first time our president has used these insulting and derogatory references and his choices of words have consequences. I will be voting NO on redistricting, perhaps he can use the next 10 months to convince voters that his policies and behavior deserve a congressional majority.”

*The Columbus Republic* [reported](#) that Republican Indiana state senator Greg Walker remains steadfast in his opposition to the redistricting plan, commenting that “I was

taught right from wrong, and this is just wrong on so many levels.” Walker declined an invitation to the Oval Office, citing potential violation of the Hatch Act, called out Trump for “trying to save his own skin ... so that he is not impeached again.”

**Y1, Week Forty-Nine**, Republicans in the GOP-controlled Senate handed Trump a defeat, notwithstanding death threats, by defeating his plans (31-19, with 21 Republicans voting with Democrats) to redraw the Indiana state electoral map to provide two more safe Republican seats. The full-court MAGA press included threats from Trump’s 2024 campaign manager and adviser to Fair Maps Indiana, Chris LaCivita, “You have a state full of MAGA Republicans run by Republican MAGA haters. If you don’t defend a political movement from those that stand in the way – then it’s not a movement at all – a handful of politicians in Indiana will now know what standing in the way really means.” The political arm of the Heritage Foundation, Heritage Action, [added](#): “President Trump has made it clear to Indiana leaders: if the Indiana Senate fails to pass the map, all federal funding will be stripped from the state. Roads will not be paved. Guard bases will close. Major projects will stop. These are the stakes and every NO vote will be to blame.” See [POLITICO](#) coverage.

### **Kansas**

Kansas Republicans [announced](#) the week before that they too did not have sufficient support to meet in a special session and vote on a new map. See [New York Times](#) coverage.

### **Measuring Voter Sentiment**

**Y1, Week Thirty-Three**, Democrats flipped an open seat in the Iowa Senate, breaking a GOP supermajority. Catelin Drey won in a district that Trump won by more than 11 points in 2024. Among other things, the extra Democratic seat prevents approval of Governor nominees strictly along party lines. In January, Democrat Mike Zimmer won a Senate seat in a district that Trump had carried by 21 points.

In March, James Malone won an open seat in the Pennsylvania Senate in a district that Trump carried with 57% and Sen. Dave McCormick carried with 56% of the vote. The victory narrows the Republican majority in the Pennsylvania Senate to 27-23.

### **Vance’s Curious Statement**

End of **Y1, Week Thirty-Three**, during a Y1, Week when Trump slipped from public view, in an interview with USA Today, Vance [said](#), “I’ve gotten a lot of good on-the-job training over the last 200 days,” when asked if he was ready to assume the role of commander in chief. He then repeated, “And if, God forbid, there’s a terrible tragedy, I can’t think of better on-the-job training than what I’ve gotten over the last 200 days.”

### **Election Deniers Resurface**

In August, *ProPublica*, among others, reported that a high profile election denier, Heather Honey, had been appointed to help oversee the election infrastructure [as the Deputy Secretary for Election Integrity](#). Honey is reported to be a protégé of Cleta Mitchell, an attorney who was among the key leaders of the efforts to overturn the results of the 2020 election. She reportedly [promoted](#) election conspiracy theories,

including one theory (that Pennsylvania had 205,000 more votes than voters in 2020) cited by Trump on [social media](#) and [on the Ellipse](#) on January 6.

**Y1, Week Forty-Two**, the *New York Times* [reports](#) that state election officials who convened last month to hear about election security left the DHS call with Honey alarmed, after she used portions of the call to parrot rhetoric about widespread fraud during the 2020 election, including that voting machines were rigged to favor Democrats. She reportedly accused CISA officials tasked with combatting election-related disinformation as having “strayed from their mission.” The *New York Times* also reports that Honey, on a call last March before her appointment to DHS, suggested the Trump administration could declare “a national emergency” to justify dictating new election rules to state and local governments.

When asked on the call whether funds for two CISA-run cybersecurity intelligence-sharing programs that were [critical elements of election security](#) would be restored, Honey suggested states use “fusion centers,” which are hubs for disseminating information across the intelligence communities and federal, state and local law enforcement. Honey said that the two programs (one to detect and deter cyberattacks and alert state and local election officials, and the other to protecting critical infrastructure (including voter databases) would not be resurrected.

Honey is not the only election denier in a position of authority at the very unit tasked with ensuring the security of our electoral systems. Marci McCarthy, who reportedly spread conspiracy theories about voting machines in Georgia while chair of the DeKalb County Republican Party, serves as the director of public affairs at CISA, which is part of DHS. Nearly all of the election experts at CISA have been placed on administrative leave or resigned this year.

The *Wall Street Journal* [reports](#) that Kurt Olsen, an attorney who assisted in efforts to overturn the 2020 election results, has joined the administration as a “[special government employee](#)” (SGE). An SGE can work for the government for up to 130 days without giving up their private business interests. Olsen apparently is investigating the 2020 election and voting-related issues, and reportedly has approached intelligence agencies for information as part of his investigation.

Recall that in September, the Civil Rights Division of DoJ, citing the Voting Rights Act, the Help America Vote Act and the National Voter Registration Act, [sued](#) six states ([CA](#), [MI](#), [MN](#), [NY](#), [NH](#) and [PA](#)) for not providing voter registration data to DoJ.

The Voting Rights Lab, in an emailed briefing, reports it is seeing states work to:

- inject partisan discretion into certification processes to “investigate” results, and weaken chain-of-custody protections to give partisan actors more access to secure voting equipment and ballots;
- force election officials to use partisan-controlled data instead of trusted systems, such as the Electronic Registration Information Center ([ERIC](#));
- mandate the use of unqualified, partisan “auditing” outfits
- restrict or ban reliable election equipment, replacing it with inaccurate and costly hand counts;

- criminalize basic election administration and voter assistance to force law enforcement to “hunt for fraud”; and
- allow partisan state authorities to take over election administration in blue counties.

**Y1, Week Forty-Five**, media report that Trump is poised to nominate a right-wing election denier, Dan Bishop, the current Deputy Director of OMB as the next U.S. Attorney for North Carolina. Bishop was one of the 147 members of the House who refused to certify Biden’s election. *MSNBC* [reports](#) that during a 2024 radio interview aired while Trump’s criminal fraud trial in New York was underway, Bishop compared Trump’s treatment to the kind of abuse Black people faced from the racist justice systems in the Jim Crow South. He also called for Republicans to engage in legal “warfare” against liberals, including by [prosecuting](#) people involved in the challenges on Fourteenth Amendment grounds to remove Trump from presidential ballots in Maine and Colorado.

### **Election Monitors**

**Y1, Week Forty-Two**, DoJ announced that it is sending election monitors to five counties in California and one in New Jersey. In November, California voters will be voting on Prop 50 (to redraw the electoral maps temporarily in response to, and to counter, the Texas gerrymandering move) and New Jersey voters will be electing a governor.

### **The November 2025/January 2026 Races**

In what must be seen as a stunning rebuke of Trump and the Republicans, the Democrats notched up impressive wins across the electoral landscape. In California, New Jersey and Virginia, in particular, Trump was on the ballot, even if he was not (with more than half the voters in each state seeing their votes as sending a message to Trump), while Zohran Mamdani’s win in New York City was largely driven by local cost of living concerns (*see* [CNN](#) coverage). [According to NBC](#), Trump’s disapproval among voters in New Jersey was 55%, in Virginia 56%, in New York City 69% and in California 63%.

- **New Jersey**: Mikie Sherrill won the governorship with 56.3% of the vote, a 13-point margin. In almost every county, there was a [shift](#) in favor of Sherrill relative to the vote for Kamala Harris in 2024 (in two cases, 17 and 18 points, respectively). Democrats gained a supermajority in the General Assembly. Sherrill’s victory represented the first time since 1961 that a candidate from the same party is returned to power three times in row. CNN exit polling [showed](#) Sherrill with large margins among Black, Hispanic and Asian voters. New Jersey, 58% of respondents in exit polls [identified electricity costs](#) as a “major problem.”
- **Virginia**: Abigail Spanberger won the governorship with 57.2% of the vote, a margin of over 14 points. Jay Jones won his Attorney General race his ill-advised tweet notwithstanding against the only statewide candidate endorsed by Trump, with 52.7% of the vote, close to a 5-point margin, as did the Democratic nominee for Lt. Governor, Ghazala Hashimi.

In the Virginia House of Delegates, the Democrats picked up 13 seats for a total of 64 out of 100 seats.

Spanberger stormed ahead in the suburbs, possibly surpassing her impressive wave in 2018. According to POLITICO, in Loudoun County, a wealthy enclave in northern Virginia: Democrat Ralph Northam won it by 20 points in 2017; Spanberger won it by 29 points. In Prince William County, which Northam won by 23 points, Spanberger won it by nearly 34 points. Her strong showing was not limited to northern Virginia; Henrico County, just outside Richmond, went for Northam by 23 points and for Spanberger by 38 points.

Although about half of Virginia voters said that support for trans rights has gone too far, more than one-fifth in that group still supported Spanberger over her opponent, who made attacks on transgender rights a cornerstone of her campaign. Just over half of Virginia voters also say that the Trump administration's actions on immigration enforcement have gone too far – Spanberger won more than 9 in 10 of them. Spanberger won among independents – roughly a third of this year's electorate – and among female voters, voters with college degrees and the majority of voters in the state who say abortion should be legal in most or all cases. She also had a significant advantage among voters from households where someone worked this year as a federal employee or was employed as a federal contractor.

- **California:** Proposition 50 passed with 64% of the vote, allowing legislators to redistrict before the 2026 midterms to counter the Republican-led gerrymandering in Texas and other states. The California Republican Party has sued to challenge the new maps. More than 90% of voters – including those who backed Proposition 50 – said they generally prefer state congressional district lines to be drawn by a non-partisan commission than the party in power, but the majority who voted “yes” also see it as a response to GOP-led redistricting elsewhere, while around 82% say they see it as a way to counter the changes made by Republicans in other states, rather than the best way of drawing congressional districts.
- **Pennsylvania:** the Democrats retained their 5-2 majority in the state Supreme Court, with all three Democratic justices winning their retention elections (in each case by sizable margins of 61.7%, 61.7% and 61.3%). Democrats also won special elections for a seat on the Superior Court and on its Commonwealth Court. Democrats won the top “row offices” in purple Bucks County, electing the county’s first-ever Democratic district attorney and defeating an incumbent Republican sheriff one year after Trump narrowly won there. Democrats won significant victories in county executive races in Erie, Lehigh and Northampton counties, all bellwether counties in recent presidential elections.
- **New York:** with a turnout that topped 2 million, the largest since 1969, Zohran Mamdani won 50.4% of the mayoral vote. By Borough, Mamdani had a 20-point margin in Brooklyn, a 10-point margin in Manhattan, an 11-point margin in the Bronx and a 5-point margin in Queens. Cuomo had a 33-point margin in



Staten Island. Mamdani outperformed in precincts that are predominately Asia (+4), Black (+26) and Hispanic (+20); and in precincts where Harris won (+23). Cuomo outperformed in precincts that are predominately (+14) and in precincts where Biden won (+18) and where Trump won in 2024 (+42). In New York City, exit polling showed 70% focused first on [housing costs](#).

- **Mississippi:** Democrats broke a Republican supermajority in the state Senate after flipping two seats in the Senate plus another pickup in the state House. A federal court ordered that the electoral maps for 14 House and Senate districts be redrawn after finding the maps drawn in 2022 discriminated against Black voters.
- **Georgia:** Democrats won two seats on the five-person public utility regulator with margins of close to 60%, representing the first nonfederal statewide victory for Democrats since 2006. The key issue in the race was the soaring cost of energy. The regulator oversees utilities, including Georgia Power, sets the rates Georgia Power customers pay for electricity and approves the utility's plans to make or buy energy and deliver it to customers.

*New York Times* chief political analyst Nate Cohn [tells](#) us, based on exit polling, that while Spanberger and Sherrill won by wide margins, it would not merely because more Democrats showed up and more Republicans stayed home, both candidates also managed to win over a modest but important number of Trump supporters. He argues that data suggest that Spanberger and Sherrill won more because of flipping Trump supporters than because of better turnout. He estimates that Sherrill and Ms. Spanberger both won 7% Trump's supporters; that 7% is turbo-charged because flipping a voter not only adds to the beneficiary but also deducts from the opponent, making it twice as valuable as turning out a new voter.

Cohn also tells us that exit polls showed Sherrill winning 18% of Trumps Hispanic support in New Jersey (Hispanic voters are much less of a force in Virginia). Sherrill also seemed to benefit from a much stronger turnout among Democratic-leaning Hispanic voters. Hispanic voters who cast ballots in 2025 reported backing Kamala Harris by 25 points; in the actual 2024 election, Harris won Hispanic voters by just nine points, according to New York Times estimates. Combined, it was enough for Sherrill to win Hispanic voters by 37 points.

**Y1, Week Forty-Five**, the administration [files](#) a motion under the Civil Rights Act and the Voting Rights Act to intervene in a lawsuit challenging Proposition 50 under the Fourteenth Amendment and Section 2 of the Voting Rights Act (11/13/25).

**Y1, Week Forty-Eight**, Democrat Aftyn Behn lost her election in TN-7 to succeed Mark Green by 8.6 points. Green had won his seat in 2022 by 21.9 points and in 2024 by 21.5 points. Trump had won the district in 2024 by 22 points. Behn focused her campaign messaging on affordability; the vote share for a Democrat increased in every county. As E. J. Dionne Jr. noted ("[What happened in the last election of 2025, and what does it mean for the midterms?](#)") "Republicans have reason to worry." Dionne cites the analysis of Democratic pollster Geoff Garin: "While some Democrats hoped for a slightly closer race, a 13-point swing in the margin from Trump 2024 is still very



significant, given that there currently are 40 Republican-held seats in districts that Trump won by 12 points or less. Redistricting will change those numbers a bit, but some of the Republican districting plans increase the number of at-risk GOP seats if there is a 12-point swing in margins.”

**Y1, Week Forty-Nine**, for the first time in 1997, Miami has a Democrat as a mayor. Eileen Higgins beat Republican Emilio Gonzalez, a former Miami city manager who served on the DHS transition team for Trump, in the race to succeed the incumbent, Francis Suarez. The race technically was nonpartisan. Miami sits in Miami-Dade County, and it Florida’s second largest city, after Jacksonville. Higgins becomes the first female mayor of Miami and the first non-Hispanic mayor since the 1990s. The incumbent was term-limited.

Turnout admittedly was low (21%), but the win is consistent with the wave of wins in special/off-year elections under Trump 2.0. Higgins won by 18 points (59% - 41%). NBC6 South Florida [quotes](#) GOP Rep. Maria Elvira Salazar, who called the elections a “wake-up call.” “[Salazar] said Hispanics also want a secure border and a healthy economy but some relief for ‘those who have been here for years and do not have a criminal record. The Hispanic vote is not guaranteed. Hispanics married President Trump, but they are only dating the GOP.’” They also quote David Jolly “Change is here. It’s sweeping the nation, and it’s sweeping Florida.”

In a Georgia state House race, one month after Democrats [flipped](#) the two seats on the Georgia Public Service Commission, Democrat Eric Gisler flipped a seat in a district (the 121<sup>st</sup>) Trump won by 12 points in 2024. The Republican incumbent had resigned in October. Gisler had run against that incumbent in 2018, but lost to him 61-39%. See [DNC](#) coverage.

**Y1, Week Forty-Eight**, E. J. Dionne Jr., in his *New York Times* op-ed (“[Trump Confronts a Backlash of the Reasonable](#)”), sets out some heartening insights and data pointing to a swing of the pendulum away from Trump:

- An [Economist/YouGov](#) poll found 56% said Trump was using his office for personal gain; only 32% did not. A similar 56% Trump as directing DoJ to go after people he saw as his political enemies; just 24% did not.
- Starting with Trump’s 49.8% of the 2024 popular vote as a base line and comparing it with his approval ratings (a New York Times analysis of public polling this month found his net approval rating had dropped to 42%, and an A.P.-NORC poll and a Gallup poll put it 36%) suggests that 15% to 25% of his voters have changed their minds.
- A [Public Religion Research Institute poll](#) asked whether Trump had gone “too far” in a variety of his actions: 54% said he had gone too far on tariffs, as did 55% on cuts to grants to universities and 60% on cuts to Medicare, Medicaid and the Affordable Care Act.
- A [KFF survey](#) found that 74% said the ACA subsidies should be extended, not eliminated.
- The Public Religion Research Institute poll found 65% opposed to deporting undocumented immigrants to foreign prisons, 63% opposed arresting

undocumented immigrants who have resided in the United States with no criminal records, and 58% ICE officers should not conceal their identities with masks or use unmarked vehicles.

**Y1, Week Fifty-Two**, a federal three-judge panel (2:1) [denied](#) the motion of the California Republican Party and the DoJ to block the Proposition 50 voter-approved maps. The majority noted,

“However, we reject the notion that voters’ intent does not matter. Instead, we employ well-understood tools to determine the voters’ intent in adopting the Proposition 50 Map, and after reviewing the evidence, we conclude that it was exactly as one would think: it was partisan. Indeed, the record contains a mountain of statements reflecting the partisan goals of Proposition 50, from which Challengers have culled a molehill of statements showing race consciousness on the part of the mapmaker and certain legislators. But that is not enough to make the necessary showing that the relevant decisionmakers – here, the electorate – enacted the new map for racial reasons.”

**Y2, Week Two**, early Sunday morning, the news from Texas was seismic. In a special run-off election for the Texas State Senate (District 9, Tarrant County, one of the largest Red counties in the nation), Democratic Taylor Rehmet, an Air Force veteran, machinist and grassroots union organizer, defeated his Trump-endorsed GOP opponent in a district that Trump won by 17 points. With 95% reporting, Rehmet led 57.2% to 42.8%. According to G Elliott Morris ([Strength in Numbers](#)), this 14.4 point margin and 31.4 point swing as against the Harris margin in 2024 rounds to D+32 if you ignore minor-party candidates and represents the most significant Democratic overperformance since Trump took office. As Morris cited, “Since Trump took office, Democrats have flipped eight Republican-held state legislative seats in special elections across five states. Republicans have flipped zero Democratic seats. The average swing across these eight flips is 19 points. Tonight’s 32-point swing in Texas blew past that.” He attributes the swing to persuasion (Trump voters breaking against the GOP) and GOP voters staying home.

MS NOW [reports](#) that Trump posted three times in the two days leading up to the election in support of Rehmet’s opponent, who had a significant spending advantage.

VoteVets [led the way](#) among national organizations with a \$500,000 [ad buy](#) two weeks ago. Their announcement [cites](#) polling showing veterans being viewed across a broad swath of voters, particularly blue collar men and younger demographics, as trusted messengers.

Rehmet and his GOP opponent Leigh Wambsganss will face off again in November to fill the seat for a full four-year term. Interestingly Wambsganss blamed the loss on low voter turnout, which coincidentally is what a number of Democratic operatives are predicting about the 2026 midterms, namely that moderate Republicans will stay home. Florida Gov. DeSantis in a post [warned](#) that “a swing of this magnitude is not something that can be dismissed. Republicans should be clear-eyed about the political environment heading into the midterms.”

**Y2, Week Four**, the Down Ballot reports that Democrats successfully defended a conservative seat in rural Louisiana, as Chasity Martinez [defeated](#) Republican Brad Daigle, 62% - 38% (a 37-point overperformance compared to the 2024 presidential

result – Trump carried the district 56-43 in 2024). Voters in the district, which includes part of Assumption and Iberville parishes, had long backed state and local Democrats but in recent years had moved towards Republicans on the federal level.

Since January 2025, Democrats have [picked up eight](#) Republican-controlled districts through special elections, as well as 18 seats in New Jersey and Virginia last November. Republicans have flipped none.

This week, Trump’s net job approval is [-19](#), with 38.5% approving and 57.3% disapproving, near Trump’s second-term floor, and the generic ballot is [D+5](#), a new high, with Democrats at 46.9% and Republicans at 42.3%.

### **Mail-In Ballots – Court Challenges**

**Y1, Week Forty-Five**, the Supreme Court agrees to hear [Watson v. Republican National Committee](#), potentially one of the most consequential election-related cases of the term. In *Watson*, Mississippi is defending its federal election grace period, allowing elections officials to count ballots that have been mailed by Election Day but arrive within five days thereafter. Oral arguments are likely to be heard in January.

The case arises from a challenge by the Republican National Committee, together with the Mississippi Republican Party and individual voters, who argued that Congress had intended that voting take place on a single Election Day and that allowing ballots to arrive days later and still be counted undermined election integrity and the public’s trust in the vote.

A federal trial court judge upheld the grace period on the ground that it met federal requirements for elections because the mail-in ballots had to be postmarked by Election Day. Under the law, no ballots cast or mailed after Election Day are counted.

A three-judge panel of the quite conservative Fifth Circuit sided with the challengers, and the defendants appealed to the Supreme Court. *See* [Vox](#) coverage.

D.C. and 17 states count all absentee ballots so long as they are mailed on or before but arrive some specified number of days after Election Day. An additional 14 states count absentee ballots so long as they are timely mailed by designated individuals residing outside the United States and arrive within a set number of days after Election Day. Nineteen other states require that absentee ballots arrive on or before Election Day. *See* the amicus brief [submitted](#) by 19 states and D.C. in support of the grace period. *Amici* call the Fifth Circuit decision “both wrong and destabilizing.”

Incidentally, on Monday, in a routine order list, the Supreme Court declined to entertain a petition from Kim Davis, a former county clerk in Kentucky who objected on religious grounds to issuing marriage licenses to same-sex couples. Davis urged the court to use a lawsuit against her as a vehicle to overturn [Obergefell v. Hodges](#), the 5-4 ruling in 2015 that legalized same-sex marriage in all states.

### **“Nationalizing” Elections**

**Y2, Week Three**, Dan Boginio, newly freed from the strictures of his Deputy Director role at the FBI, relaunched his podcast on Monday and invited Trump to speak. Trump, reprising his grievance that the 2020 election was stolen from him, issued an ominous

warning: “The Republicans should say, ‘We want to take over. We should take over the voting in at least 15 places.’ The Republicans ought to nationalize the voting.” Trump also alluded the raid in Fulton County – “you’re going to see some interesting things come out” in Georgia. Recall this also comes on the heels of his threat in January (“people will soon be prosecuted for what they did”) and DoJ’s lawsuits against 24 states, [demanding](#) access to voter registration rolls. See [Mother Jones](#) coverage.

Speaker Johnson, when asked about Trump’s call to nationalize elections, [said](#), with zero evidence, Democrat-led states are engaging in election fraud: “It looks on its face to be fraudulent. Can I prove that? No. It’s the blue states that I’m concerned about.” Sen. Tommy Tuberville [told](#) *Fox News* that “a half dozen” members of Congress “did not get elected” and that “if we don’t straighten that out,” we are going to see more election fraud in the midterms.

Marc Elias, in his [interview](#) with Dalia Lithwick on her Slate podcast “Amicus,” posits that when Trump says he wants Republicans to “nationalize” elections what he does not mean is that there should be national standards for elections. So, why is he doing this? Elias has a two-part answer: Trump wants Republicans to take over the voting and he wants to project that he alone has powers has powers over elections (that he incidentally does not have).

Trump doubled down the day after his Bongino interview, telling GOP lawmakers in the Oval Office, “I want to see elections be honest and if a state can’t run an election, I think the people behind me [alluding to the lawmakers] should do something about it.” The proposed [SAVE Act](#) is making a new appearance (it was passed with GOP votes in the House) but it would need 60 votes in the Senate and that is unlikely to happen. (See “[Trump Repeats Call to ‘Nationalize’ Elections, as White House Walks It Back](#).”) Sen. Schiff [warned](#) that, “In his first term, Donald Trump pressured and threatened and coerced and incited – all in attempt to rig an election and overturn its result to cling to power. We cannot miss the signs that he is going to try again. Don’t take my word for it. Take his.”

Recall that in an August post, Trump wrongly (from a constitutional law perspective<sup>54</sup>) [asserted](#) “... the States are merely an ‘agent’ for the Federal Government in counting and tabulating the votes,” he wrote in an August social media post. ‘They must do what the Federal Government, as represented by the President of the United States, tells them, FOR THE GOOD OF OUR COUNTRY, to do.’”

Recall too that the Speaker of the House is an election denier who played a role in trying to overturn the results of the 2020 election. Johnson weighed in on the “nationalization” threat, feeding conspiracy theories championed by Trump, saying, for example, that the election results in Blue states “just look[] on its face to be fraudulent” (referring to GOP candidates being in the lead on Election Day and then losing as mail-in ballots were counted). He continued, “What you’re hearing from the president is his frustration about the lack of some of the blue states, frankly, of

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<sup>54</sup> The President has no role in overseeing elections. Article I, Section 4, Clause 1 (the [Elections Clause](#)) could not be more clear.

enforcing these things and making sure that they are free and fair elections.” Senate Majority Leader Thune told reporters “I’m not in favor of federalizing elections,” though he supports passage of the SAVE Act.

We need to brace for more threats and more feints as Trump wakes up to the reality that his mid-cycle redistricting effort is unlikely to deliver more than a few GOP seats, if any (net, net), while his polling numbers continue to decline. Recent Democratic electoral victories that are serving as a wake-up call for GOP lawmakers will likely only embolden Trump to reach for more leverage over elections.

This calls for a whole of society effort in support of free and fair elections in November 2026.

### **Fulton County Raid/DNI On-Site**

- The raid – “not just a fight about nostalgia, but about establishing “proof of concept”
- Tulsi Gabbard’s presence and connecting Trump with the FBI agents executing the warrant
- Overseen by a U.S. Attorney in Missouri
- FBI SAC in Atlanta quits or is fired
- Could be all about getting hold of data
- Sen. Warner sounds the alarm
- Search warrant affidavit repeats debunked claims and fails to note the statute of limitations had lapsed

**Y2, Week Two**, if any reminder were needed that the 2026 midterms will be subject to unprecedented efforts to upend them, that reminder came this week as the FBI executed a search warrant to seize sealed boxes of original ballots from Fulton County. The ballots were from the 2020 election. As *Atlantic* investigative journalists Sarah Fitzpatrick and Yvonne Wingett Sanchez reported (“[It’s A Five-Alarm Fire](#)”), “The most disturbing part, for the people we spoke with – including officials who describe themselves as strictly apolitical, who have spent careers resisting partisan pressure – was not just that the federal government seized state election records. It’s what the episode revealed about the relationship among the Justice Department, the intelligence community, and the president.

Fitzpatrick and Sanchez report that planning for the seizure started in the White House and then spread not only to the FBI but also to the ODNI. The initial impetus was likely an August Cabinet meeting at which Trump asked Gabbard about purported evidence related to “how corrupt the 2020 election was.” Gabbard promised she would soon brief him, adding, “We are finding documents literally tucked away in the back of safes and random offices.”

According to Josh Dawsey, Justin Volz and Sadie Gurman of the *Wall Street Journal* (“[Spy Chief Tulsi Gabbard Is Hunting for 2020 Election Fraud](#)”), “a U.S. official familiar with the warrant said it authorized agents to look for physical ballots, voter rolls from that year, ballot images created by scanning ballots and tabulator tapes from every voting machine in the county.” According to the warrant “the materials were



being sought as part of an investigation into possible violations of federal law against destroying election records and another statute dealing with the submission of fraudulent votes.”

DNI Tulsi Gabbard, who strangely has been off the radar screen in recent weeks, and FBI Deputy Director Andrew Bailey (who replaced Dan Bongino) both were present for the seizure. Several former officials told Fitzpatrick and Sanchez “they could not recall an instance since the creation of [ODNI] when a sitting director had come anywhere near the physical execution of a federal search or seizure, much less a politically fraught operation involving ballots cast by American citizens.” One more mystery is that the Attorney General appointed the U.S. Attorney for the Eastern District of Missouri, Thomas Albus, to investigate “election integrity” nationwide. It was Albus, rather than a prosecutor in the local U.S. Attorney’s Offices in Georgia, who is listed on the search warrant approved by a federal magistrate.

Jonathan Karl, of *ABC News*, [reported](#) that late Wednesday night, Trump [reposted](#) a claim, reprising a thoroughly debunked conspiracy that Italy used military satellites to hack into U.S. voting machines to flip votes from Trump to Joe Biden: “China reportedly coordinated the whole operation. The CIA oversaw it, the FBI covered it up, all to install Biden as a puppet.” Reposting another post about the FBI seizure, Trump warned, “This is only the beginning. Prosecutions are coming.” Another repost that evening is the false claim that “Barack Hussein Obama” falsified intelligence and “conspired with foreign powers, not one, not two, not three, but four times to overthrow the United States government in 2016.” Karl points out the obvious that, in addition to being patently false, Trump’s claim ignores the fact that had Obama tried to overthrow the government in 2016, “he would have been overthrowing himself.”

Ken Dilanian, of *MS NOW*, [reports](#) that “the special agent in charge of the FBI’s Atlanta Field office, Paul Brown, was forced out of that job earlier this month over his qualms about and refusal to carry out the searches and seizures of the Fulton County ballots.”

Meanwhile, the *New York Times* [reports](#) that Trump personally ordered the DNI to go to Atlanta and that she coordinating her actions with the Deputy Director of the FBI. And in another stark break with protocol, Gabbard reportedly met with some of the agents who conducted the raid and then organized a short phone conversation between Trump and those agents. The *New York Times* quotes a former senior DoJ official:

It is extremely dangerous to our democracy and a shocking abandonment of years of sound policy for the president to be directly involved in the conduct of domestic criminal investigations, especially one that seeks to redress his personal grievances and to make the director of national intelligence an instrument of his political will, It’s now more clear than ever that the independence of the Department of Justice and the F.B.I. is completely compromised and they are essentially under the direction and control of the White House.”

Over the course of the week, the story behind Gabbard’s presence shifted. First the Deputy Attorney General when asked about Gabbard’s presence, said “She happened to be present in Atlanta.” He later said in another interview, “I don’t know why the director was there.” Then he told Fox News on Monday night: “First of all, she



wasn't at the search; she was in the area where the search took place. She's not part of this investigation." See [CNN](#) coverage.

In her letter to lawmakers (02/02/26), Gabbard [stated](#) that her "presence was requested by the President and executed under my broad statutory authority to coordinate integrate and analyze intelligence related to election security, including counterintelligence (CI), foreign and other malign influence and cybersecurity."

Back though to Trump, when asked on Wednesday about Gabbard's presence, during an interview with NBC News, Trump [said](#) "I don't know." On Thursday, at a national prayer breakfast, Trump [said](#), referring to Gabbard, "She took a lot of heat two days ago because she went in at Pam's insistence ... and she looked at votes." He continued, "people ask, why is she doing it, because Pam wanted her to." By week's end, an ODNI spokeswoman said both the President and the Attorney General were involved asked her to be there. Another spokesperson posted the same statement on X, but it then was taken down. By Friday, the Attorney General [declined](#) to confirm the ODNI claim about Bondi's role, saying only, "She was there, we are inseparable. That's all I can say."

All of the foregoing in respect of the 2020 election has been reviewed exhaustively, and how a visit to a warehouse (I assume she did not start opening boxes while she was there) would enhance anyone's understanding of foreign influence is beyond me.

**Y2, Week Three**, Fulton County ([Robert L. "Robb" Pitts, Chairman, Fulton County Board of Commissioners and the Fulton County Board of Registration and Elections v. the United States of America](#)) filed a lawsuit challenging the FBI raid and demanding the return of close to 700 boxes of records that were seized in the raid (02/04/26). See [Court Listener](#) docket and [Brief to Unseal the Affidavit](#).

Marc Elias, in his [Amicus](#) podcast, warns that the seizure is not about relitigating the 2020 election but rather needs to be understood as establishing proof of concept for the 2026 elections. Trump pulled off a heist of ballots, and it did not matter that the warrant may have been faulty or that there is no legal basis for the seizure. Fact is, it worked. And equally important, he says, they are optimizing the logistics as this presumably is a complicated operation, starting with managing to get a federal magistrate judge (whose reason for being is to prevent the abuse of the grand jury system, subpoenas and arrest warrants) to issue the warrant. "This is a learning exercise that they will use going forward to 2026."

Lithwick notes that we are in a whole different dimension beyond their being problems with the warrant, namely that the administration is justifying Gabbard's presence on a national security (foreign influence) angle, even though the warrant makes no mention of that angle. Elias notes that injecting a national security angle has a "rhetorical benefit," but, more worryingly, courts often will grant significant deference whenever the government cites "national security" grounds.

Elias points out two other red flags. First, the method to the authoritarian's madness is to normalize to the point where citizens simply no longer notice. So, as more warehouses are raided, people will stop caring. Second, with Trump, as with any authoritarian, one must identify the true end goal, and here Elias posits that this is

about getting the data – if you want to suppress the votes of Democrats, you need to know who they are and where they live. Why else would DoJ be suing 23 Blue states and D.C. to get their voting rolls. That election should belong only to the states

Sen. Warner also is raising the alarm. In a post on Thursday, he [writes](#), “We have a President who can’t get over the fact that he lost in 2020... and sees the writing on the wall with his plummeting approval rating. Is he preparing to massively intervene in the midterms?” In another post, Warner writes, “If Trump ordered Gabbard to attend the FBI raid in Fulton County, it raises serious concerns about the extent to which he is intervening in domestic criminal investigations about his loss in the 2020 election. We should all be afraid of a President manipulating the FBI to do his bidding.”

In interviews posted on YouTube, Warner [warns](#) that if Trump directed Gabbard to go, then we have a return to Nixonian Watergate-style tactics. If Trump did order her to go, it means he knew about the warrant before it was served. He also raises the alarm about the involvement of Gabbard’s team in investigating Puerto Rican voting machines, where he says there was an acknowledgement of no foreign involvement. Moreover, if she has evidence of foreign involvement she had an obligation to advise the Senate and House intelligence committees, and Warner says he has not seen any. Warner reminds us of a key lesson of Watergate, the cover-up may be worse than the crime.

Warner [goes on to say](#) that a year ago he was not convinced, but he now believes “it appears there may be a coordinated effort” to undermine free and fair elections, pointing to Gabbard’s involvement, the seizure of voting records, the potential for roving bands of ICE agents to intimidate registered voters from showing up at polling stations, the dismantling of bulwarks against foreign interference in elections and a president who cannot get over the fact he lost in 2020. *See also* [Warner’s press remarks](#) on PBS.

As **Y2, Week Three**, shudders to a close, we now witness the intelligence community added to the list of institutions that the American people are sceptical, if not suspicious, of and will no longer trust. HHS, DoD, DoJ, DHS, ICE, Border Patrol already are on that list, having been weaponized by Trump and his enablers in key positions in those agencies.

**Y2, Week Four**, DoJ [complied](#) with an order signed by District Judge J.P. Boulee ordering the unsealing of various documents relating to the Fulton County raid, including the [search warrant affidavit](#) signed by an FBI special agent.

The order arises out of the case filed by Fulton County. Fulton County officials alleged in their lawsuit that the FBI intentionally circumvented pending civil judicial proceedings to obtain the records on behalf of the DOJ. By doing so, the federal government violated Georgia state law, the officials said.

While the names of many of the witnesses relied upon by the government were redacted, on who was named is a former Trump campaign lawyer who played a key role in the president’s effort to overturn the 2020 election, Kurt Olsen. Olsen joined the White House as a “special government employee” and initiated the referral that led to the warrant. The affidavit also names Clay Parikh, a cybersecurity specialist [tied](#) to Mike

Lindell. *Democracy Docket* [notes](#) that the allegations set out in the affidavit have long been debunked by [state audits](#).

It is noteworthy that the affidavit failed to note that the statute of limitations for the alleged crimes had lapsed.

Other responses:

- Fulton County Board of Commissioners Chairman Robb Pitts [said](#) at a press conference that the affidavit showed that the FBI's investigation is based on "recycled rumors, lies, untruths and unproven conspiracy theories." "Fulton County's 2020 elections have been examined, they've been reexamined, they've been audited, there have been hand counts under microscope, and in every instance we come up clean. And any honest review going forward will also be clean. These accusations have already been debunked. But here we go again."
- Republican Secretary of State Brad Raffensperger [described](#) the claims "baseless and repackaged."
- Election security expert David Becker [explained](#), "This affidavit was much weaker than I suspected. No allegations of intent. No allegations of election theft. No allegations of foreign interference. No allegations that the statute of limitations doesn't apply. At worst, it alleges human error, during a pandemic, that didn't affect the outcome"
- POLITICO [reports](#) that "Fulton County officials have acknowledged they did not keep all the scans and tallies of ballots in the 2020 election, but they say they were unaware that was required and the shortcoming is of no significance because the original paper ballots were kept."

Georgia First [filed](#) an *amicus* brief in the Fulton County case supporting the petition for the return of sensitive voter data seized during the FBI raid. See [ACLU](#) press release.

### How We Must Prepare for the 2026 Midterms<sup>55</sup>

#### SIBR

- Fulton County and Puerto Rico ballot seizures
- DoJ continues to try to extort voter rolls from Blue states, most recently in Minnesota
- Trump floats plans for Republicans to "nationalize" elections and "take over" control of voting
- Trump continues to claim the 2020 election was stolen from him
- Tulsi Gabbard and the foreign election interference angle

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<sup>55</sup> This analysis is based on:

- David A. Graham's cover article in The Atlantic ("[Donald Trump's Plan to Subvert the Midterms Is Already Under Way](#)");
- Brennan Center's Lawrence Norden's and Sean Morales-Doyle's expert brief ("[What to Expect Next in the Trump Administration's Strategy to Meddle with the Vote](#)");

For a host of reasons, come November 2026, the Republicans are likely to lose their majority in the House and perhaps the Senate. And given the track record of this administration chronicled in these pages, holding the majorities may well be seen as existential for the Republicans. Republican strategists no doubt would prefer to win electorally, but history tells us that a free and fair election is unlikely to sustain both GOP majorities, and if not at least one majority. It is not hard then to imagine, and for purposes of preparedness we must contemplate, a tiered GOP strategy for the midterms:

- win at the polls, with the help of redrawn maps and turbo-charged gerrymandering, voter suppression tactics and disinformation campaigns – all familiar though amplified;
- prepare to use emergency powers and other instruments of power to reduce access to voting in places that will underpin Democratic victories; and
- prepare to contest the election results in the House via the certification process at the state level and in Congress to avoid seating a majority of Democrats on January 3, 2027.

### *The Bulwarks*

We start with the foundational principle that only Congress and the states can set or change election rules. The corollary to that principle is that neither the President nor DoJ can set rules governing elections or supervise the state and local election officials who run our elections.

Federal law addresses the protection of vote in a variety of ways (though we all must recognize that under this DoJ federal law will not likely be a bulwark against Trump-inspired tactics. That said, there could well be significant scope for state law actions to prevent or sanction those same tactics.

### *Federal law on elections*

Article I, Section 4, Clause 1 of the Constitution allows states to choose the “Times, Places and Manner of holding Elections for Senators and Representatives,” but permits Congress to “make or alter” those state rules “except as to the Places of [choosing] Senators.” 2 U.S. Code § 7 establishes the Tuesday next after the first Monday in November, in every even numbered year, as the day for the election, in each of the

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- Brennan Center’s Jasleen Singh’s “[The Trump Administration’s Campaign to Undermine the Next Election](#)”;
  - Brennan Center’s Eliza Sweren-Becker’s and Jasleen Singh’s “[Guide to Laws Against Intimidation of Voters and Election Workers](#)”;
  - Brennan Center’s “[Federal Laws Protecting Against Intimidation and Election Interference](#)”;
  - Brennan Center’s [Timeline of Administration Efforts to Undermine the 2025 Elections](#); and
  - Mother Jones’ “[Project 2026: Trump’s Plan to Rig the Next Election](#).”

States and Territories of the United States, of members of the House of Representatives.

### *Federal law protecting against voter intimidation and election interference*

- Section 11(b) of the Voting Rights Act, [52 U.S. Code § 10307\(b\)](#): prohibits actual or attempted “intimidation,” “threats” or “coercion” against a person “for voting or attempting to vote” or “for urging or aiding any person to vote or attempt to vote.” No showing of intent to intimidate is required so long as the behavior has the effect of intimidating voters.
- Section 131(b) of the Civil Rights Act of 1957, [52 U.S. Code § 10101\(b\)](#): prohibits actual or attempted “intimidation,” “threats” or “coercion” with the purpose of interfering with a person's right to vote in federal elections.
- Section 2 of the Enforcement Act of 1871 (the Ku Klux Klan Act), [42 U.S. Code § 1985\(1\)](#): prohibits two or more persons from conspiring to use “force, intimidation, or threat” to prevent a person from “discharging any duties” related to administering a federal election.
- Section 2 of the Ku Klux Klan Act, [42 U.S. Code § 1985\(3\)](#): prohibits two or more persons from conspiring to use “force, intimidation, or threat” to deprive a person of equal protection, to hinder state officials in securing equal protection for others, or to prevent voters from engaging in lawful activity related to voting in federal elections.

### *Protections Against Interference by Military and Government Officials*

- Section 1 of the Ku Klux Klan Act, [42 U.S. Code § 1983](#): prohibits any state official from violating the constitutional rights of any person, including the right to vote, the right to equal protection, and the right to due process.
- [52 U.S. Code § 10102](#): prohibits officers of the U.S. military from interfering with “the freedom of any election in any State” or “the exercise of the free right of suffrage in any State.”

### *Criminal Protections Against Intimidation*

- Section 12 of the National Voter Registration Act of 1993, [52 U.S. Code § 20511\(1\)\(A\)](#): provides criminal penalties for “knowing” and “willful” actual or attempted intimidation, threats, or coercion against any person registering to vote, voting, or attempting to register or vote. It also protects those who urge or aid any person to do the same.
- [18 U.S. Code § 241](#): provides criminal penalties for any person who conspires with another to intimidate any person exercising a constitutional right, including the right to vote.
- [18 U.S. Code § 594](#): provides criminal penalties for any person who intimidates or attempts to intimidate voters with the purpose of interfering with their right to vote.
- [52 U.S. Code § 10308\(a\)](#): provides criminal penalties for any person who deprives or conspires to deprive a voter of their right to vote.

- [18 U.S. Code § 875\(c\)](#): provides criminal penalties for any person who threatens to injure another person using methods of interstate communication.

### *Protections Against Interference by Military and Government Officials*

- [18 U.S. Code § 242](#): provides criminal penalties for a state official who willfully subjects a citizen to the deprivation of a constitutional right, including the right to vote.
- [18 U.S. Code § 592](#): provides criminal penalties for any federal official who stations “troops or armed men at any place where a general or special election is held” except when necessary “to repel armed enemies of the United States.”
- [18 U.S. Code § 593](#): provides criminal penalties for any member of the U.S. military who intimidates voters or interferes “in any manner with an election officer’s discharge of [their] duties.”
- [18 U.S. Code § 595](#): provides criminal penalties for any government employee who uses their official authority in connection with federally financed activity to interfere with or influence a federal election.
- [18 U.S. Code § 598](#): provides criminal penalties for any person who uses congressional appropriations “for the purpose of interfering with, restraining, or coercing” any person in the exercise of the right to vote.

### *State prohibitions on carrying guns at election locations*

- See [Chart: State Prohibitions on Guns at Election Locations](#)

### *The Threat Landscape*

I start with the legal bases for countering efforts to upend the midterm elections because we have seen, and will continue to see, federal courts ruling in favor of plaintiffs against actions of the administration, as outlined in the preceding pages. And to prepare for court challenges, as well as to rally and educate civil society, the media, faith and other community leaders, the business community and ultimately the American public, it will be imperative to understand the threat landscape. That said, an administration determined to skew outcomes in favor of Republicans will have myriad options at its disposal.

### *Laying the Groundwork*

Trump is unlikely to cancel the midterm elections. The authoritarian tends to covet elections – keep the framework in place, but ensure not to lose, so as to avoid international opprobrium while lending an air of legitimacy. Trump has congratulated authoritarian leaders on victories deemed illegitimate. Steven Levitsky and Lucan Way call the political system that gives an all-but-preordained outcome the aura of choice “[competitive authoritarianism](#).” Authoritarian regimes have a cornucopia of tools at their disposal to stay in power – undermine the rule of law, eliminate term limits, co-opt independent media and reward loyal outlets, pack the government with loyalists, push out civil servants and place allies on the bench of key courts,



deploy the instruments of government to weaken the opposition, and jail or order the assassination of opposition leaders.

Trump has threatened to issue an EO to eliminate mail-in voting. Previously, in his [Preserving and Protecting the Integrity of American Elections](#) EO, he sought to insert himself in the process and exert control over parts of the electoral system. The principal prongs of this effort to nationalize voter suppression include:

- directing the EAC to mandate proof of citizenship to register or re-register to vote – litigation challenging this requirement is ongoing;
- forcing the EAC to amend its guidelines to rescind certifications of voting systems and require new certifications under new standards – litigation challenging this requirement is ongoing; and
- directing DOGE and DHS to obtain voter files and other records maintained by election officials, all of which potentially contain sensitive personal information about individual voters.

While these prongs are being [challenged](#) in a variety of lawsuits, one could see Trump weaponizing the challenges, blaming “Democratic” or “radical Left” judges for facilitating election fraud. The certification prong could prove particularly potent, as it calls on states to adopt new technology that does not currently [exist](#). Former White House counsel Robert Bauer (under Obama) [warns](#), the EO “lays fresh groundwork for an attack on the outcome of elections that involves claims of compromised or errant voting machinery.” Trump first attempts to mandate technology that states cannot adopt, and then uses that failure as an excuse to seize voting equipment.

Separately, Trump has directly or through enablers:

- ***Pivoted from one tactic to the next.*** When the Supreme Court pushed back on his deployments of National Guard, and as his mid-decade redistricting effort trends towards a draw on new seats created, he directed his Attorney General and DNI to seize ballot boxes, with varying justifications. Is this just about showing there is little that can stop him, while seeding doubt in the minds of American citizens about election security and privacy of voting decisions. Or let’s drill deeper and consider the following; the seizure of specific voting machines in Georgia and Puerto Rico, ostensibly to provide the machines were vulnerable to foreign interference, are deemed vulnerable and decertified, forcing election officials to count ballots manually.
- ***[Called](#) for voter ID for the midterms, “whether approved by Congress or not!”*** Trump went on to say, “the People of our Country are insisting on Citizenship, and No Mail-In Ballots, with exceptions for Military, Disability, Illness, or Travel.” He then issued a second post threatening to act by EO. **(Y2, Week Four).**<sup>56</sup>

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<sup>56</sup> In his second post, Trump urged the Supreme Court, as it considers the tariffs, to consider that,

- ***[Called](#) on Republicans to “nationalize” elections and “take over voting” in 15 unspecified locations.***
- ***Continued to repeat the baseless claim that the 2020 election was tainted by massive and widespread fraud,*** and in June called for the appointment of a special prosecutor - “The evidence is MASSIVE and OVERWHELMING. A Special Prosecutor must be appointed. This cannot be allowed to happen again in the United States of America! Let the work begin!” As recently as ***Y2, Week Three***, Trump has ***[doubled down](#)*** on the debunked allegations that the 2020 was “rigged and stolen.”
- ***Weaponized the DoJ to serve his own ends,*** including by gutting and fundamentally changing the priorities of the storied Civil Rights Division. According to ***[Mother Jones](#)***, about 250 lawyers (70%) have ***[left](#)*** the Division since January, and its voting section, which enforces the Voting Rights Act and other voting rights laws, has fallen from 30 lawyers to just a ***[handful](#)***. Political appointees have removed all the ***[senior managers](#)*** in the voting section and ***[ordered](#)*** the dismissal of every major active voting rights case, including lawsuits challenging restrictive voting laws and gerrymandered maps in Arizona, Georgia, and Texas. The head of the Division, Harmeet Dhillon, has shifted the Division from countering racial discrimination in voting to prioritizing Trump goals of voter suppression in the guise of “preventing illegal voting, fraud, and other forms of malfeasance and error.”
- ***Set up new task forces*** – DoJ’s Weaponization Working Group, the New Jersey U.S. Attorney’s Office Election Integrity Task Force and the D.C. U.S. Attorney General’s Special Unit: Election Accountability that can target voters, election officials, perceived political adversaries and journalists in search of alleged widespread voter fraud, which does not exist, and thereby enable election interference through investigations of perceived opponents, targeting of election officials for just doing their jobs and casting doubt on election systems.
- ***Repeatedly threatened to prosecute election officials and to target nonprofit organizations*** involved in voter engagement, election monitoring and litigation to protect access to voting.
- ***Rewarded election deniers*** with key appointments in the administration, including positions with oversight of election security. An election denier involved in efforts to challenge the 2020 election, ***[Heather Honey](#)***, was appointed to the newly created role of Deputy Assistant Secretary for Election Integrity and the CISA Director of Public Affairs is Marci McCarthy, a former

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“the Corrupt and Deranged Democrats, if they ever gain power, will not only be adding two States to our roster of 50, with all of the baggage thereto, but will also PACK THE COURT with a total of 21 Supreme Court Justices, THEIR DREAM, which they will submit easily and rapidly when they immediately move to terminate the Filibuster, probably in their first week, or sooner. Our Country will never be the same if they allow these demented and evil people to knowingly, and happily, destroy it.”

Georgia GOP Party official who [questioned](#) the integrity of the 2020 election and [claimed](#) that January 6th was “set up and orchestrated by the FBI.”

- ***Sidelined key law firms***, which among a number of adverse consequences has diminished the legal resources available to voters whose voting rights have been abridged or denied and the voting rights groups championing their causes.
- ***Ordered criminal investigations*** of those who have tried to hold him accountable.
- ***Questioned free speech*** of those who criticize him or his policies.
- ***Pressured social media platforms*** to do away with content moderation and thereby allow disinformation to flow far more freely, all in the guise of protecting free speech and countering the “censorship industrial complex” purportedly deployed against conservatives.
- ***Bullied news outlets*** through a combination of lawsuits and FCC pressure.
- ***Ordered DoJ to investigate*** ActBlue, targeted former head of CISA Chris Krebs in an EO, and set the ***stage for the targeting*** of pro-democracy, voter registration and GoTV groups;
- ***Dismantled the federal government’s capabilities to counter foreign and domestic interference***, by gutting election security/disinformation units at CISA, DHS and FBI. Election security teams at CISA and assistance to local election officials have been cut back, increasing the risk of chaos and doubt about the security of voting systems and the ability to counter election-targeted disinformation. The CISA work force is down an estimated 1,000 staffers (approximately one-third).
- While there have been no ***arrests of officeholders or candidates*** for office, the administration is investigating Sen. Adam Schiff and has [charged](#) Rep. LaMonica McIver with assault. Just before the Democratic mayoral primary, ICE agents [arrested](#) Democratic candidate Brad Lander as he was escorting a migrant out of a New York City court. DoJ has charged Jim Comey and Letitia James.
- ***Created a force potentially answerable only to him*** – ICE. And while ICE ostensibly is tasked with immigration enforcement, who knows how they might otherwise be deployed. Missouri Attorney General Catherine Hanaway [announced](#) she was referring to ICE a canvassing firm involved in a grassroots referendum campaign.

Trump ***pardoned the January 6 insurrectionist***, which has the potential to encourage vigilante efforts “to protect” future elections. One would not be wrong in interpreting the pardons as a giving a green light to election-wrongdoing and interference, with the prospect of a pardon or commutation if arrested and prosecuted.

Donors, campaign workers and candidates may question whether participation in the political process is worth the risk of harassment and prosecution.

## Changing Electoral Rules

Trump [pressured](#) Texas Gov. Abbott to call the state legislature to **redraw congressional districts** mid-decade. Other red states are considering doing the same, prompting California and other blue states to do the same in response. Trump reportedly threatened Republicans who have resisted redrawing maps with primary challenges.

Trump instructed the EAC to require proof of citizenship to vote and demanded that ballots received after Election Day, even if mailed before Election Day, not be counted. These have been [blocked](#) by federal judges.

DoJ has ordered a number of states to provide it with voter-registration records containing detailed private information about voters. DoJ is [suing](#) states that fail to comply, potentially setting the stage for allegations of fraud. Last summer, following election advice provided by Putin, Trump announced a plan to ban voting-by-mail and requiring paper ballots. No EO has emerged, but again he could use mail-in voting as a justification for claiming elections were tainted by fraud. His insistence that voting machines are not secure and the failure to take steps “to fix” the vulnerabilities could also serve as a pretext for claiming the elections were tainted by fraud.

In September, Reuters [reported](#) that the acting U.S. attorney for Nevada, Sigal Chattah, had directed the FBI to investigate claims of voter fraud in Nevada, hoping that a probe would help Republicans keep the House. (Shortly thereafter, Chattah’s appointment was ruled by a federal judge to be invalid.)

One variable to keep an eye on will be timing. Could an EO be issued for example just before Election Day making it far more difficult to obtain effective emergency relief from the courts.

## Starting this Summer

Trump could order ***federal law enforcement agents (including ICE agents), National Guard units or active-duty military to patrol streets in Blue districts***. This could be intended to depress canvassing, voter registration efforts and attendance at campaign rallies.

Recall that during the November gubernatorial race in New Jersey, Mikie Sherrill’s service records were leaked. There are a number of veterans running for election or re-election in 2026 whose records could also be leaked to embarrass candidates.

## Just Before/on Election Day

DoJ announced it would send ***poll monitors*** to observe 2025 elections in New Jersey and California. This could have been a test run for use of monitors in 2026 to intimidate poll workers and voters.

Trump could order ***federal law enforcement agents (including ICE agents), National Guard units or active-duty military to patrol streets in Blue districts***. While federal law [specifically bans](#) the presence of “any troops or armed men at any place where a general or special election is held, unless such force be necessary to repel armed enemies of the United States,” that may not matter to Trump.

In addition, although there are no emergency powers that authorize a president to intervene in elections, including for example, national security grounds to prevent foreign interference to change voter results, Trump ***could invoke the Insurrection Act***, either to enforce federal law or protect voters' constitutional rights against an alleged attack.<sup>57</sup>

The presence of National Guard, active-duty military or federal law enforcement agents on the streets at the very least could be used to intimidate voters and depress turnout at the polls. Worst case, any of the federalized agents could be ordered to ***shut down access to polling stations, seize voting machines, suppress protesters or arrest political leaders who fail to comply with his orders***. Yes, these would be illegal, but it might only take isolated compliance with these orders, to create havoc and dissuade voters from voting. And, recall, voting at the polls for the midterms on Election Day only happens on November 3 – that date cannot be changed and the election cannot be rerun if marred by illegal actions.

Trump could use DOJ or DHS ***to pressure states into cooperating with investigations into alleged election fraud and threaten criminal investigations of election officials and election workers into alleged election-day “irregularities.”***

There is one other set of threats – the ***vulnerability of the communications and information environment to manipulation***, through disinformation and other malign efforts. As I set out in two briefing notes (available [here](#) and [here](#)) ahead of the 2024 election, there was significant concern that AI-generated deepfake technology combined with micro-targeting could be deployed to wreak considerable havoc on Election Day. These could include, by way of example:

- fake personalized text messages or robocalls advising that the local polling station (remember these are micro-targeted) has been closed and voters should just text their votes in or directing them to an alternate (and incorrect) polling place;
- a fake presidential address saying that foreign hacking had been discovered and so polls would be open for an additional 48 hours;
- social media messages or robo-texts/calls warning voters that election rolls would be checked against outstanding warrants or unpaid taxes, or that any person ever found guilty of any crime cannot vote and doing so is a crime, or that law enforcement would be manning the polling stations; or

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<sup>57</sup> Cleata Mitchell, the former Trump counsel who helped his efforts to overturn the 2020 election and now [heads](#) the Election Integrity Network, a national network of election deniers, on a [podcast](#), referenced emergency powers that Trump could invoke to control national elections – Trump’s “authority is limited in his role with regard to elections except where there is a threat to the national sovereignty of the United States – as I think that we can establish with the porous system that we have.” As Matt Choen writing in *Democracy Docket* [notes](#), “It isn’t clear whether Mitchell’s comments were based on knowledge of Trump’s thinking, or whether she was speculating on what she believes Trump has the power to do.”

- videos circulated on social media showing election workers throwing away ballots.

**Y1, Week Fifty-One**, during his Oval Office interview with the *New York Times*, when asked about seizing voting machines in 2020, Trump responded that “he regretted” not doing so, and then pivoted to the practical difficulties rather than the fact seizure would have been illegal: “I don’t know that they [the National Guard] are sophisticated enough. You know, they’re good warriors. I’m not sure that they’re sophisticated enough in the ways of crooked Democrats and the way they cheat, to figure that out.” He then avoided answering a follow-on question as to whether he would issue a seizure order in the future. See [New York Times](#) reporting.

**Y2**, as noted above, we have the [seizure](#) of voting records in Fulton County and Trump’s [musings](#) about nationalizing voting.

### After Election Day

Recall in 2020 the “red mirage,” followed by the “blue wave” reflecting a greater number of Democrats voting by mail. In his blocked elections EO, Trump directed the Attorney General to target states that count ballots that arrive after Election Day (but are postmarked by then), arguing that “federal law establishes a uniform Election Day across the Nation” and that any ongoing counting is thus illegal. Even if permanently enjoined, Trump could use the same argument in lawsuits seeking to throw out any such votes.

*A flurry of lawsuits in close House districts or states with close Senate races* could aim to give Republican candidates an edge. (Recall in the 2024 race for the North Carolina Supreme Court, Republican Jefferson Griffin challenged the narrow win by Democrat Allison Riggs following his early lead, and came close to succeeding in throwing out overseas ballots and ballots from Blue areas which failed to include social security numbers. The state court sided with him; a federal judge handed the race to Riggs.)

In 2020, Trump tried to have his Attorney General, DoD and DHS [seize](#) voting equipment. Election officials refused to cooperate and successfully resisted the interference. Already there has been one instance of testing resistance, when a DHS official and an individual claiming to work for the administration [reportedly asked](#) at least 11 election officials in Colorado for access to their voting equipment. Recall too that in Colorado, election clerk Tina Peters gave someone associated with My Pillow CEO Mike Lindell access to voting equipment; she was [convicted](#) and sentenced to prison; Trump and his DoJ have championed her case, though [are powerless](#) to overturn her conviction in state court. Trump [granted](#) Peters a symbolic pardon **Y1, Week Forty-Nine**.

*Trump could repeat the same thing, and order the military or federal law enforcement agents to seize voting machines in battleground states.* Attempts to seize voting equipment could be accompanied by *instructions not to certify election results*. In 2020, Trump pressured election officials in [Georgia](#) and [Michigan](#) to reject election results and, since then, more than 30 local officials in Arizona, Colorado, Georgia, Michigan, New Mexico, North Carolina, Pennsylvania, Utah, and



Virginia [refused to certify](#) election results, often [citing](#) a lack of [trust](#) in [voting equipment](#). It is not at all irrational to see the deployment of National Guard and Marine units in LA, and subsequent deployments of National Guard in other Blue cities, as dress rehearsals for deployments in advance of the midterms.

In 2026, Republicans could allege elections won by Democrats were tainted and Trump could seek to recruit state and local election officials to help the effort, particularly where these officials are election deniers. Threats from DoJ could add to the pressure on these officials.

And if there are various narrow Democratic wins that provide a narrow majority for the Democrats, Republicans could refuse to seat these Democrats.

### January 3, 2027

A worrying scenario: control of the House comes down to a few close races that have yet to be called but in which the Democrat is ahead. Trump alleges widespread fraud and convinces Speaker Johnson not to seat any of the Democrats in the contested seats.

Or Johnson could delay seating winning Democratic candidates just beyond the date for voting on the Speaker.

Recall that under the 20<sup>th</sup> Amendment, every two years voters elect a new House, which is seated on January 3. While individual states administer elections and certify congressional elections, the House is vested under the Constitution (Article 1, Section 5) with the authority to judge the elections, returns and qualifications of its members. The Federal Contested Elections Act [allows](#) losing candidates to challenge the election of their opponent (the contestee) and separately a House member can challenge the right of another to be sworn in. Challenges go to the House Committee on Administration, which [can recommend](#):

- dismissal upon a motion to dismiss by the contestee;
- the seating of a certain candidate on the grounds that he or she received a majority of the valid votes cast;
- a recount and investigation of any fraud or irregularities in the voting process in various precincts;
- seating of a certain candidate after the committee has conducted a recount and investigation; or
- that the returns from the election be rejected and that the seat be declared vacant and a new election be held.

The Committee's recommendation is voted on by the full House, by majority vote. In *Roudebush v. Hartke*, the Supreme Court held that the final determination of the right to a seat in Congress in an elections case is not reviewable by the courts because it is "a non-justiciable political question," and that each House of Congress in judging the elections of its own members has the right under the Constitution to make "an unconditional and final judgment." (See also [Deschler's Precedents](#) (House precedents from 1936-2013)).

### Sounding the Alarm

See "Face the Nation" [interview](#) with Sen. Mark Warner.



## CORRUPTION WATCH

### Tom Homan and his Cash Payment

**Y1, Week Thirty-Seven**, Carol Leonnig and Ken Dilanian [report](#) that, as part of an uncover operations in the summer of 2024, the FBI recorded Border Czar Tom Homan accepting \$50,000 in cash after indicating he could help the faux business executives win government contracts in the second Trump administration. DoJ and the FBI planned to wait to see whether Homan would deliver on his alleged promise once he joined the administration, but the case stalled soon after Inauguration Day and, in recent Y1, Weeks, after Kash Patel requested a status update on the case, the case was closed.

When asked by Fox News host Laura Ingraham about the report, Homan responded “I did nothing criminal. I did nothing illegal.” He did not deny receiving the cash. Presumably the recording still exists. The presumed basis for a charge would have been [18 U.S. Code § 201](#), which only applies to a serving public official or “person who has been selected to be a public official.”

Democrats on the Senate Judiciary Committee sent letters to the [FBI Director](#) and to [the Attorney General and Deputy Attorney General](#) demanding answers, among others, on when these officials were informed of the FBI investigation into Homan, who ordered that the probe be closed and what the involvement of the White House was. Democrats on the House Judiciary Committee also [sent](#) a letter to the Attorney General and FBI Director. See [New York Times](#) coverage.

Homan is no stranger to the rule of law debate. In March, in response to the judicial orders relating to the deportation of alleged TdA members to El Salvador, he [exclaimed](#) “We’re not stopping. I don’t care what the judges think. I don’t care what the Left thinks. We’re coming.” Homan asked the Deputy Attorney General to open an investigation of Alexandria Ocasio-Cortez for educating her constituents on their constitutional and legal rights.

See op-ed by a former Department of the Interior IG (“[The Tom Homan Affair Has More Red Flags Than a May Day Parade](#)”).

### Hatch Act Violations?

Spend time at the intersection of politics and federal employees, and you would be hard pressed to escape notice of [Hatch Act](#) restrictions.

**Y1, Week Thirty-Nine**, Public Citizen filed a complaint with the Office of Special Counsel against the SBA and HUD alleging that website banners violate the Hatch Act.

The SBA website banner read: “Senate Democrats voted to block a clean federal funding bill (H.R. 5371), leading to a government shutdown that is preventing the U.S. Small Business Administration (SBA) from serving America’s 36 million small businesses. Every day that Senate Democrats continue to oppose a clean funding bill, they are stopping an estimated 320 small businesses from accessing \$170 million in SBA-guaranteed funding.”

SBA employees were also directed to set their OOO messages to a script blaming Democrats: “I am out of office for the foreseeable future because Senate Democrats voted to block a clean federal funding bill (H.R. 5371), leading to a government shutdown that is preventing the U.S. Small Business Administration (SBA) from serving America’s 36 million small businesses.”

A message at HUD said that Democrats would “inflict massive pain on the American people.” After the shutdown, the message was updated to read “The Radical Left in Congress shut down the government. HUD will use available resources to help Americans in need.”

While these messages clearly cross the line for federal agencies that are supposed to be providing services in a nonpartisan fashion, they may not technically violate the Hatch Act as they are not attempting to influence campaigns or elections.

### **Conflicts of Interest**

**Y1, Week Forty-Two**, Trump reportedly is said to be demanding \$230 million in compensation from DoJ. The *New York Times* [sets out](#) that Trump apparently has filed two administrative claims, the first, submitted in 2023, seeks damages for the FBI and special counsel investigations into Russian influence over the 2016 elections and the second, submitted in 2024, relates to the classified documents raid on Mar-a-Lago. Any decisions by his former personal lawyers now in senior positions at DoJ raises conflicts of interest issues. *The Guardian* reports that the demands are being made under the [Federal Tort Claims Act](#). See [Guardian](#) coverage. See also [Associated Press](#) coverage.

**Y1, Week Forty-Five**, as part of the deal reached in the Senate to end the shutdown, Senate Majority Leader John Thune inserted a provision that could net eight Republican Senators for having their phone records collected. The provision would require electronic services providers to notify a Senate office if the provider receives a request to disclose data from that senator or the senator’s office. The provider cannot be prevented by court order from making the notification, though the notification can be delayed if part of a criminal investigation of the senator.

*POLITICO* [reports](#) that Democrats on the Senate Appropriations Subcommittee on the Legislative Branch were not consulted on the provision as part of the otherwise bipartisan bill. *POLITICO* quotes Sen. Martin Heinrich, the ranking member on that Subcommittee, as saying, “I am furious that the Senate Minority and Majority Leaders chose to airdrop this provision into this bill at the eleventh hour – with zero consultation or negotiation with the subcommittee that actually oversees this work. This is precisely what’s wrong with the Senate.”

Chief Judge Boasberg had approved measures that would have precluded providers from notifying the eight senators that their data had been requested by federal law enforcement agents.

Last month, counsel representing Jack Smith sent a [letter](#) to Judiciary Committee Chair Grassley to try to correct the record regarding what they characterized are “inaccurate” claims that Smith “wiretapped,” “spied on” or “surveilled” GOP lawmakers as part of his

investigation into Trump's efforts to overturn the 2000 election and, in particular, the issuance of grand jury subpoenas for the toll records of the eight senators and one member of the House in the days leading up to, during and immediately after the assault on the Capitol. Multiple GOP lawmakers have incorrectly alleged that Smith had "tapped" their phones, "spied" on their conversations or "surveilled" their communications, when in fact toll records do not reveal the content of any message or phone call, but rather record, after the fact, electronic routing information – the incoming and outgoing phone numbers, the time of the calls and their duration.

Counsel, in their letter, explained: "The subpoena's limited temporal range is consistent with a focused effort to confirm or refute reports by multiple news outlets that during and after the January 6 riots at the Capitol, President Trump and his surrogates attempted to call Senators to urge them to delay certification of the 2020 election results. In fact, by the time Mr. Smith's team conducted the toll records analysis, it had been reported that President Trump and Rudy Giuliani tried calling Senators for such a purpose, with one Senator releasing a voicemail from Mr. Giuliani." Counsel also noted that Volume 1 of the Special Counsel's Report [describes](#) some of the calls made to GOP Senators during the assault and contains a footnote that refers to the use of toll records in the investigation. They also point out that the records in question were provided as part of discovery to Trump's personal counsel, some of whom are now senior officials at the DoJ.

**Y1, Week Forty-Six**, the House passed a bill (426-0) repealing [the law](#) that would have allowed senators to sue if they were not notified when law enforcement seeks their phone records.

### **Federal Judge Attends a Trump Rally**

**Y1, Week Forty-Eight**, Ruth Marcus, writing in The New Yorker ("[The Federal Judge at the Trump Rally](#)"), reports that Judge Emil Bove attended Trump's campaign rally in Pennsylvania. Marcus notes that the day after the rally, Fix the Court filed an ethics complaint, calling the rally a "highly charged, highly political event that no federal judge should have been within shouting distance of." Marcus cites Jeremy Fogel, a former federal judge as saying, "This violated the spirit, if not the letter, of Canon 5, which is the ban on political activity, and it creates at least an appearance of a lack of impartiality." Former federal appeals-court judge J. Michael Luttig was more blunt, "I've never known a federal judge who would have ever attended that event. It's entirely inappropriate for a sitting federal judge, especially Judge Bove, given the controversial circumstances of his confirmation."

Marcus underscores that "Bove's attendance at Trump's campaign rally offered proof, if any more was needed, of his lack of judicial temperament." She cites the irony that Bove's former colleagues continue to denounce alleged partisanship of federal judges who dare to rule against Trump. At a Federalist Society meeting last month, Deputy Attorney General Todd Blanche, called out "rogue activist judges," three times describing the Administration's conflict with them as a "war." These judges, he complained, "have a robe on but they are more political or certainly as political as the most liberal governor or D.A." The following Y1, Week, his office ordered U.S. Attorneys across the country to submit two to three examples of "unusual judicial system

obstacles” to the Trump agenda. Blanche and his boss the Attorney General then declared on X that DoJ “has no tolerance for undemocratic judicial activism.”

### **Emirati Investment**

**Y2, Week 2**, the Wall Street Journal [reported](#) that, just before Inauguration Day, Sheikh Tahnoon bin Zayed Al Nahyan, the brother of the UAE president, the UAE national security adviser and the head of the UAE’s largest wealth fund (dubbed the “Spy Sheikh”), secretly agreed to purchase a 49% stake in [World Liberty Financial](#) for \$500 million, with \$187 million going to Trump family entities and at least \$31 million going to Witkoff family entities.

Tahnoon reportedly had been seeking access to “highly guarded” Nvidia AI chips. Let’s pause to consider this, a foreign government official taking a significant stake in a company owned and run by the family of an incoming president of the United States. The Wall Street Journal cites Biden era concerns that AI technology going to Tahnoon, one of whose companies (G42) has ties to Huawei and other Chinese firms, would end up in China.

Following a visit to the White House last March (and so after the secret investment in World Liberty Financial), the administration [committed](#) to give the UAE access to 500,000 advanced AI chips a year to build an AI data center. *See also* “[How Gulf Sheikhs Played Their Trump Cards Into a Massive AI Chip Deal](#).” Reportedly, around one-fifth of the chips were allocated to G42, causing significant concern among national security officials.

While the AI chips deal was widely reported, reporting on the investment in World Liberty Financial only surfaced this week. Back in September, Senators Warren and Slotkin had sent a [letter](#) to the acting Commerce IG, acting State IG and acting director of the Office of Government Ethics calling for an investigation into the roles of David Sacks (the AI and crypto czar) and Steve Witkoff (the Middle East envoy) in advocating for the sale of the chips to the UAE. The letter concludes,

“In the history of our country’s foreign policy, one is hard-pressed to find two senior officials with such significant conflicts of interest involved in decisions regarding national security. Such unbridled conflicts of interest have no place in the U.S. government, and we urge you to undertake a swift and thorough evaluation of these allegations. This information is also critical as Congress considers legislation for digital asset market structure and attempts to ensure that crypto corruption does not undermine our national security.”

### **Court Declines to Dismiss an SEC Complaint Against Elon Musk**

**Y2, Week Three**, in other news, Elon Musk [failed](#) in his bid to have a federal court declare an SEC disclosure provision unconstitutional. That provision (Section 13(d)) required Musk to file a Schedule 13D or 13G to report beneficial ownership of more than 5% of Twitter shares, which he did not timely do (a filing was made only after he beneficially owned more than 9% - 11 days after the first report was due). The SEC [charged](#) Musk with violating Section 13(d) in January 2025, seeking disgorgement of the amount by which he underpaid for shares he bought after failing to make the required disclosure within 10 calendar days after crossing the 5% threshold - \$150 million.



Musk had argued that the disclosure provision was unconstitutional under the First Amendment, that a rule promulgated under Section 13(d) is unconstitutionally vague, that the SEC was selectively enforcing Section 13(d) against him and that SEC commissioners were insulated against removal by unconstitutional protections. Judge Sparkle L. Sooknanan denied Musk's motion to strike and dismiss the SEC complaint (02/03/26). The SEC case against Musk continues. See [Court Listener](#) docket.

### **The Gordie Howe International Bridge**

**Y2, Week Four**, following the 9/11 attacks and the closing of the border that followed immediately after the attacks, the fact that tractor-trailer trucks cannot pass through the tunnel linking Detroit and Windsor, and the age of the existing bridge built in 1929 (the Ambassador Bridge) the decision was made to build a second bridge spanning the border between the United States (Michigan) and Canada (Ontario). Ultimately, the government of Canada financed the construction of the second bridge as well as the highway interchange on the Detroit side leading to the bridge, named after the Canadian professional ice hockey giant Gordie Howe. This crossing between Detroit and Windsor is the busiest trade corridor linking the two countries.

Trump announced he intends to block the opening of the new bridge, and it is not a surprise that the owner of the Ambassador Bridge, the billionaire Matthew Moroun. Trump [claims](#) he is doing so because Canada has failed to address a long list of his grievances. Canada is Michigan's largest export market. Trump supported the project during his first term.

It is not clear how Trump would block the opening of the bridge.

Prime Minister Carney told reporters, "I explained to the president that Canada paid for the bridge, firstly. Secondly, it's a property shared between the state of Michigan and the Canadian government and there were American steel and workers involved in the work for the bridge." Under the 2012 Crossing Agreement setting out the terms of the construction and operations of the bridge, while the bridge is to be operated and maintained by Canada, it [is jointly owned](#) by the government of Canada and the state of Michigan.

## SEEKING TO DEFY GRAVITY

### Appeal of Prior Conviction

**Y1, Week-Forty Three**, Trump is [seeking](#) to reverse his May 2024 conviction in New York court in the so-called hush money case and dismiss the indictment against him. Trump is represented by Sullivan & Cromwell. Recall Trump was convicted on 34 criminal counts, rendering him a convicted felon, but following the election, the presiding judge, Juan Merchan, granted him an “unconditional discharge.” Among other theories he argues the conviction should be reversed in light of the Supreme Court ruling on immunity and that the Judge Merchan should have recused himself. In June he had sought to transfer his state criminal case to federal court as a precursor to asking the Supreme Court to quash the conviction on the grounds of immunity.

### Failure of Imagination

**Y1, Week Forty-One**, Sen. Elissa Slotkin [delivered](#) a call to arms at the Brookings Institute Knight Forum on Geopolitics this week, warning that:

“Trump has laid out a whole lot of enemies that are American citizens. And if he’s willing to use lethal force against enemies abroad, what’s stopping him from using lethal force against his enemies at home? That question should chill every American to the bone. And I’m giving this speech today because I believe that’s exactly his plan. I believe that Trump is ready to bring the full weight of the government against Americans he perceives as enemies. Why? Because he has one goal: making sure he and his ilk never have to give up power. Now to be clear, I don’t say this lightly. But I think, between the strikes in the Caribbean, his efforts to identify domestic terrorists, and his deployment of force in American cities, that seems to be where we’re headed.”

### Twenty-Second Amendment

**Y1, Week Forty-One**, media [report](#) that Speaker Johnson spoke to Trump about a third term and suggested that Trump is not seriously entertaining a third term. Johnson referred to 22<sup>nd</sup> Amendment - “It’s been a great run. But I think the president knows, and he and I have talked about, the constrictions of the Constitution, as much as so many of the American people lament that.” Trump, the next day while on his way to South Korea, said “And, you know, based on what I read, I guess I’m not allowed to run so we’ll see what happens.” He continued, “If you read it, it’s pretty clear – I’m not allowed to run. It’s too bad.”

Steve Bannon, in an [interview](#) with The Economist, posited that Trump is “going to get a third term” and “[a]t the appropriate time we’ll lay out what the plan is. But there’s a plan.”

The operative provision of the 22<sup>nd</sup> Amendment reads as follows: “No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once.” The 22<sup>nd</sup> Amendment was adopted by Congress in 1947 (with no Republican voting against the Amendment and with the support of conservative Southern Democrats) and became part of the Constitution in February 1951, prompted by FDR’s third term.

Note that the 12<sup>th</sup> Amendment, ratified in 1804, provides that “no person constitutionally ineligible to the office of president shall be eligible to that of vice president of the United States.”

Those who have raised the prospect that Trump could still be in office on January 21, 2029 suggests that Trump could run as the vice-presidential candidate and then, following January 20, 2029 if the ticket wins, could step in if the president steps aside. So, does the 12<sup>th</sup> Amendment block this end-run? Some suggest that a two-term president could still be president as long they did not get elected as president for that third term. When asked about the end-run, Trump said that although “he would be allowed to do it,” he wouldn’t want to. “Yeah, I would rule that out, because it’s too cute. I think the people wouldn’t like that. It’s too cute. It’s not – it wouldn’t be right.”

## SUPREME COURT WATCH

In the aftermath of the oral arguments in *Louisiana v. Callais*, Michael Podhorzer [provides](#) a catalogue of why we are where we are with the Supreme Court:

- Intervention paving the way of a Republican to reach the White House: *Bush v. Gore*, *Trump v. United States* and *Trump v. Anderson*;
- Three justices served on the Bush legal team (Roberts, Kavanaugh and Barrett); five served in GOP administrations (Thomas, Alito, Roberts, Gorsuch and Kavanaugh) and one was involved in the Ken Starr investigation (Kavanaugh);
- There is a clear partisan divide in support for justice starting with Thomas that had not existed beginning with the passage of the Voting Rights Act - Burger, Blackmun, Powell, Rehnquist, Stevens, O'Connor, Scalia, Kennedy and Souter all had significant bipartisan support, while Democratic support largely evaporated for Thomas, Roberts, Alito, Gorsuch, Kavanaugh and Barrett;
- Five of the six justices were nominated by presidents that did not win the popular vote, and five of the six justices were confirmed by senators representing less than half the American population;
- Two justices sympathetic to Trump's efforts to reverse the outcome of the 2020 election did not recuse themselves in Trump-related cases;
- Each of the cases decided by the Roberts court that changed election laws in ways that helped Republicans were decided without the vote of any justices appointed by Democratic presidents; and
- Conservative jurists have called out the Roberts court for creating new law.

## CRACKS IN THE WALL

**Y1, Week Forty-Four**, Carol Leonnig and Ken Dilanian of *MS NOW* [report](#) that a federal grand jury is investigating whether FHFA Director Bill Pulte and pardon czar Ed Martin illegally shared sensitive grand jury information with unauthorized people in connection with the mortgage fraud cases against Sen. Schiff and NY AG James. Those actions may taint the investigations, resulting in dismissal of the underlying charges as well as criminal charges for those involved in the leaks. *The New Republic* [reports](#) that Deputy Attorney General Blanche may be “encouraging” the investigation by the Maryland U.S. Attorney’s office as he is concerned with errors in the high profile DoJ prosecutions.

**Y1, Week Forty-Five**, examples of Republican pushback include:

- foreign policy, with criticism of the Trump plan to end the war in Ukraine coming from Sens. McConnell, Graham and Wicker, as well as criticism from Rep. Greene over Trump’s handling of Israel, and most recently criticism over the possible invasion of Venezuela, principally from Sen. Paul;
- Trump’s proposal to send \$2,000 checks to millions of Americans from tariff revenue, which would require congressional approval;
- Trump’s “Genesis Mission” – an initiative set out in [Launching the Genesis Mission](#) EO to create an integrated AI platform (the American Science and Security Platform) that benefits from federal datasets, high-performing computing resources and AI – has encountered criticism from both Steve Bannon and Sen. Jost Hawley, a longtime critic of Section 230;
- redistricting – while Republican-controlled legislatures in Texas and Missouri have complied with White House demands to redraw congressional maps mid decade, Indiana has [pushed back](#);
- ending the filibuster and the “blue slips” tradition - Sens. Thune and Curtis have pushed back against Trump’s exhortation to kill the filibuster, and Sen. Grassley has pushed back against Trump’s exhortation to drop the tradition whereby the home-state senators can veto nominees for district court judges and U.S. Attorneys in their respective states; and
- the targeting of the fast-boats allegedly smuggling drugs is finally encountering pushback following the [bombshell reporting](#) on the No Quarter order.

When Marjorie Taylor Greene announced she was not running for re-election, she pointed to Trump’s threats to primary her, saying “I refuse to be a battered wife.” On par with Greene’s announcement is the announcement by staunch Trump supporter Rep. Troy Niels that he too would not seek re-election in 2026. Punchbowl News reports on dissention among the GOP rank and file blaming disdainful treatment by the White House and a speaker unwilling to fight back, and acceptance that they will lose the majority in 2026.

**Y1, Week Forty-Six**, I have long maintained that it is critically important to remind people that the Democrats could well control the White House and Congress in 2029 and that the statute of limitations for federal crimes generally is at least five years. I,

therefore, was pleased to see JPMorgan CEO Jamie Dimon respond as follows when [asked](#) by CNN's Erin Burnett why his firm had not contributed to the Trump ballroom:

“We have an issue, OK, which is anything we do, since we do a lot of contracts with governments here and around the world, we have to be very careful about how anything is perceived. *And also how the next DOJ is going to deal with it.* So, we're quite conscious of risks we bear by doing anything that looks like buying favors or anything like that. So, do we do things like that? And by the way, we also have policies where we don't do certain things because it makes it easier for us.” (Emphasis added)

**Y1, Week Fifty-Two**, with the unexpected death of a Republican member of Congress, Speaker Johnson now has a majority of two, though with Rep. Massie's voting record that majority is effectively down to one. See [New York Times](#) coverage.

**Y2, Week Three**, we should all take some solace in individual wins, no matter how small in a cauldron of oppression where Trump rarely backs down:

- the people of Minneapolis showed resistance can work – Bonvino is out, body cams are in and investigations are being undertaken;
- Ed Martin has been [demoted](#), apparently for irritating his nominal superiors at DoJ – as of the end of 2025, he ceased to be the chair of the DoJ Weaponization Working Group and lost his Assistant Attorney General title (he remains the pardon attorney);
- Trump backed off his threats to seize Greenland and impose additional tariffs on eight NATO allies;
- the temporary shutdown of the Kennedy Center suggests Trump did not want to continue to be embarrassed by more cancellations and plummeting attendance;
- Trump's threat to “nationalize” the elections suggests he is very worried, no doubt exacerbated by the 32-point swing in Saturday's Texas Senate run-off election, that Democrats will regain the majority in the House and possibly the Senate in November; and
- Trump's polling numbers are underwater.

**Y2, Week Four**, Gail Slater, the Assistant Attorney General for Antitrust [announced](#) she was stepping down (generally reported as having been pushed out). A veteran antitrust attorney who pledged during her confirmation hearing to resist political pressure and reportedly was an ally of the Vice President, Slater had bipartisan support (she was confirmed with 78 votes). The *Washington Post* noted that, this past summer, two of Slater's top deputies, Roger Alford and William Rinner, were placed on administrative leave after clashing with lobbyists working for Hewlett Packard Enterprise, which was trying to settle a DoJ lawsuit over its \$14 billion acquisition of Juniper Network. The settlement was pushed through by then chief of staff to the Attorney General, Chad Mizelle, [according](#) to the *Wall Street Journal*. Slater opposed the HPE/Juniper merger (because the deal potentially created a duopoly for cloud-computing and wireless-networking systems) as well as the firings. The *Guardian* [described](#) the strained relationship between Bondi and Slater, as well as Slater's isolation from her former ally, Vance.



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## WORRYING TRENDS

### Targeting Urban, Liberal White Women

In the aftermath of the killing of Renee Good, Republican officials and conservative commentators moved beyond labelling Good a “deranged lunatic” and a “domestic terrorist,” to coining a new phrase and acronym, “Affluent White Female Urban Liberal” or “AWFUL” (at times shortened to “AWFL”).

Clyde McGrady, writing in the New York Times ([“After Renee Good Killing, Derisive Term for White Women Spreads on the Far Right”](#)), reports that the killing of Renee Good seems to have sparked a right-wing response targeting white women in the streets, despite the fact that men have been equally involved.

Michelle Goldberg, in her op-ed ([“The Right Is Furious With Liberal White Women”](#)), reports that Fox News warns of “organized gangs of whine moms” deploying “antifa tactics” against ICE, while [PJ Media](#) calls out as the “greatest threat to our nation” a “group of ‘unindicted domestic terrorists’ who are just AWFL.” The Canadian influencer Lauren Chen, Goldberg notes, [posted](#) that the ideology of women like Renee Good is “almost wholly responsible for the decline of Western civilization.” Radio host Erik Erickson [posted](#), “An AWFUL (Affluent White Female Urban Liberal) is dead after running her car into an ICE agent who opened fire on her. Progressive whites are turning violent. ICE agents have the right to defend themselves.”

Trump and his enablers have had to double down on a narrative to counter [widespread revulsion](#) at Renee Good’s killing, sparked because Americans are not used to seeing militarized violence against a middle-class white mother. Hence the labelling of Renee Good as a “domestic terrorist,” the lies about how she was shot and killed and the fiascos over the investigations. Those speaking out or protesting ICE operations need to be cast as “enemies of the state,” as “insurgents,” as “deranged leftists.”

Goldberg and others have called out the irony – contempt for white women historically had tended to associated with the left, and now conservatives, who for at least five years, have decried the perceived demonization of white people have now elevated white women as the enemy. MAGA has deep white nationalist roots, but that orthodoxy celebrates “loyal” women. As a lesbian and an activist for the rights of immigrants, Renee Good did not comport with the MAGA ideal.

Liberal white women are only the latest target of the right-wing information ecosystem. This follows the targeting in recent months of Jews (Tucker Carlson’s [embrace](#) of Nick Fuentes) and Indian Americans (which Vivek Ramaswamy [called out](#)). This is just a newish manifestation of the Great Replacement theory embraced by the Trump base.

McGrady quotes political scientist and co-editor of the book “The Right Women: Republican Party Activists, Candidates, and Legislators,” Dr. Shauna Shames, who attributes the targeting of white, urban women to fears around race, gender and immigration among white, non-college men who see their “place in society” is

slipping. He also quotes Laura K. Field, author of the book “Furious Minds: The Making of the MAGA New Right,” who said social, demographic and economic changes had left men with a sense that they have lost status. “Women are, for many of them, the place holder for their ‘stolen’ status.”

Perhaps there is a crack in the right-wing ecosystem. On his [podcast](#), Joe Rogan said, referring to the killing of Renee Good, “It’s complicated, obviously, but it’s also very ugly to watch someone shoot a U.S. citizen, especially a woman, in the face.”

### **Excessive Use of Force on the Streets of America**

**Y2, Week Three**, Democrats, led by Sen. Richard Blumenthal and Rep. Robert Garcia, provided a forum for Americans to hear what is happening on our seats. No one from DHS showed up, and no Republicans showed up.

Renee Good’s brothers delivered an emotional tribute to their sister. They were joined by [Martin Daniel Rascon](#), a 23-year old American citizen, who was shot at in August by plainclothes Border Patrol agents in California. Rascon also described later having his home broken into by agents to detain his father-in-law, Francisco, who thereafter was released from custody by order of a federal judge and had charges dismissed. Marimar Martinez, also an American citizen, was shot five times by Border Patrol agents last fall in Chicago, while Aliya Rahman, another American citizen who recounted [being pulled](#) from her vehicle after telling agents she is disabled (the video of this encounter went viral).

A 79-year old American citizen [was body slammed](#) to the ground twice by agents in California last summer when ICE descended on his car wash business. He has [filed](#) a \$50 million civil rights claim under the Federal Tort Claims Act against DHS, CBP, ICE and Border Patrol. Another American citizen [filed](#) a lawsuit under the Federal Tort Claims Act against CBP, ICE and Border Patrol following his arrest and detention for more than 24 hours after filming an ICE raid at a Home Depot store and telling a truck driver not to exit his vehicle or answer questions from agents.

Recall that ProPublica, back in October, [reported](#) on more than 170 American citizens having been arrested and held by ICE.

## ACCOUNTABILITY

- [Jack Smith testifies](#)
- [An agenda for the next Dem House](#)
- [Prosecuting federal agents](#)
- [Governors/lawmakers fight back](#)
- [District attorneys fight back](#)
- [Tools of resistance](#)
- [Congress must act](#)

### Special Counsel Jack Smith Testifies

**Y2, Week One**, who would have thought that Special Counsel Jack Smith would have been given a platform to defend his decision to bring two criminal indictments against Trump, one for seeking to overturn his electoral defeat at the hands of Joe Biden and of unlawfully removing and failing when asked to return classified documents from the White House. Recall that following Inauguration Day, Smith has kept a very low profile. But, never tiring of his crusade to remind Americans, notwithstanding the plethora of evidence to the contrary, that he really won the 2020 election, Trump wanted a spectacle and was not satisfied with [closed-door](#) testimony back in December. So Trump's enablers on the House Judiciary Committee called for public testimony, presumably hoping that some misstatement would provide the justification for a DoJ investigation (à la Comey). That testimony [was delivered](#) at a hearing this week.

Over the course of five hours, the Republican committee members hammered away at process (tactics, really such as subpoenas to obtain toll phone records and payments to confidential informants, all standard procedure, and whether he had properly signed his oath of office) to impugn Smith's motives and largely stayed away from his findings, for that would have been met with testimony that Smith firmly believed that had the cases gone to trial, there was ample evidence to secure jury convictions. And it would have forced some lawmakers to confront uncomfortable truths; after all some were among the members who fled the insurrection and condemned the attack at the time.

Smith easily batted away frequent attacks that he had "weaponized" the criminal justice system and was acting at the behest of the Biden administration: "No one should be above the law in this country, and the law required that he be held to account. So that is what I did." Smith did not apologize for, or regret, prosecuting Trump - "The rule of law is not self-executing," he said. "It depends on our collective commitment to apply it. ... My belief is that if we do not hold the most powerful people in our society to the standards of the rule of the law, it can be catastrophic."

In the middle of the hearing, the White House social media account [accused](#) Smith of being "a deranged animal, who shouldn't be allowed to practice Law" and sent another directive to Pam Bondi, "Hopefully the Attorney General is looking at what he's done, including some of the crooked and corrupt witnesses that he was attempting to use in his case against me." The irony should not be lost on anyone

that the very tactics and motivations that Republican lawmakers accuse Smith of are standard operating procedures for the Trump DoJ (including today's post).

Committee Democrats have asked that the hearing continue as soon as the report on the classified documents prosecution is unsealed, allowing Smith to shed more light on the second set of charges. See [videos](#) of Rep. Jim Jordan's, Rep. Jamie Raskin's and Rep. Pramila Jaypal opening statement.

### **An Agenda for the 120<sup>th</sup> Congress under Speaker Jeffries**

It should be beyond debate that the country will need to rebuild trust, rebuild institutions and reconstitute a federal workforce. It should also be beyond debate that it is relatively simple (Trump has shown the way with his [225](#) EOs (January 20-December 31, 2025) to destroy, and that rebuilding when it is axiomatic that this will not be about returning to a pre-2025 world, will be complex, time-consuming and fraught.

If past indeed is prologue, Democrats will be severely challenged by internal divisions in seeking to fashion an answer to Project 2025. Admittedly that answer will have multiple workstreams based on legislative leverage. The safest bet at this point is that Democrats will control the House beginning January 3, 2027. Perhaps the Democrats will ride a wave of revulsion and take the Senate as well, but the Senate map has always proven a challenge and demographics invariably impose a cap somewhere short of 60 seats. In any case, it is hard to imagine veto-proof margins, so there of necessity will need to be a 2027 agenda and a 2029 agenda. And, those agenda will likely have an affirmative policy component and an accountability component. See [Young Democrats](#) menu of legislative reforms.

There is also another imperative to consider. If there is an electoral wave in 2026 it will because Independents and moderate Republicans shift away from MAGA to counter the carnage. That then presents a cautionary tale and an opportunity to focus on policies that have broad support of the American people, such as protecting privacy of Americans online, providing greater oversight of evolving technologies including AI, and countering climate change.

There will also be another imperative to consider in the interval between the midterms and the presidential election. How to ensure there are free and fair elections in 2028. This then means:

- protecting voting rights – strengthen Federal Election Commission
- amending the Insurrection Act;
- codifying norms;
- banning federal agents (not just military) at polling places
- addressing “[qualified immunity](#)”; and
- reintroducing the [Bivens Act](#), legislation [introduced](#) in 2024 by Reps. Jamie Raskin and Hank Johnson that would enable citizens to recover damages for constitutional violations committed against them by federal officials, including ICE, TSA, FBI, DoJ, and federal prison officials. Similar legislation was introduced in the Senate by Sen. Sheldon Whitehouse. (See discussion of the [Bivens](#) case, above.)

Rep. Jason Crow [has introduced](#) the No Political Enemies (NOPE) Act (*see* [summary](#) and [text](#)). He was joined by Sen. Chris Murphy, Senate Democratic Leader Schumer, and Sens. Cory Booker, Chris Van Hollen, Alex Padilla, Peter Welch, Tina Smith, Adam Schiff, Richard Blumenthal, Angela Alsobrooks and Jeff Merkley (D-OR), and Reps. Greg Casar, Chrissy Houlahan, Alexandria Ocasio-Cortez and Maxwell Frost.

The NOPE Act would:

- prohibit federal executive branch officials (“federal officials”) from targeting individuals who are U.S. citizens or nationals, green card holders or others merely present in the United States or entities (“protected targets”) whether by alleging violations of federal civil or criminal law or by launching investigations, regulatory actions or other enforcement under federal civil or criminal law in response to the exercise of protected speech or participation or otherwise intended to suppress, burden or punish constitutionally protected speech or association;
- create an “affirmative defense” in criminal prosecutions or civil enforcement actions. Relying on this defense, protected targets who present substantial evidence that protected speech or association was a motivating factor can require the government to have to prove that legitimate, non-protected grounds justified the legal action *and* that the federal officials were not substantially motivated by the protected speech or participation of the protected targets (this is similar to anti-SLAPPs legislation, which makes it far more difficult for those seeking to use the courts to harass, silence or bankrupt those speaking out on issues of public interest by forcing those critics to spend money to defend against baseless lawsuits);
- allow protected targets to seek an injunction to pause or halt federal officials from undertaking investigations, regulatory actions or other enforcement under federal civil or criminal law in response to the exercise of protected speech or participation (a federal court may also issue an injunction to halt imposing tax if the protected targets can show the denial or revocation of tax-exempt status is related to protected speech or participation);
- allow protected targets to sue federal officials for damages if they were targeted for exercising their protected speech or participation rights (this would introduce a narrow statutory *Bivens* remedy to overcome immunity);
- require the U.S. government to pay reasonable attorney’s fees and costs to protected targets who win in criminal prosecutions or civil enforcement actions if they can show the government was substantially motivated by a desire to suppress constitutionally protected speech or association; and
- prohibit the use of federal funds for any investigation, regulatory action or other enforcement action initiated or pursued to suppress protected speech or participation of protected targets. Violations would trigger the Anti-Deficiency Act.

See also [Protect Democracy](#) summary.



## Prosecuting Federal Agents

### *State vs. Federal Law*

Following the killing of Renee Good, the Vice President was quick to point out (incorrectly, I might add) that the agent who killed Renee Good had “absolute immunity.” Stephen Miller also (incorrectly) stated on Fox News, “You have federal immunity in the conduct of your duties. And anybody who lays a hand on you or tries to stop or obstruct you is committing a felony.”

Not so fast. CNN [quotes](#) Michael J.Z. Mannheimer, a constitutional law expert at Northern Kentucky University’s Salmon P. Chase College of Law as saying, “The idea that a federal agent has absolute immunity for crimes they commit on the job is absolutely ridiculous,” and quotes Timothy Sini, a former federal prosecutor in New York, as saying “Officers are not entitled to absolute immunity as a matter of law.”

A University of Wisconsin Law School [explainer](#) points out that states could prosecute federal officials for state crimes, but within limits. The limits stem from the Supremacy Clause (as confirmed in an 1890 Supreme Court case, *In re Neagle*). But Supremacy Clause immunity only applies when federal officials are reasonably acting within the bounds of their lawful federal duties. Essentially, a federal official will enjoy immunity from state prosecution if the official was doing something authorized by federal law, and the actions were “necessary and proper” in fulfilling that federal duties. In *In re Neagle* a Deputy U.S. Marshal assigned to protect a U.S. Supreme Court justice shot and killed an attacker in California.<sup>58</sup> California charged the federal marshal with murder, but the U.S. Supreme Court held that he could not be prosecuted because he was carrying out his official duties and was justified in killing the attacker as part of those duties.

In 1992, in the prosecution of an FBI sniper for killing the wife of anti-government activist Randall Weaver (in what became known as the Ruby Ridge incident), Attorney General Janet Reno chose not to prosecute the sniper under federal law, but Idaho prosecutors charged him with involuntary manslaughter under Idaho law. A split Ninth Circuit concluded that the state case could proceed because disputed facts left it unclear whether the sniper “acted in an objectively reasonable manner in carrying out [his] duties.” Shortly after that decision, the newly elected county prosecutor in Idaho chose to drop the state charges.

There is a second wrinkle in these cases, namely the question of whether these cases are to be tried in state court or federal court. [28 U.S. Code § 1442](#) allows a federal

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<sup>58</sup> The deputy marshal, David Neagle, was assigned to protect U.S. Supreme Court Justice Stephen Field following a threat to kill him by the former chief justice of the California Supreme Court, David S. Terry. Field had [ruled](#) against Terry and his wife in a case in which Terry and his wife were sentenced to prison for contempt. When Terry later attacked Field on a train in California, Neagle shot and killed him. The local sheriff arrested Neagle for killing the unarmed assailant, Terry. Field sought a writ of *habeas corpus*, which was granted, and he was released. The state of California appealed to the Supreme Court, which affirmed the release, finding that Neagle had acted in the course of his official duties protecting Field and had not committed a crime.

official to move criminal prosecutions that are brought against them from state to federal court if the case relates to the official's employment and the officer has a "colorable federal defense."

As for the act itself, in a 1985 case ([\*Tennessee v. Gardner\*](#)), the Supreme Court held that, under the Fourth Amendment, a police officer is not permitted to open fire on someone who is fleeing unless the officer reasonably believes that the person fleeing presents a serious danger to the officer or others. As David A. Graham, writing in *The Atlantic* points out ("[A Deadly Shooting in Minnesota](#)"), shooting a driver in a moving vehicle is a bad idea, and many police forces have guidelines against doing so except in extreme circumstances, as the vehicle could continue to move and injure others.

A 2023 DHS Policy Statement (004-05), tracks *Gardner* and [authorizes](#) the use of deadly force on suspects who are fleeing if an officer "has a reasonable belief that the subject poses a significant risk of death or serious physical harm" to the officer or others. According to Nick Miroff, writing in the *Atlantic* ("[Lethal Force on a Frozen Street](#)"), under ICE's rules of engagement, officers are allowed to use force if they reasonably believe their lives are in immediate danger from a weapon, including a vehicle trying to strike them.

### ***Civil Redress***

Renee Good's family could bring a wrongful death claim seeking monetary damages, but that case would be subject to a qualified immunity defense. While that defense would typically be the end of the story, courts have been known to set aside qualified immunity defenses where the facts are particularly egregious. *See Reuters'* in-depth [investigation](#) into qualified immunity defenses invoked by police officers.

The background: In brief, the [Ku Klux Act](#) was enacted after the Civil War to enable citizens to sue state and local officials to recover damages for violations of federal constitutional rights. There is no comparable legislation providing citizens with an express cause of action against federal actors for violations of constitutional rights. Plaintiffs have been left with pursuing so-called implied causes of action.

In 1971, the Supreme Court, in [\*Bivens v. Six Unknown Fed. Narcotics Agents\*](#), recognized limited circumstances when federal agents could be held to account (meaning that plaintiffs could be awarded money damages where a federal officer acting under color federal authority commits a constitutional tort). Following *Bivens*, which was a Fourth Amendment case, the Supreme Court has endorsed damages remedies for constitutional violations by federal officers in only two cases, which involved Fifth and Eighth Amendment violations.

In 1979, in *Davis v. Passman*, the Court recognized a *Bivens* claim for violation of the Equal Protection Clause of the Fifth Amendment when a Congressman fired an administrative assistant based on her gender. In 1980, in *Carlson v. Green*, the Supreme Court recognized a *Bivens* claim where prison officials failed to provide an inmate with proper medical care in violation of his Eighth Amendment right to be free from cruel and unusual punishment). Since then, starting with *Hernandez v. Mesa*, a 2020 Fourth and Fifth Amendment case against a border patrol agent in a cross-border shooting, the *Biven* remedies have been diluted and the Supreme Court has declined

to extend *Bivens* to any new causes of action, other constitutional provisions and new types of defendants.<sup>59</sup>

In addition to the apparent disdain the Supreme Court has shown for *Biven* actions and remedies, there is also the doctrine of “qualified immunity” which as a practical matter protects officials from damages “when an official’s conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.”

See [Bivens Basics: An Introductory Guide for Immigration Attorneys](#) and “[Lessons for Bivens and Qualified Immunity Debates from Nineteenth-Century Damages Litigation Against Federal Officers](#).” See also “[Measuring the Success of Bivens Litigation and Its Consequences](#).” Note a Bivens claim differs from actions under the Federal Tort Claims Act 28 U.S. Code §§ 1346(b); 2671 et seq., which is brought against the United States.

### **Governors/Lawmakers Fighting Back**

**Y2, Week 2**, the *New York Times* (available [here](#) and [here](#)) among others has catalogued recent state legislative efforts by Blue states to counter the excesses of ICE operations in their states. These include an ever-growing list of actions:

- **Gov. Newsom** and his **Attorney General Rob Bonta** (California) established a portal in December for residents to upload photos and videos of interactions with federal agents, and on Tuesday, reminded state and law enforcement officials that they had the authority to investigate possible state crimes committed by federal agents. The California State Senate [passed](#) along party lines legislation ([SB 747](#) – The No Kings Act), [introduced](#) last November, that would make it easier for California citizens to sue federal agents for violations of rights under the U.S. Constitution by allowing suits to proceed against federal defendants in state court; the bill now goes to the Assembly. The legislation is intended to fill a gap created by 42 U.S. Code § 1983, which only

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<sup>59</sup> A recent successful case involving *Bivens* remedies and a successful challenge to qualified immunity involved a Black Secret Agent detained (twice) in 2015 by two white U.S. Park Police officers while he was on protective duty (*Hicks v. Ferreyra*). The lower court [denied](#) the defendants’ qualified immunity defense and recognized the *Bivens* claims (both stops violated the Fourth Amendment). Hicks was awarded *Bivens* damages of \$730,000. In 2023, the Fourth Circuit [affirmed](#) the \$730,000 [verdict](#). In 2024, the Supreme Court declined to hear the appeal, leaving the lower court verdict intact. The key is that Hicks presented, as the Fourth Circuit wrote, a “cognizable *Bivens* claim because his claim is not meaningfully different from the [Fourth Amendment] claim asserted in *Bivens*.” The Fourth Circuit recognized the two-step inquiry mandated by [Ziegler v Abbasi](#), which calls on a court to assess whether the case presents a “new *Bivens* context” and whether the differences are material. If so, then a second inquiry is needed as to whether special factors” suggest that Congress is better equipped to determine whether a damages action should be permissible. The Fourth Circuit found that the first level of inquiry had been met, namely this was not a “new *Biven* context.”

provides a remedy for violations of U.S. constitutional rights under color of state law by state and local officers. It in effect creates a state analogue to § 1983 for violations by federal, state or local officers. The legislation would not override absolute or qualified immunity to the same extent available in suits under § 1983.

A lawmaker, Assemblyman Jesse Gabriel, [has proposed](#) introducing legislation that would require the California Attorney General to conduct an independent investigation into any shooting by federal immigration enforcement agents in the state, an extension of [an existing law](#) that already requires such investigations for shootings by local and state law enforcement. He will also co-author a bill with [Assemblymember Juan Carrillo](#) that would ban federal immigration enforcement agencies from using state resources to facilitate their operations, such as staging equipment and personnel on state property.

- **Colorado** [introduced](#) the Rights Violation in Immigration Enforcement Remedy, which would create a statutory cause of action for a person who is injured during a civil immigration enforcement action by another person who, whether or not under color of law, violates the U.S. Constitution while participating in civil immigration enforcement. A person who violates the U.S. Constitution while participating in civil immigration enforcement is liable to the injured party for legal or equitable relief or any other appropriate relief.
- In **Delaware**, legislation has been [introduced](#) that would disqualify commercial airlines from receiving a state aviation jet fuel tax exemption for economic development if they transport ICE detainees for deportation without meeting standards regarding presentation of judicial warrants and due process.
- **Gov. Maura Healey** (Massachusetts) [announced](#) a suite of actions to protect Massachusetts residents from federal agents. In the most comprehensive effort in the country to protect against ICE activity in sensitive locations, she filed legislation to keep ICE out of courthouses, schools, childcare programs, hospitals and churches; make it unlawful for another state to deploy its National Guard in Massachusetts without the consent of the governor; and allow parents to pre-arrange guardianship for their children in case they are detained or deported. She also signed an [Executive Order](#) prohibiting the state from entering into any new [INA Section 287\(g\) agreements](#)<sup>60</sup> unless there is a “specific, articulable public safety risk or need” and sunsets not later than 12 months after its issuance; prohibiting ICE from making civil arrests in non-public areas of state facilities; and prohibiting the use of state property for immigration enforcement staging, processing or operations.
- As noted above, **Gov. Pritzker** (Illinois) was an early proponent of citizen activism, urging residents to document and record abuses by CBP and ICE.

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<sup>60</sup> Doing so would prevent state and local police from acting as federal agents or using taxpayer-funded resources or personnel to carry out federal civil immigration enforcement.

He also signed a law facilitating suits by state residents against immigration agents, prompting DoJ [to sue](#), arguing that the law placed the agents in physical danger and at financial risk. He also [signed](#) an executive order [establishing](#) an Accountability Commission that would create a public record of the actions of federal agents deployed in Chicago. In the wake of Minneapolis, the Governor [has requested](#) the Accountability Commission to examine statements, policy decisions, and roles of administration officials to determine the impact of the conduct and decisions that those officials made related to Operation Midway Blitz.<sup>61</sup>

- **Gov. Gretchen Whitmer** (Michigan), vice chairman of the Democratic Governors Association (DGA), and **Gov. Andy Beshear** (Kentucky), who chairs the DGA, [issued](#) a joint statement demanding “complete transparency and accountability into this federal agent-involved shooting.”
- **Gov. Janet Mills** (Maine) [is supporting](#) legislation that, as in Massachusetts, would ban ICE agents from entering private areas of schools, child care centers and public libraries without a warrant or subpoena.
- **Gov. Mikie Sherrill** (New Jersey) [announced](#) on “The Daily Show” that her new administration would begin collecting video images of citizens interacting with federal agents and urged New Jersey residents to use their smartphones to record those interactions. State officials are working on a portal for images to be uploaded. This is the same approach taken by New York. New Jersey also is planning to ban ICE agents from staging raids from New Jersey state property and to send out information to advise residents of their rights. See [New York Times](#) coverage.
- **Gov. Hochul** (New York) [warned](#) “No one is above the law. No one, not an ICE agent, not a federal officer, not the president of the United States. And make no mistake, when these people who have abused the power entrusted to them by their offices are finally out of power, states, including New York, will hold them accountable.”

The Governor announced the Local Cops, Local Crimes Act that would eliminate [INA Section 287\(g\) agreements](#)<sup>62</sup> and would prohibit federal agents from using local detention centers for civil immigration enforcement, mass raids, or the transportation of detainees. It would also authorize individuals to bring state-level civil actions against federal officers who violate U.S.

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<sup>61</sup> The list includes: Stephen Miller, Tom Homan, Kristi Noem, Gregory Bovino, Tricia McLaughlin, Corey Lewandowski, Todd Lyons, Rodney Scott as well as additional deputies, subordinates and officials across the administration that have been involved in federal deployments.

<sup>62</sup> The announcement notes that 14 New York law enforcement agencies across nine counties have signed 287(g) agreements with ICE. Under the proposed legislation, all existing 287(g) agreements will be void and New York will join seven other states that currently prohibit 287(g) agreements: Washington, Oregon, California, Illinois, New Jersey, Delaware, and Connecticut.

constitutional rights of New York residents, consistent with the same legal standards that already exist for state and local officers under federal civil rights law.

New York Attorney General Letitia James [created](#) back in October a portal to collect interactions between residents and federal agents, following an outcry over an immigration [raid](#) in lower Manhattan on Canal Street.

- In **Oregon**, the legislature [will take up](#) a bill (the Law Enforcement Accountability & Visibility Act) that, among other things, would ban law enforcement agents from wearing masks or concealing the agencies they work for.
- In Washington, lawmakers have [introduced](#) “An Act Relating to remedies for violations of federal constitutional rights occurring during immigration enforcement” (HB 2597) – similar to the Colorado legislation, which also preserves immunities though in the negative (they do not apply to the extent permissible under the U.S. Constitution and the Washington Constitution).
- In Wisconsin, lawmakers have [introduced](#) “An Act Relating to establishing a civil cause of action for civil rights violations ([SB 355](#))” – similar to the Colorado legislation.

### **District Attorneys Fighting Back**

**Y2, Week 2**, Nine District Attorneys [have launched](#) the Project for the Fight Against Federal Overreach (FAFO – no doubt, not an accident) to assist in the arrest and prosecution of federal agents who violate state law. The Project intends to provide “mutual support” to prosecutors who are “up against the might of the federal government,” on the founders said. Thus far, nine prosecutors have signed on.

According to their press release, the coalition “launches amid growing concerns about warrantless entries, unlawful detentions, and coercive enforcement tactics by federal agents, and it’s intended to ensure that constitutional limits on federal power are actively enforced through lawful institutions.” The founding participants are District Attorneys from Minneapolis (Mary Moriarty); Philadelphia (Larry Krasner); Austin, TX (Jose Garza); Fairfax, VA (Steve Descano); Falls Church & Arlington, VA; (Parisa Dehghani-Tafti); Portsmouth, VA (Stephanie Morales); Norfolk, VA (Ramin Fatehi); Dallas, TX, (John Creuzot); and Pima County, AZ (Laura Conover).

### **Tools of Resistance**

Imagine where we would be had there been no smartphones at the time George Floyd was killed, or Renee Good or Alex Pretti. We now hear Democratic governors and others urging citizens to deploy smartphones at scale to bear witness to violations of the Constitution.

Nina Jankowicz, in her publication Wayfinder (“[They Killed Alex Pretti, But Not the Truth](#)”), interviews Eliot Higgins, the founder of [Bellingcat](#), an independent investigative collective of researchers, investigators and citizen journalists using open-source intelligence tools (OSINT) for good, and Lou Osborn, the co-founder



of [INPACT](#), a group of investigators known for their work exposing the crimes of Russia's Wagner group, and highlights the value of OSINT in bearing witness.

### **Congress Must Act**

Writing in the aftermath of the killing of Alex Pretti, the Washington Post editorial board ("[The Trump Administration Is Lying to Our Faces. Congress Must Act](#)") urges Congress, which it notes has the power to hold the administration accountable through its control of federal spending, to investigate the killings of Alex Pretti and Renee Good and the broader conduct of federal agents, including the violence directed against peaceful protesters, as part of the Trump crack down on immigration.

### **Reforming ICE**

**Y2, Week Three**, Paul Rozenzweig, a former Deputy Assistant Secretary for Policy at DHS, set out in an article in the *Atlantic* ("[How to Actually Reform ICE](#)"), a proposal for meaningful reform of ICE, HSI and the Border Patrol (collectively referred to below as ICE). He starts from the proposition that "abolishing ICE" is pointless because many of the functions of ICE are necessary and, therefore, he suggests an alternative, which calls for addressing four areas:

- **Personnel** - New ICE (as he calls it) must restore the minimum recruitment age back to 21, which had been lowered to 18 in August, and recruitment priorities should focus on applicants with relevant experience, not just those with aligned political views. Additional educational requirements should be considered. Then these new hires need to be trained, and that training needs to be better and there needs to be more of it.
- **Operations** – current ICE "is an organization whose actions, and the policies that guide those actions, are a reflection of overly aggressive enforcement priorities set by Trump, many of which are beyond the agency's normal capacity." Border Patrol agents (who normally patrol the Texas frontier) and HSI agents (trained in sophisticated transnational-smuggling investigations), in particular, are handling tasks outside their core mission and not consistent with their training or experience. Too many ICE agents on American streets "have not been trained to operate in urban environments with high levels of civilian protest activity."

[Judge Menendez](#) has set out how many of ICE's actions in Minneapolis violate the law. Her opinion and other sources, including ICE itself, tell a story of:

- arrests of peaceful protesters and legal observers,
- stops and [sometimes arrests](#) of drivers monitoring ICE,
- indiscriminate use of pepper spray, likely in violation of the First and Fourth Amendments,
- violations of [constitutional](#) restrictions on the use of force,
- breaches of ICE use-of-force policies when confronting protesters,
- [unconstitutional disregard](#) of Fourth Amendment warrant restrictions on search and seizure;

- unlawfully arrest of an individual because [he refused to show identification](#) (the detainee's family disputes whether ICE even requested ID at all);
- demand that a U.S. citizen in violation of the Constitution [submit to their facial-recognition app](#) or be arrested;
- alleged denial of [access to lawyers](#)
- more than 150 U.S. citizens have been illegally detained; an agent was filmed arresting a U.S. citizen based on the suspicion that he was an alien because he had a foreign accent; other agents wrongly arrested a U.S. citizen and forced him to leave his home dressed only in underwear and a blanket in below-freezing temperatures; reports suggest that ICE agents in Minneapolis are searching for Hmong residents – all of these are unconstitutional.

ICE agents could, if Congress wishes, be deprived of all criminal-arrest power and the authority to execute judicial warrants. They would then be empowered like TSA officers at screening checkpoints, with limited to quasi-civil enforcement authorities, such as detention and seizure. The majority of ICE agents could be disarmed.

- **Accountability** – ICE has ignored court orders, so better enforcement mechanisms are needed. New leaders (under a new administration) would help. Accountability can be enhanced by applying the exclusionary rule to immigration proceedings and by reversing the inability of citizens to sue agents for injuries, either by act of Congress or EO.
- **Organizational culture change** – a new president must not only change the leadership but may need more extensive changes in personnel further down the hierarchy. At the same time, the focus must shift to a new core mission of supporting national security through high-value investigations of transnational crime and interior immigration-enforcement action against dangerous criminals. As part of this, new ICE must replace broad sweeps in urban environments with targeted enforcement against properly identified subjects.

## POLITICAL VIOLENCE

### Stoked by Disinformation

**Y1, Week Twenty-Nine**, a gunman [opened fire](#) at the CDC's Royal Campus in Atlanta, killing David Rose, a DeKalb County police officer who had responded to the incident. Multiple CDC buildings were hit by gunfire, with the building housing CDC Director Susan Monarez's office taking the most fire.

The gunman is believed to have been anti-vaxx. In a statement to CDC staff, Monarez noted, "... the dangers of misinformation and its promulgation have now led to deadly consequences. I will work to restore trust in public health to those who have lost it-through science, evidence, and clarity of purpose. I will need your help." A statement [released](#) by the AFGE, LOCAL 2883 in solidarity with CDC staff noted that the incident "was not random and ... compounds months of mistreatment, neglect, and vilification that CDC staff have endured. AFGE called for clear and unequivocal condemnation by CDC and HHS leadership of vaccine disinformation and congressional action "to end the reckless politicization of federal employees and hold leaders accountable for rhetoric that incites hostility and vilifies public servants."

Rose died protecting a federal facility and federal employees in what even HHS Secretary Kennedy acknowledged was an act of political violence. Despite commenting on all matter of news items (consequential and inconsequential) and despite his professed obsession with law and order, Trump has yet to comment on the killing. The reason – commenting would of necessity connect violence against the police with MAGA's deep allergy to COVID vaccines. Recall that after a gunman assassinated two Democratic lawmakers in Minnesota, Trump never called Gov. Walz.

### Charlie Kirk - Another Tragic Milestone

The political assassination of Charlie Kirk follows a tragic trajectory.

- Former Minnesota House Speaker Melissa Hortman and her husband, as noted above, were assassinated in their home in June, and State Sen. John Hoffman and his wife Yvette were shot multiple times at their home that same night and survived.
- Gov. Josh Shapiro's home was targeted by an arsonist while he and his family slept inside.
- Then candidate Trump was the target of two assassination attempts in July 2024.
- Justice Kavanaugh was the target of an assassination attempt in June 2022
- Two New Mexico state legislators were targeted by a GOP candidate at the end of 2022.
- Paul Pelosi was the victim of an attack at the Pelosi's San Francisco home in October 2022, which was aimed at his wife Nancy, who was in D.C. at the time.
- District Judge Esther Salas was targeted for assassination and instead her son Daniel was killed, and her husband was injured in the attack in July 2020.

- Gov. Gretchen Whitmer was the target of a thwarted kidnap plot in early 2020.
- Rep. Steve Scalise was targeted at a baseball practice in June 2017.
- Rep. Gabby Giffords was shot in January 2011 while at a public constituent event in her district. Six were killed and 13 others were injured.

Add to that President Kennedy, Bobby Kennedy and Martin Luther King, 168 murdered in Oklahoma City. And the attempts on the lives of George Wallace and Ronald Reagan. Before that the assassinations of Presidents Lincoln, Garfield and McKinley. Attempts were also made on the lives of Presidents Truman, Franklin Roosevelt and Ford.

### **Divider-in-Chief**

**Y1, Week Thirty-Five**, Peter Baker, writing in the *New York Times* (“[In an Era of Deep Polarization, Unity Is Not Trump’s Mission](#)”), reminds us that Trump does not embrace the idea the traditional idea that the president is a president for all Americans. He is as Baker [posited](#) in 2019, president only for those you agree with him and his agenda; he excels at the politics of division. Those who do not agree with him deserve retribution. In his Oval Office address, Trump [pivoted](#) from that conventional presidential playbook of being the comforter-in-chief to his divisive self, [blaming](#) the assassination on the radicals on the left and promising revenge.

Trump promised that his administration would “find each and every one of those who contributed to this atrocity, and to other political violence, including the organizations that fund it and support it, as well as those who go after our judges, law enforcement officials, and everyone else who brings order to our country.” He called out the Butler assassination attempt, the attacks on ICE, the murder of UnitedHealthcare CEO Brian Thompson and the shooting of Rep. Scalise, but no mention of the assassinations and attempted assassinations in Minnesota, or the kidnap plot against Gov. Whitmer, let alone the attacks on law enforcement officers on January 6.

We see in the decisions and his messaging [around](#) disaster relief and his [comments](#) on crime and deployments of the National Guard to Blue cities – a war against Democrats. Baker cites Stephen Miller’s recent [post](#) suggesting based on responses to the Kirk assassination many in positions of authority have been radicalized by the left.

The Deputy Secretary of State warned foreign nationals that anyone who glorifies the assassination of Kirk “would not be welcome visitors.” Horrific as the killing was, we should remain steadfast in our application of the First Amendment – free speech is protected unless it incites violence. I do not recall similar warnings being issued in the aftermath of the 9/11 attacks, or at any other time in our recent history. It is unclear how this statement will be implemented.

Domestically, recall that Sen. Mike Lee [offered](#) condolences and called for swift justice in the aftermath of the Kirk assassination, while following the assassinations in Minnesota posted a jab at the governor, “Nightmare on Walz Street” and then posted “This is what happens when Marxists don’t get their way.” Recall that following the attack on Paul Pelosi, figures on the right, including Sen. Ted Cruz, Elon Musk, Rep.

Marjorie Taylor Greene, and Don Jr., [spread](#) conspiracy theories about the attacker and others made fun of the attack.

Musk posted on X, “The Left is the party of murder.” Re. Nancy Mace accused the “Left of [owning] what happened.” 2022 GOP candidate for Senate Blake Masters [urged](#) the FBI to destroy the NGO/donor patronage network that enables and foments” “left-wing violence.” Laura Loomer [accused](#) the Democratic Party rhetoric of “motivating the attack.”

Rep. Seth Moulton [reported](#) that his “office had received an extraordinary number of violent and graphic threats” against him, his family and his staff after calling on Trump to join Speaker Johnson in condemning political violence rather than inciting it further.

Over the weekend, Trump [continued to accuse](#) the left of fomenting violence, while denying that there is any incitement coming from the right and failing to call out any attacks that targeted Democrats.

CNN is [tracking](#) an online effort among conservatives, including Laura Loomer, to highlight social media posts and messages critical of Kirk as part of a campaign to punish those behind the posts and messages. CNN reports that a doxxing site called Expose Charlie’s Murders has been set up as part of this effort. *See generally* [The Guardian](#) coverage.

### **The Fallout**

**Y1, Week Thirty-Six**, Vance and Miller doubled down on threats to dismantle groups that celebrate Kirk’s death and political violence, with Vance vowing that the administration would “work to dismantle the institutions that promote violence and terrorism in our own country.” Miller said that DoJ, DHS and other federal agencies would “identify, disrupt, dismantle and destroy” the networks that he claims constitute an “vast domestic terror conspiracy.” There is no evidence that the alleged assassin was supported by anyone or any group.

The Guardian [reports](#) that DoJ has removed from its website between September 11-12 [a study](#) prepared by the National Institute of Justice based on research over three decades that concluded that far-right extremists have killed more Americans than any other domestic terrorist group. The study leads off with the following: “Since 1990, far-right extremists have committed far more ideologically motivated homicides than far-left or radical Islamist extremists, including 227 events that took more than 520 lives. In this same period, far-left extremists committed 42 ideologically motivated attacks that took 78 lives.” It stated that “militant, nationalistic, white supremacist violent extremism has increased in the United States” and that “the number of far-right attacks continues to outpace all other types of terrorism and domestic violent extremism.”

The Guardian also cites a study published by CSIS (“[The Escalating Terrorism Problem in the United States](#)”) which concluded, based on an analysis of 893 plots between 1994-2020, that Right-wing attacks and plots account for the majority of all terrorist incidents in the United States since 1994.” The CATO Institute [found](#) in a study released last week that right wing political right accounts for 63% of all

politically motivated killings since 1975 (excluding the 9/11 attacks) and that since 2020, “right-wing terrorists account for over half” of the 81 people killed in terror attacks on U.S. soil.”

At least eight members of the armed forces have been suspended or investigated over social media posts about Charlie Kirk’s assassination, [according](#) to Task & Purpose. Among them is Army Col. Amy Nieman, a senior JAG officer with the 101<sup>st</sup> Airborne Division, who posted on Facebook that she is “signing off for a while” from Facebook as it

“is too awful a reminder of where we find ourselves. Awful to see so many people who have never expressed outrage over the far-too-many shootings suddenly overcome. ... Awful to see the number of people who say this is the fault of one side and in no way related to the proliferation of guns or the devolution of political discourse. Awful to see bickering and histrionics instead of meaningful change.”

The story also notes that at least one vigilante online account has been created to out service members accused of criticizing Kirk. Kori Schake, head of the Defense Policy Team at the American Enterprise Institute warned that “This kind of vigilante culture war activity is terribly damaging. It’s going to drive talented people out of our military and politicize those who remain.”

While the Uniform Code of Military Justice (UCMJ) ([Article 88](#)) provides that “Any commissioned officer who uses contemptuous words against the President, the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of Homeland Security, or the Governor or legislature of any State, Commonwealth, or possession in which he is on duty or present shall be punished as a court-martial may direct,” members of the armed forces also are protected under the First Amendment, but military status may take precedence (see George Croner, *Just Security* “[Could Trump Use the Uniform Code of Military Justice to Stifle the Protected Speech of Military Retirees?](#)”). Incidentally, former members of the military are also concerned with potential courts martial under [Article 133](#) (conduct unbecoming) and [Article 134](#) (conduct prejudicing good order and discipline or bringing discredit) of the UCMJ.

**Y1, Week Forty-Eight**, NIMJ President Rosenblatt published an article in Lawfare (“[The Military’s Social Media Purge](#)”) that addresses the balancing between First Amendment and military necessity that in theory governs what serving members of the military may or may not say publicly. He begins by citing what happened to Col. Nieman and notes that:

“Nieman’s story illustrates an emerging trend of the military’s policing of social media. Normally, military members enjoy broad First Amendment rights to share their views, limited only when the speech conflicts with military duties. But the past few months have seen a ‘Kirk Purge’ in which those standards have been abandoned for newer decrees that seek to punish military members for their viewpoints. These new standards inject uncertainty about which viewpoints are disfavored, which tends to broadly chill otherwise protected expression.”



Rosenblatt notes that “Nobody can tell what’s covered by the military’s newest standards for online speech. That’s the point.” He cites the following consequences of the “Kirk Purge”: the Army recently [announced](#) that it suspended 12 service members, and DoD [announced](#) that 128 service members and 158 nonuniformed personnel has been put under investigation for their social media activity. Those numbers were announced in October; current figures are likely higher.” He concludes,

“Some well-meaning people might cheer military members hunkering down and staying quiet, especially those who think professional soldiers should keep their feelings to themselves and reduce their social media activity. But the stakes now feel higher than policing manners. The U.S. military has never had an ideological litmus test other than loyalty to the Constitution. The military’s social media purge could be a move away from that ideal.”

## Targeting “Domestic Terrorist Groups”

### *Antifa*

**Y1, Week Thirty-Six,** Trump threatens to designate antifa as a “major terrorist group.” The first problem with threat is that antifa (short for anti-fascist) is not a group, but rather a loose collective of organizations and activists. There is no organization, no headquarters, no leadership and no obvious funding source. Second, there has never been a definition of “domestic terrorism” of which I am aware (and only [foreign organizations](#) can be officially designated as a “terrorist organization”), so it is hard to see what the basis would be for that designation, though that has not stopped Trump in the past. Third, it is unclear what the connection is between antifa and the Kirk assassination and thus what the basis would be for any such designation, let alone prosecution. The report of the investigation into the assassin released to date makes no reference to membership in any group.

Al Jazeera [quotes](#) historian Mark Bray, author of “*Antifa: The Anti-Fascist Handbook*” as describing “Antifa [as] a kind of politics, not a specific group. In the same way that there are feminist groups but feminism is not, itself, a group.” Bray goes on to say that “Speaking of ‘antifa’ in the singular is misleading and plays into Trump’s efforts to repress the left. He is trying to promote the common right-wing conspiracy theory that there are shadowy financiers like George Soros playing puppet master behind everything the left does.”

This comes in the context of a broader set of concerns over the targeting of left-wing groups. The *Wall Street Journal* [reports](#) that potential actions could include review of tax-exempt status or anti-trust investigations over alleged anti-competitive behavior. Section 1105 of the Internal Revenue Service Restructuring and Reform Act of 1998 (adding new Section 7217 to the 1986 Internal Revenue Code), incidentally, [prohibits](#) executive branch influence over taxpayer audits and investigations. The Act specifically names the President and the Vice President within the ambit of the prohibition.

**Y1, Week Thirty-Seven,** Trump made good on his promise on Monday, and via his [Designating Antifa as a Domestic Terrorist Organization](#) EO in fact designated “Antifa” as a “domestic terrorist organization.” The EO cites no specific statutory

basis for his designation. The EO calls for investigations “any and all illegal operations – especially those involved terrorist actions – conducted by Antifa or any person claiming to act on behalf of Antifa, or for which Antifa or any person claiming to act on behalf of Antifa provided material support.”

Recall that in September 2020, when Trump said he would designate antifa as a terrorist organization, then FBI Director Chris Wray [testified](#) that antifa is an ideology and not an organization. In response to the testimony, Trump tweeted, “And I look at them as a bunch of well-funded ANARCHISTS & THUGS who are protected because the Comey/Mueller inspired FBI is simply unable, or unwilling, to find their funding source, and allows them to get away with “murder”. LAW & ORDER!” See [Democracy Docket](#) coverage.

**Here is the problem:** in light of the authoritarian direction of this administration, designating those aligned against fascism sweeps in multitudes of authors, journalists, lawmakers, civil society groups and ordinary citizens.

**Y1, Week Thirty-Eight**, former counsel on domestic terrorism at DoJ, Thomas Brzozowski, writing in Lawfare (“[You Can’t Designate ‘Antifa.’ Banks and Platforms Will Act Like You Did Anyway.](#)”), points out that the threat is not what the designation means as a legal or regulatory matter, but what people think it means.

“The White House has taken an action that is sweeping in its rhetoric yet almost certainly empty of formal legal effect. That emptiness is by design. The damage is in the announcement. ... Designating Antifa as a “domestic terrorist organization” is equivalent to designating fascism or communism: It is a political statement, not a legally operative act. ... Even if that designation likely will not survive legal challenges, it can still do the work of law in the streets, on bank compliance desks, and across social media platforms. The chilling effect is not hypothetical; it is the point.”

Brzozowski walks us through the chapter and verse, underscoring that there is no federal statute that authorizes the federal government to designate a purely domestic organization as a terrorist entity with the legal consequences that attach to FTOs and Specially Designated Global Terrorist (SDGT):

- There are two federal designation regimes for terrorism threats: the FTO list under 8 U.S. Code § 1189 and the SDGT program under [Executive Order 13224](#), issued under IEEPA. Both regimes are intended to address foreign threats. The FTO statute applies only to “foreign organizations” [designated](#) by the secretary of state. IEEPA authorizes the President to block transactions when there is an [“unusual and extraordinary threat”](#) with a source “in whole or substantial part outside the United States.” Executive Order 13224 relies on that foreign nexus.
- The criminal “material support” offense that attaches to FTO designations, [18 U.S. Code § 2339B](#), makes it a crime to knowingly provide “material support or resources” to a designated FTO. By its terms, § 2339B is tied to the FTO list and so does not reach purely domestic groups. There is another material support statute, [18 U.S. Code § 2339A](#), which prohibits support knowing or intending

it to be used to commit a listed terrorism offense, but that provision is not tied to any designation. Importantly, § 2339A relies on proof of intent and connection to specified crimes, not membership in or association with a named group.

- In [\*Holder v. Humanitarian Law Project\*](#), the Supreme Court upheld the application of § 2339B to coordinated training and advice for designated foreign groups, but did so only after emphasizing the prerogatives of Congress in foreign affairs and national security. The Court cautioned that its reasoning should not be read to suggest Congress could impose the same ban on coordinated advocacy with *domestic groups*, where First Amendment protections are paramount.
- There is no federal authority to designate domestic groups as “terrorist organizations.” There is a definition of “domestic terrorism” in [18 U.S. Code § 2331\(5\)](#). While § 2331 establishes enhanced statutory maximums for [select federal statutes](#), appears in at least [one federal offense](#), and impacts multijurisdictional search warrant authority, importantly, it creates no designation authority, imposes no listing, and authorizes no standalone criminal penalties.
- While no statute authorizes designation of a purely domestic group, the closest analogous statute [defines](#) an organization, in part as “a group of persons ... associated together with joint action on any subject.” That is not to say that political violence committed by a group or an individual claiming to be “antifa” is immune from prosecution, but it does mean that prosecutors must fall back on ordinary criminal law, such as conspiracy, assault, arson, weapons offenses, seditious conspiracy under [18 U.S. Code § 2384](#) where proved, and state law criminal statutes, to deal with that violence, case by case and subject to all constitutional protections.

Brzozowski explains that, when challenged, the EO is likely to be characterized as *ultra vires* (for purporting to impose a non-existent designation on antifa), a violation of the Administrative Procedure Act’s requirements of reasoned decision-making and a violation of the First Amendment for making expressive association a proxy for criminality. He notes that when the government has frozen assets under IEEPA without adequate process, courts have found [due process violations](#). Likely defendants in cases seeking declaratory and injunctive relief would include DoJ, DHS and Treasury (the White House is not a federal agency for claims under the Administrative Procedures Act). Plaintiffs could include local antifascist collectives, journalists, and donors who can show concrete harms traceable to the proclamation—think bank account closures, payment-processor deplatforming, cancelled permits, or explicit threats of investigations.

The risk is that while litigation is slow, the impact can be far more immediate as compliance departments, platform safety teams (to the extent they still operate) and HR departments default to the more cautious approach in the face of lack of legal certainty. Banks and payment processors are subject to both AML and risk management requirements and could quickly move to de-risk those targeted by the

government. In spite of the “jawboning” constraints described above (in a different context, *see, e.g., [Bantam Books v. Sullivan](#)*), the risk aversion of platforms and private employers could have a chilling effect as legal challenges slowly wind their way through the courts.

**Y1, Week Forty-Seven**, at a hearing of the House Homeland Security Committee on “Worldwide Threats to the Homeland,” Michael Glasheen, an FBI agent serving as operations director of the National Security Branch, struggled to answer basic questions about the structure of antifa, prompting a top Democrat to say the bureau failed to “prove” it merits the label.

When ranking chairman of the committee, Rep. Bennie Thompson, asked Glasheen whether antifa is headquartered or how many members it has, Glasheen did not have answers. “We are building out the infrastructure right now,” Glasheen said. “So, what does that mean?” Thompson replied. “We’re trying to get the information. You said antifa is a terrorist organization. Tell us, as a committee, how did you come to that? How many members do they have in the United States, as of right now?” Glasheen said the number is “very fluid” and that the investigation into the movement and its members is ongoing, comparing it to al-Qaeda and ISIS.

### ***NSPM-7***

**SIBR:** Building on the targeting of “antifa,” Trump issued a National Security Presidential Memorandum [Countering Domestic Terrorism and Organized Political Violence](#) also titled NSPM-7. The threat this poses to our democracy needs to be seen in the instrument used – this is not an EO and it is not a Presidential Proclamation; it is a national security directive. As Ken Klipperstein sets out in his Substack, “[Trump’s NSPM-7 Labels Common Beliefs As Terrorism “Indicators,”](#)” while EOs set out day-to-day edicts for the federal government, a national security directive, usually issued in secret, “is a sweeping policy decree for the defense, foreign policy, intelligence, and law enforcement apparatus.” He aptly characterizes this as “targeting pre-crime, to reference *Minority Report*.”

NSPM-7 recites a number of recent acts of political violence, but omits any reference to assassinations and other attacks against Democratic political figures. Oversight? Note that when signing NSPM-7, Trump foreshadowed what might be coming when he suggested that funders of liberal causes should be investigated - “I hear names of some pretty rich people that are radical left people,” Trump said, calling out both George Soros and Reid Hoffman. “They’re bad, and we’re going to find out if they are funding these things. You’re going to have some problems because they’re agitators, and they’re anarchists.” See “[Trump targets domestic terrorists — but only mentions the ‘radical left.’](#)”

Returning to the “antifa” theme, NSPM-7 then turns what Trump calls “recurrent motivations and indicia” under the umbrella of self-described “anti-fascism.” “Common threads animating this violent conduct include:

- anti-Americanism;
- anti-capitalism;
- anti-Christianity;

- support for the overthrow of the U.S. government;
- extremism on migration, race and gender;
- hostility towards those who hold traditional American views on family, religion and morality; and
- promotion of “organized violence, violent intimidation, conspiracies against rights, and other efforts to disrupt the functioning of a democratic society.”

The NJTTFs are directed to investigate, prosecute and disrupt “entities and individuals engaged in acts of political violence and intimidation designed to suppress lawful political activity or obstruct the rule of law.” They are also directed to investigate crimes “relating to acts of recruiting or radicalizing persons for the purposes of political violence, terrorism, or conspiracy against rights; or the violent deprivation of any citizen’s rights.” (collectively for this discussion, “NSPM-7 ‘Political Violence.’”)

NSPM-7 worryingly lumps in additional targets that could become the basis for targeting those simply opposed to the policies and positions of the administration:

- institutional and individual funders, and officers and employees of organizations, that are responsible for, sponsor, or otherwise aid and abet the principal actors engaging in NSPM-7 ‘Political Violence’; and
- NGOs and American citizens residing abroad or with close ties to foreign governments, agents, citizens, foundations, or influence networks engaged in violations of the [Foreign Agents Registration Act](#) or money laundering by funding, creating, or supporting entities that engage in activities that support or encourage domestic terrorism.

Even more worryingly, NSPM-7 sets out a “national strategy to investigate and disrupt networks, entities, and organizations that foment political violence so that law enforcement can intervene in criminal conspiracies *before* they result in violent political acts.” Let us pause here – intervention “before” they result ... This approach made sense in the C-T context, to degrade and dismantle foreign terrorist networks before they could unleash terror on the homeland. NSPM-7 provides the intelligence and law enforcement agencies with the tools to target Americans for political activity and speech.

Some specific comments: the reference to the [Foreign Agents Registration Act](#) appears to run counter to the enforcement policy set out by the Attorney General that seemingly cut back FARA to its initial espionage roots. The IRS Commissioner is directed to focus on the tax-exempt status of organizations deemed to be “directly or indirectly financing political violence or domestic terrorism.” Note that this edict to the IRS speaks of political violence or domestic terrorism rather than referring to the specific elements of NSPM-7 ‘Political Violence’ that appear elsewhere. Perhaps a drafting oversight, or not. Note too that [Section 501\(p\)](#) of the Internal Revenue Code provides for the suspension of tax exemption for organizations identified as terrorist per the section.

This is nothing short of a redirection to the domestic context of counter-terrorism tools developed in the aftermath of the 9/11 attacks to counter foreign terrorists and

potentially deploying these tools against tax-exempt organizations and their funders and supporters. The scope of NSPM-7 could encompass NGOs and other civil society groups that support protests or civil rights advocacy if the activities are deemed to enable or motivate NSPM-7 ‘Political Violence.’

See generally, [Democracy Docket](#) coverage.

**Y1, Week Thirty-Eight**, over 3,000 civil society groups [signed](#) an open letter condemning NSPM-7.

**Y1, Week Thirty-Nine**, Reuters [reports](#) that Stephen Miller is gearing up a counter-terrorism task force of sorts to target left-leaning groups that it alleges have been funding and organizing political violence. The multi-agency effort will include the FBI, DHS, DoJ, Treasury and the IRS. Targets could include nonprofit organizations and educational institutions. In a statement to reports, the White House claimed that “Left-wing organizations have fuelled violent riots, organized attacks against law enforcement officers, coordinated illegal doxing campaigns, arranged drop points for weapons and riot materials, and more.”

**Y1, Week Forty-Five**, Protect Democracy [sues](#) the Treasury Department, the State Department, DHS and FinCEN to produce records requested under FOIA relating to the EO targeting antifa and NSPM-7 (11/24/25). In particular, Protect Democracy had demanded the release of the list of philanthropic and nonprofit organizations that the administration reportedly is targeting for investigation based on their political views and advocacy work. Protect Democracy is represented by American Oversight Foundation. [American Oversight](#) press release.

**Y1, Week Forty-Six**, the Attorney General [issued](#) a memorandum implementing NSPM-7. It remains to be seen whether the full force of federal law enforcement will be deployed to counter right-wing extremism – the examples cited suggest otherwise – “many of these domestic terrorists and domestic terrorist organizations are united by an anti-fascist platform that justifies violence and other means necessary to combat perceived “fascism.” The memorandum cites carvings on the bullet casings of the bullets that killed Charlie Kirk, although some experts interpret those carvings as referring to gamer memes. And no mention of course of the assassination in Minnesota.

The memorandum states “For too long, rampant criminal conduct rising to the level of domestic terrorism – e.g., organized doxing of law enforcement, mass rioting and destruction in our cities, violent efforts to shut down immigration enforcement, targeting of public officials or other political actors, etc. – has been tolerated.” The culprit: “extreme viewpoints on immigration, radical gender ideology and anti-American sentiment.” Note, no reference to violence against abortion clinics, for example.

In addition to a litany of potential federal criminal offenses that could be charged, the memorandum reminds law enforcement and prosecutors of “tax crimes in which extremist groups are suspected of defrauding” the IRS. There is also a reference to terrorism enhancements for purposes of the federal sentencing guidelines.



The FBI is directed to compile “a list of groups or entities engaged in acts that may constitute domestic terrorism” and provide that list to the Deputy Attorney General. The FBI is directed to better publicize its tip line and to update the capabilities of its digital media tipline to enable “witnesses and citizen journalists” to submit media of suspected acts of domestic terrorism. It is also directed to establish “a cash reward system for information that leads to the identification and arrest of individuals in the leadership of domestic terrorist organizations.”

### **Taking a Step Back**

**Y1, Week Thirty-Seven,** *New York Times* journalist and longtime analyst of political violence Jia Lynn Yang, in her piece “[Political Violence Isn’t New. But Something About This Moment Is.](#)” highlights the impact of loneliness, particularly on young adults, more than half of whom in a [2023 study by Harvard](#) reported feeling lonely. Social isolation figured prominently in an [analysis by Virginia Commonwealth University](#) of mass shooters. Yang observes that:

“[t]oday’s assassins have tenuous attachments to the kinds of formal networks that drove our divisions in past eras – political parties or radical groups, on either the left or the right. What they have instead are Discord channels and sites like Infowars, where they assemble a pastiche of ideas to try to make sense of the world. Those in their 20s have never known an existence free of the digital products ceaselessly pushed upon them by Silicon Valley, but even older generations are captive to their phones.”

Yang warns that as long as the focus is on finding a political party to blame, “the despair that feeds this violence will only contaminate more of American life.”

## CAPITOL HILL

### Nominations

**Y1, Week Three**, Senator Brian Schatz has placed [a hold](#) on confirmations of all State Department nominees until the actions affecting USAID are reversed. The Senate typically speeds up the confirmation of many nominees through “unanimous consent,” a process that bypasses a formal floor vote if no senator objects. Schatz’s blanket hold prevents the Senate from approving nominees quickly, requiring Senate Majority Leader John Thune to use valuable floor time to advance the president’s nominations through the confirmation process. This was the tactic used by Senator Tommy Tuberville to hold up military nominations over the DoD policy of abortion-related travel expenses.

Democrats maintain that shutting down USAID would require an act of Congress, and a [report](#) prepared by the Congressional Research Service concurs. The CRS report notes that, “[b]ecause Congress established USAID as an independent establishment (defined in 5 U.S. Code § 104) within the executive branch, the President does not have the authority to abolish it; congressional authorization would be required to abolish, move, or consolidate USAID.” Trump takes issue with this on the flimsy justification that the agency is “rife with fraud.”

Apparently, after several Democratic Senators were barred from entering the Treasury, Senator [Richard Blumenthal](#) announced the caucus is placing a blanket hold on all Trump nominations through multiple committees. Senators [Markey](#) and [Coons](#) made similar announcements. The first target will be proposed OBM director Vought. See Indivisible’s [We Choose to Fight](#), the toolkit to resist nominations.

**Y1, Week Thirty-Five**, the Senate GOP leadership went “nuclear” to change Senate rules to speed up confirmations of Trump nominees. The Senate voted 53-45 along party lines to allow the Senate to confirm an unlimited number of nominees at once, rather than confirming each individually, and to do so by simple majority vote rather than the vote of 60. The rule change applies to nominees subject to two hours of Senate debate, namely subcabinet picks and ambassadors. It will not affect judicial nominations. GOP senators may object to individual nominees in any given block, but the minority loses the right to do so.

**Y1, Week Forty**, Trump’s nominee to head the Office of Special Counsel, Paul Ingrassia, who had graduated from law school only three years ago, withdrew his name from consideration, blaming the lack of support among Republican Senators. *POLITICO* initially [reported](#) that in a May 2024 text thread with fellow Republicans, Ingrassia called for the end of Martin Luther King Jr. Day and said you can “never trust a chinaman or Indian.” Others in the group chat challenged him, to which he reportedly replied, “I do have a Nazi streak in me from time to time, I will admit it.” He also stressed the need to have “competent white men in positions of leadership.” There were other racist comments in the thread reportedly attributed to Ingrassia.

Ingrassia is now serving as the general counsel of the Government Services Administration. **Y1, Week Forty-Eight**, Daniel Lippmanm, Daniel Barnes and

Sophia Cai of POLITICO track Ingrassia's rise in Trump world ([“The turbulent trajectory of Trump’s ‘Nazi streak’ acolyte”](#)), noting:

“Ingrassia’s almost Trumpian survival demonstrates how ideological affinity and personal loyalty can outweigh all other considerations in this administration. And while top officials in the Republican Party and White House have split between denouncing bigoted language exhibited by officials like Ingrassia — who said he has a “Nazi streak” according to the texts — and forming a defensive line around supporters, the messages don’t appear to have hurt his official standing.”

### **Whitewashing History**

**Y1, Week Thirty-Eight**, Trump’s post about the phantom [274 FBI agents on Capitol Hill](#) before the riot is but one example of an effort to rewrite the history of January 6<sup>th</sup>. Let’s us not forget the pardons of the insurrectionists on Inauguration Day and Trump’s frequent use of the phrase “January 6<sup>th</sup> Hoax.”

*POLITICO* [reports](#) that a new Republican-led panel intends to re-investigate the attack, presumably to recast the narrative of an event that the entire country, if not much of the world, witnessed real time on television. The security failures that the Chair of the panel, Rep. Barry Loudermilk, has cited have been the subject of various investigations, including the [review](#) by retired Lt. Gen. Russel Honoré (supported by a “task force” of senior retired military officials), a [series of reports](#) issued by the Capitol Police’s IG, a bipartisan [review](#) by the Senate Committee on Homeland Security and Governmental Affairs and the Senate Committee on Rules and Administration, and an [appendix](#) (with its 388 footnotes, largely citing transcripts of interviews) to the Final Report of the previous House Select Committee to investigate the January 6<sup>th</sup> Attack on the United States Capitol. Loudermilk, incidentally, was [scrutinized](#) by the previous Select Committee for hosting a tour of the Capitol on January 5.

**Y1, Week Forty-One** two DoJ prosecutors, Carlos Valdivia and Samuel White, were placed on leave and locked out of their accounts only hours after they submitted a sentencing memorandum to court that contained the following language “thousands of people comprising a mob of rioters attacked the U.S. Capitol” on January 6<sup>th</sup>. This was first [reported](#) by ABC News. The memo was submitted in a case against a January 6<sup>th</sup> insurrectionist who faced separate charges related to an [arrest](#) near the home of the Obamas. New prosecutors filed a new sentencing memorandum identical to the first one except it removed any mention of the January 6<sup>th</sup> attack and his involvement therewith.

**Y1, Week Forty-Three**, Ed Martin, DoJ pardon attorney [posted](#) a Presidential Proclamation announcing blanket pardons for all involved in the 2020 fake (alternate) elector scheme “as well for any conduct relating to their efforts to expose voting fraud and vulnerabilities in the 2020 presidential election,” and then listed 77 specific beneficiaries of the pardons, including Kenneth Chesebro, Jeffrey Clark, John Eastman, Jenna Ellis, Rudy Giuliani, Boris Epshteyn, Mark Meadows, Sydney Powell. The beneficiaries were largely part of the Trump inner circle or signed false certifications claiming they were legitimate electors.

The proclamation, which was posted on the 10<sup>th</sup> though dated the 7<sup>th</sup>, specifically excludes Trump. The pardons have limited legal effect as none of those named were charged with federal crimes, though various were charged under state law and some pleaded guilty. The more alarming aspect is that the pardons evidence a willingness on the part of Trump to pardon those he sees have committed federal crimes in his name. See [POLITICO](#) coverage and [PBS](#) coverage.

And, speaking of pardons, POLITICO was the first [to report](#) that a whistleblower had provided a message between Ghislaine Maxwell and her counsel to House Judiciary Committee Democrats suggesting that Maxwell is preparing to ask Trump to commute her sentence, her only avenue of ending her 20-year prison sentence early after the Supreme Court declined to hear her appeal. Reporting also suggests she is receiving favorable treatment in her minimum-security prison. See [press release](#) issued by Rep. Jamie Raskin. Raskin also [sent](#) a letter to Trump asking a series of questions about Maxwell's treat and the potential commutation of her sentence.

**Y1, Week Fifty-One**, the White House marked the fifth anniversary of the insurrection by [launching](#) a website that praised Trump's handling of the insurrection by blaming Democrats. The website blames Democrats for "certifying a fraud-ridden election," criticizes the work of the January 6<sup>th</sup> Select Committee (that produced a "scripted TV spectacle to fabricate an 'insurrection' narrative and pin all the blame on President Trump") and blames the Capitol Police for escalating tensions with "peaceful protesters." See press statement [issued](#) by Public Citizen calling out the "Orwellian gaslighting of the American people."

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## POLLING

### Recent Polling and Voter Sentiment

**Y1, Week Forty-Seven,** [Gallup](#) finds Trump's approval rating at 36%, a new second-term low, with 60% disapproving. In February, approval/disapproval essentially were tied 47% approve, 48% disapprove. On the issues, his approval ratings are crime - 43%, foreign affairs - 41%, trade - 39%, immigration - 37%, the economy - 36%, healthcare - 30%. Trump's lowest ever job approval rating [was](#) 34% just after January 6<sup>th</sup> – his first term average was 41%, four points lower than any other president recorded by Gallup (started in 1938). Only 3% of Democrats approve of Trump's job performance.

During his first term, Trump was the only president never to register a 50% job approval rating at any point during his presidency since Gallup began measuring presidential job. He was the only president who did not have [a honeymoon](#) upon taking office. His [initial 45% job approval rating](#) was the high point during his entire first year as president.

**Y1, Week Fifty-Two,** Navigator [polling](#) (01/15/26) finds:

- Americans want a focus on the economy but say Trump/GOP focused more on other issues (55% - 19%, a -36 point gap)
- Most have heard about the Maduro capture (77% have heard a lot or some). Support for the military operation is split and heavily partisan (43% support – 43% oppose), though majorities agree the United States should not take control of Venezuela and run the country (37% support – 53% oppose), including a plurality of non-MAGA Republicans by a 2-point margin (43% support – 45% oppose).
- 72% overall (including 87% Ds, 79% Is, 56% Rs. and 72% Non-MAGA Rs.) believe the United States should be cautious about using military force abroad and instead focus priorities at home, while only 28% believe the United States should be taking bold actions to strengthen influences and finances. This margin stays the same even after adding the context of toppling a dictator: “The U.S. should be willing to use its military power abroad, including to topple dictators when necessary, to strengthen U.S. influence and finances,” while 72% overall (including 89% Ds, 82% Is, 54% Rs. and 69% Non-MAGA Rs.) agree with the opposing message: “The U.S. should be cautious about using military force abroad, especially when it comes to regime change wars, and instead focus our time and money on priorities at home.”
- By a 34-point margin, a majority oppose the United States taking control of Greenland (23% support, 57% oppose). Republicans narrowly support the U.S. taking control of Greenland (net +7), though non-MAGA Republicans oppose the move by 34-points (19% support – 53% oppose).
- ICE's favorability has dropped significantly in the past year, including in the wake of the killing of Renee Good. In June 2025, ICE's net favorability was -8 with 42% seeing the agency positively and 50% negative. The latest polling, which was fielded the day after Good was killed, found ICE had a net -20

favorability, with only 37% favorable and 57% unfavorable (including 89% Ds, 62% Is, 25% Rs.). ICE is also one of the most prominent negative news stories regarding the President in qualitative data.

- 78% (including 78% Ds, 70% Is, 80% Rs.) say they have seen at least some news about the shooting of Renee Good with 55% saying they have seen, heard, or read “a lot” about it. This includes 85% of active news consumers and 66% of passive news consumers.
- 59% overall (including 86% Ds, 60% Is, 31% Rs. and 41% Non-MAGA Rs.) say that ICE has been too aggressive in its approach. In Navigator’s June 2025 survey, only 52% said the administration has been too aggressive in their approach to deportations.

Cook Political Report [ratings summary](#) (majority is 218)

- Solid D 189 – solid R 186
- Likely D 8 – Likely R 16
- Lean D 14 – Lean R 4
- Either party could win  
Toss Up currently D 4 [OH-01, OH-09, TX-34 and WA03]  
Toss Up currently R 14 [AZ-01, AZ-06, CA-22, CA-48, CO-08, IA-01, IA-03, MI-07, NJ-07, NY-17, PA-07, PA-10, VA02, WI-33]

**Y2, Week 2**, Economist/YouGov polling [finds](#):

- 39% overall strongly or somewhat approve of Trump’s job performance, and 57% disapprove, for a net approval of -18; that net approval is up slightly from last week’s -20, but lower than Trump’s net approval of -13 at this point in his first term.
- Republican approval of Trump’s job as president has been declining since the start of his second term, when he had a net job approval among Republicans of +91; it is now +72.
- 27% of Independents approve of Trump’s job handling and 67% disapprove - a net job approval of -40, a record-low net job approval among Independents, in either his first or second terms. The net job approval is a steep drop from last week, when net job approval with the group was -31. It is too early to say how much this drop reflects a long-term decline in approval among Independents and how much is weekly survey variation.
- 49% overall strongly disapprove of Trump’s job as president, a new high for Trump’s second term, and twice as many as the 23% of Americans who strongly approve of Trump’s job handling. 56% of Republicans strongly approve of Trump’s job handling, while 87% of Democrats strongly disapprove of it.
- 45% overall believe Trump is suffering from both some amount of cognitive decline and some amount of physical decline; majorities of Democrats believe he is suffering severe cognitive (66%) or physical (56%) decline.



- 55% overall say they have very little confidence in ICE, an increase of 10 points since mid-December. Confidence in ICE has declined most among Independents: 67% now say they have very little confidence in ICE, up from 49% in December. Majorities of Democrats (80%) and Independents (56%) want ICE spending to be decreased; most Republicans (55%) support increasing spending on ICE and only 17% support spending cuts.
- By a margin of 15 points, more Americans oppose than support sending federal troops to Minneapolis (52% vs. 37%). Only slightly more approve than disapprove of recent protests against ICE actions (47% vs. 44%) and by a similar margin Americans classify the anti-ICE protests in Minneapolis as mostly peaceful rather than mostly violent (43% vs. 40%). A large majority (77%) overall say that peaceful protests against ICE should be allowed in Minneapolis, including 93% of Democrats and 63% of Republicans
- 73% of Americans (including 78% of Democrats and 71% of Republicans) say they had seen video of an ICE agent shooting Renee Good. About twice as many Americans believe the shooting of Good was not justified than say it was justified (56% vs. 29%). 66% of Americans think the ICE agent who shot Good should be investigated; 23% say he should not be.

### **GOP Vulnerabilities**

**Y2, Week Three**, a bipartisan coalition of former Agriculture Department officials and leaders of farm groups warned the chairs and ranking members of the House and Senate agricultural committees of the damage being done to American farmer. The warning, set out in a letter, blames administration action and congressional inaction for increased farm bankruptcies and diminished profit margins. The letter cites increased costs for farm inputs, disruptions to domestic and overseas markets, reduced pools of reliable labor and diminished critical agricultural research (due to funding and staffing cuts). See [New York Times](#) coverage.

### **Backlash Not Limited to Polls**

**Y2, Week Four**, G. Elliott Morris, in his Strength in Numbers series sets out in his latest analysis (“[The backlash against Trump is showing up in hard data, not just polls](#)”), summarizes some interesting data. The headline is that anti-Trump protests are roughly four times as common as they were one year into his first term. He cites data from Crowd Counting Consortium at Harvard that suggest that close to 13 million (about 3.7% of the population) have demonstrated against Trump in the past year. He also cites findings that low-political engaged/low-news-engagement voters (around 27% of the electorate) have shifted 24 points – support by 11 points to disapproval by 13 points. This swing among low-information voters who are not consuming news throughout the day suggests that changing attitudes are a topic of conversation among normal people.

## CONCLUDING THOUGHTS

### The Law and the Constitution

Our legal system is under threat. I wrote that on January 21.

Professor Lawrence Tribe properly [framed](#) the issue: “Without any doubt Donald Trump is the most lawless and scofflaw president we have ever seen in the history of the United States.” Continuing with the muzzle velocity characterization (*see* below), Tribe describes “a blitzkrieg on the law and the constitution. The very fact that the illegal actions have come out with the speed of a rapidly firing Gatling gun makes it very hard for people to focus on any one of them. That’s obviously part of the strategy.” The freeze on federal spending and the attempt to end birthright citizenship have no legal basis. The manner in which the IGs were removed violated the law, and a number of firings of federal employees likely will be found to have violated the law.

### “Muzzle Velocity”

In his February 2 op-ed (“[Don’t Believe Him](#)”), Ezra Klein had some critically important insights. Klein points out that the Trump strategy is Bannon’s “muzzle velocity.” Flooding the zone is the point – the objective of the EOs and announcements cumulatively is to overwhelm and distract, to keep us all off-balance. Trump has power – that of the presidency, but that power has limits. He seeks to make us all believe he has omnipotent power. But, as Klein urges, “don’t believe him.”

He is acting by EO because he is afraid of seeking more durable legislation via Congress, even though Republicans control both chambers on Capitol Hill. Were he to do so with the margins he has, however, he would fail, and recalling the humiliation of the McCain thumbs down, he fears looking weak. Klein concludes that “Trump is acting like a king, because he is too weak to govern like a president.” “He is hoping that perception then becomes reality. That can only happen if we believe him.” Klein reminds us not to mistake the chaos for command and control or to mistake the speed and force for a real strategy for governing.

Little of what Trump is doing should be making him more popular. After all, much of the carnage (shrinking government, imposing tariffs) may be intended to provide cover for his tax cuts. He has only one direction and one speed now, and that, Klein posits, is to continue to overreach, and that will make him even more unpopular. The question is whether the Republic can survive to the midterms?

### Slide to Autocracy?

As **Y1, Week Four** wound to a close, Trump posted on Social Media and on X the cryptic message: “He who saves his Country does not violate any Law” – perhaps paraphrasing Napoleon Bonaparte, and echoing ([according](#) to Time Magazine) the authoritarian leader of El Salvador Nayib Bukele). The question is whether this statement portends plans for the administration to ignore court rulings or is a message to MAGA extremists that if they act outside the bounds of the law they will be protected. *See* “[Trump Suggests No Laws Are Broken if He’s ‘Saving His Country’](#).” It is hard to characterize this statement as anything other than dictatorial, and sadly both Musk and Vance appear to be onboard.

As **Y1, Week Thirty-Four** beckons, I am mindful that there is little consensus on where exactly we have landed – are we living in an autocracy, in a dictatorship, in a competitive authoritarian system, an illiberal democracy, a fascist state, a police state? Perhaps it is easiest to pinpoint what we are not – the United States is no longer a functioning democracy?

Professor of Public Policy Don Moynihan [describes](#) the state of play as a “competitive authoritarian system” with rapidly increasing emphasis on the authoritarian component. Garrett Graff [makes](#) a similar point – while historians will in the future debate when we tipped into authoritarianism, the fact is we have crossed the line. Graff also argues that it is a mistake to try to pinpoint the point of no return – history tells us that is not what typically happens. Instead, a blurred transgression, a norm destroyed, a presidential “diktat” goes unchallenged. And then you wake up one day and the country is different.

Graff goes on to say that that day may be today, and given where we now are, from here on it is just a matter of degree. How bad will it get? Do we end up like Hungary circa 2015 or an American Reich on par with Berlin circa 1933. Much of the media is not helpful as far too many commentators continue to avoid stating the obvious (“no president has asserted such control” or “Trump is wielding government power to enforce a more rigid ideology”) – and apportion blame across the political spectrum. The reality is that only one party is responsible for where we currently are.

See also Christina Pagel’s Substack (“[The loss of American freedom](#)”), Stephen Saideman’s post (“[American Autocracy: Let’s Call It What It Is](#)”) and Jonathan Bernstein’s post (“[Where We Are](#)”).

As to how bad, we can start with Moynihan’s checklist of targeted control, and we can determine for ourselves how far we have fallen:

- the government bureaucracy
- the military
- the internal security apparatus
- legal system
- civil society
- business
- higher education
- the media
- elections

The French use the term *bilan*, a balance sheet, to also refer to the results of a broader check-up. So, let’s take a look at that:

- For a fascist police state, look no further than a president using armed military units from Red states to seize cities run by opposition politicians and using federal law enforcement to target opponents of the regime. Declaring emergencies where there are none is classic authoritarian. The formation of a rapid deployment force to be deployed on American streets has strong parallels of praetorian units in 1930s Europe.

- Look no further than to deployment of the U.S. military not at the request of local or state government but over their objections. Although there is no basis for the deployment, the nation's capital is in effect an occupied city. We have checkpoints manned by armed troops and we have demands to see IDs – sound familiar? Think the Gestapo, the KGB or the Stasi. In a speech to American service personnel in Japan, Trump warned if we need more than the National Guard, we'll send more than the National Guard.
- Look no further than the strikes against boats in the Caribbean and the Pacific and the execution of suspected drug smugglers, without legal justification, and without even evidence of the identify of those killed and their involvement in smuggling into the United States.
- Look no further than the removal of senior military lawyers able to advise on the legality of orders and operations. And speaking of which, look no further than the arrogation of the power to determine what federal law is and what is legal.
- Look no further than the pardoning of the January 6<sup>th</sup> insurrectionists and the posthumous rehabilitation of Ashley Babbitt – compare the actions of “Sandwich Guy” to 1,500 who were found guilty or plead guilty, including for assaulting police officers, and then were pardoned and celebrated. The Brown Shirts?
- Look no further than kidnapping and deportation without due process to a prison with a history of torture or to a country where deportees have no connection. Look no further than the creation of internment camps, including one being built at Fort Bliss in El Paso, Texas on the site [used](#) to intern Japanese Americans in the 1940s. The impunity with which ICE agents operate has plenty of historical antecedents.
- Look no further than the purge of federal employees for no reason other than they are deemed disloyal or inconvenient on the slightest pretense, or they are just doing their jobs. The weaponization of the DoJ, the FBI and other federal law enforcement agencies against political opponents is a classic tactic of authoritarian regimes.
- Look no further than the whitewashing of history, the cleansing of school and university curricula, the repression of academic freedom, and the control over museums and the arts.
- Look no further than coercion of the media and the consequent self-censorship, including investigations of FCC licenses.
- Look no further than the extortion of targeted American businesses – taking stakes or imposing export taxes. Never mind the obvious pay-to-play, ranging from donations to settling lawsuits that would never have been won by Trump.
- Look no further than the suppression of government data and the firing of federal employees for reporting data/conclusions that Trump finds inconvenient – the head of the Bureau of Labor Statistics and the head of the

Defense Intelligence Agency. Trump has gone after Lisa Cook and is trying to sideline Jerome Powell – all to get the Fed to follow his edicts.

- Look no further than the weaponization of the DoJ and law enforcement to seek revenge against his enemies. As many have said, most recently [Ezra Klein](#), look hard enough at just about any one and you will find a transgression – and even if there is none, the mere accusation can have consequences. Prosecutors were forced out for not kowtowing to the administration.
- Look no further than ignoring or subverting court orders.
- Look no further than the investments in Trump family businesses. Forbes [estimates](#) that Trump's net worth doubled in one year to \$5.1 billion.
- Look no further than end-running around the legislative branch by acting via executive order and impounding funds appropriated by Congress, the latest being the use of pocket rescission.
- 

... and just because, in contrast to other authoritarian regimes, this regime is doing it all in plain sight does not make it any less dangerous or insidious.

### Resistance ...

**Y1, Week Forty**, estimates of the number of Americans who turned out for the October 18<sup>th</sup> No Kings rallies range from 4 to 8 million, with organizers putting the number at close to 7 million. The coalition [that organized](#) the rallies (estimated at over 2,700 individual protests) had over 200 partners. *NewsY1, Week* estimates show that New York State had the highest estimated attendance, with almost 380,000 people, followed by California at about 260,000 and Illinois at 250,000. The exact tally is unimportant – what is important is that the October 18<sup>th</sup> rallies may have been the largest in the country since the 1970s Earth Day rallies, surpassing even the Women's Marches in 2017.

### ... and Complicity

As **Y1, Week Forty** gave way to the No Kings [rallies](#) across the country, I paused to consider the messages conveyed by Guardian columnist Jonathan Freedland in his piece ("[A Lesson From Germany that Applies Today](#)"). Freedland recounted the story of the [Solf Circle](#), a group of like-minded German aristocrats and professionals who fought back against the Nazi regime, some in small ways and some in more consequential ways. The group ultimately was betrayed by Gestapo informer allowed into the group just before they were all arrested at a gathering. All were imprisoned; some were executed, some survived.

Freedland ponders "the core mystery that runs through this story [, which] is not just the identity of the betrayer, but also why people of privilege and rank, who could so easily have kept their heads down, risked everything. Had they fallen in line, their fortunes, careers and country estates likely would have remained intact. They could have survived the war unscathed. But they chose another path. ... Through deeds large and small, they demonstrated – to themselves and one another – that obedience was not the only option."

Freedland concludes “if there is a lesson to be gleaned from the deadly fate of those men and women, it might just be that the best safeguard against tyranny is a legion of people who believe in an authority higher than any political program, prince – or president.”

**Y2, Week One**, David French approaches the events of the past two weeks from a slightly different perspective though that, like Freedland’s, borrows from Nazi Germany. In his op-ed (“[An Old Theory Helps Explain What Happened to Renee Good](#)”), French delves into a concept articulated by Nazi-era Jewish labor lawyer Ernst Fraenkel called “[the dual state](#),” as updated for the moment we face, by Aziz Huq, a University of Chicago law professor (“[America Is Watching the Rise of a Dual State](#)”). French explains the split screen we are living in, much as Freedland did, but then goes a step further.

Fraenkel noted that, as the Nazis consolidated power, ordinary Germans enjoyed the benefit, in the words of Huq, of a “capitalist economy governed by stable laws” even as other parts of the German system changed into an engine of genocide and war. Fraenkel distinguished between a “normative state” where, as Huq writes, the “ordinary legal system of rules, procedures and precedents” applies and the “prerogative state,” characterized by “unlimited arbitrariness and violence unchecked by any legal guarantees.”

These two states co-exist side-by-side, a zone of lawlessness next to a normative state. As French notes, “It’s the continued existence of the normative state that lulls a population to sleep. It makes you discount the warnings of others. ‘Surely,’ you say to yourself, ‘things aren’t *that* bad. My life is pretty much what it was.’” In Minneapolis, life in much of the city goes on – it’s normal. But when you need to interact with ICE, you run headlong into the prerogative state. Renee Good thought she was in the normative state and had no idea of the danger she was about to encounter; she had entered a state where she could be killed and there would likely be no adverse consequence for the killer. He might even be viewed as a hero to some (a GiveSendGo page has raised close to \$300,000 for Jonathan Ross).

Our vulnerability, in French’s opinion, is that the prerogative state was built by well-meaning people with laudable intentions. He writes, “It’s hard to overstate how much this web of immunities – combined with the failure of Congress to step up and fulfil its powerful constitutional role – has made the United States vulnerable to authoritarian abuse.” He continues, “Rather than providing additional precautions against the rise of authoritarian rule, American law and precedent seem to presume that angels govern men, and those angels would be free to do even more good if only they possessed a free hand.” He cites, for example, Supremacy Clause immunity and qualified immunity that assumed that government would function more effectively if it was less accountable to the public.

French concludes that assuming we get past the carnage, “there will be a time of reflection and reform. It happened after the Civil War. It happened during the civil rights movement. It happened after Watergate. And when the time for reform comes again, it must focus on the abolition of the prerogative state.”



In the meantime, as M. Gessen writes in his New York Times op-ed, “state terror has arrived” in America. “The administration,” they write, “seeks to reduce us all to a state of constant fear – a fear of violence from which some people may at a given moment be spared, but from which no one will ever be truly safe. That is our new national reality.”

### Calling It Out as to Where We Are

**Y1, Week Forty-One**, *see*

- “[Trump’s Plan Is Now Out in the Open](#)” (Peter Wehner) (10/31/25)
- [President for Life](#) (J. Michael Luttig) (12/25)
- Sen. Elissa Slotkin’s [remarks](#) remarks at Brookings (10/29/25)
- The *New York Times* editorial board, in their new tracker, “[Are We Losing Our Democracy?](#)” in which they track 12 items. Authoritarians:
  - stifle dissent and speech – Trump has started to
  - persecute political opponents – Trump has
  - bypass the legislature – Trump has started to
  - use the military for domestic control – Trump has started to
  - defy the courts – Trump has started to
  - declare national emergencies on false pretenses – Trump has
  - vilifies marginalized groups – Trump has
  - control information and the news media – Trump has started to
  - seek to take over universities – Trump has started to
  - create a cult of personality – Trump has
  - use power for personal benefit – Trump has
  - manipulates the law to stay in power – Trump has started to

**Y1, Week Forty-Eight**, the *Washington Post* surveys the damage done by Trump to the federal government and how America’s 2.4 million federal employees got caught up in a once-unthinkable overhaul of the nation’s sprawling bureaucracy, carried out in less than one year by the most polarizing presidents in American history (*see* “[The year Trump broke the federal government](#)”). In short,

- Missions have shifted or shattered.
- Entire agencies were [deleted](#).
- Nearly 300,000 employees were forced out of the federal workforce.
- The administration froze or shut off billions of dollars in scientific research, [gutted](#) or [eliminated](#) offices and programs devoted to civil rights and diversity, rewrote the federal hiring system [to reward loyalty](#) to the president.
- The administration shrank Social Security while [installing](#) ICE agents in hundreds of new offices across the country.

## **We Don't Seem to Learn**

**Y1, Week Forty-One**, I recall a conversation with then President Obama way back when about the targeted drone assassinations that he approved and what would happen if that power was in less “safe” hands. Executive Director of the Knight First Amendment Institute Jameel Jaffer touches on this in his *New York Times* op-ed (“[The Secretive Office Approving Trump’s Boat Strikes](#)”) where he looks at the office at the center of the questions around legal authority for the Caribbean boat strikes, the [OLC](#). A key problem is that OLC opinions typically remain confidential for years, which means that errors in analyses remain unidentified and uncorrected for years, while provide legal justification for operations that could be inconsistent with American values and violative of the law.

The OLC provided legal justifications for the warrantless phone taps on Americans, enhanced interrogation (torture) of prisoners overseas and targeted drone strikes. Jaffer reminds us that one of the torture memos was leaked in 2004 but public attention did not focus on them until 2009. A consequent investigation by DoJ’s Office of Professional Responsibility [determined](#) that the two principal authors of the two torture memos had committed professional misconduct. (A [controversial](#) DoJ review [softened](#) the conclusion.) The Senate Intelligence Committee later [concluded](#) that the torture program had compromised the country’s standing in the world as well as its security.

There is now a well-trod path for the OLC justification to remain out of the public eye.

\* \* \*

For months leading up to the election, some warned of the risk of an impending slide to fascism should Trump win. Far too many thought the warnings were at best inapt and at worst alarmist – their authors, victims of Trump “derangement syndrome.”

Well, here we are, with January 6<sup>th</sup> insurrectionists, including militia members found guilty of sedition, pardoned or had their sentences commuted, and some were welcomed on Capitol Hill, while those who investigated them are now under threat. Countless public servants have been driven out of their jobs for just doing their jobs. Government watchdogs have been fired in violation of the law. Floods, fires and a plane crash have been weaponized for purely political reasons and possibly for sport. Refugees are no longer welcome, and the roundups of undocumented migrants that were sold to the American public as focusing on dangerous criminals have reached well beyond criminals. Foreign aid has dried up, putting programs, aid workers and aid volunteers, and lives across the Global South at risk. America is now positioned for forced territorial expansion, which must impress Vladimir Putin to no end. And not only are we aligned with Putin, while pushing away our traditional allies, but a slew of defenses that we have built up over the years to counter foreign espionage, foreign influence operations, corruption, kleptocracy and organized crime, and possibly terrorism are being dismantled and the professionals who spent years if not

decades countering these threats, are being fired or reassigned. As a nation we are far less secure, and our insecurity deepens by the day.

These are also the less obvious but no less pernicious actions. As David Rothkopf so eloquently noted in his Substack (“[The Opposite of Woke is - Despotism](#)”), Trump and MAGA have declared war on information so as to create a “brain dead America.” He reminds us that one of the key elements of the playbook of autocrats (from Hitler, to Stalin, Mao, Putin and Orbán) is the attack on education, free thought, ideas, speech, knowledge and facts. The war on DEI and its many manifestations, including the banned words, should be seen for what they truly are, an “effort to outlaw or penalize ways of thinking, ways of seeing the world that do not confirm with the thinking of the small group that has seized the reins of our society.” The attacks on DEI, excluding members of the press from the press pool, attacks against law firms and universities – all are designed to chill open discourse and freedom of thought. This, Rothkopf concludes, is authoritarianism and despotism.

Trump has surrounded himself with cabinet members who pose unprecedented risks to our national security, our institutions and our public health. Consider that many of them would not be hired in a position of authority or placed on a board in corporate America. An unelected oligarch, through a department that does not legally exist, is gaining control of private data of federal civil servants, the federal payment systems and other sensitive (and potentially classified) information, and those attempting to hold the line have been placed on administrative leave.

We should not be surprised, as Trump threatened much of what he has wrought. When Trump trumpeted he would be a dictator on Day One, this is what he meant. And far too many just laughed. Shame on us. This is a brazen effort to undermine the Constitution combined with blatant “state capture.” The question now is, what are we going to do about it? Where is the public outrage now that our Republic is so fundamentally threatened?

We must not normalize, and we must not minimize, what is happening. For our close to 250 years as a Republic, we have been spared what many have experienced and are experiencing. We must learn from them and, as Rothkopf urges, we must stand up and speak truth to power. And if we need a more detailed roadmap, I commend Timothy Snyder’s 20 lessons from *On Tyranny*:

1. Do not obey in advance
2. Defend institutions
3. Beware of the one-party state
4. Do not look away at symbols of hate and authoritarianism
5. Do not give up on professional ethics
6. Be wary of paramilitaries
7. Be reflective if you are armed
8. Stand up and stand out
9. Avoid parroting the same phrases everyone else uses
10. Do not abandon truth

11. Question and investigate
12. Stay in touch with those around you
13. Do not isolate
14. Maintain communications but do so in a safe and unimpeachable manner
15. Contribute to good causes
16. Learn from people abroad
17. Be alert to dangerous words
18. Be calm when disaster arrives
19. Be a patriot
20. Be as courageous as you can.

I also commend to you Professor Larry Diamond's "[Defending Democracy in America](#)" (03/24/25), in which he urges action to counter what he describes as "the grave and imminent danger of democracy decaying into a hollow shell of '[competitive authoritarianism](#)' eloquently laid out in 2020 by Professors Steven Levitsky and Lucan Way. The slippery slope we are on is reminiscent of the route by which "democracy has died, at varying speeds," in Venezuela, Turkey, Hungary, Serbia among others. It is the route being followed by India on under Narendra Modi, by Slovakia under Robert Fico, and by Poland under the Law and Justice Party, until it was defeated in national elections in October 2023. His prescription for action (and see also my January 25 briefing note, available [here](#)):

- **stay informed** and support independent journalism;
- **seek out and support civil society organizations** that are defending democracy and mobilizing civil society – Diamond lists:
  - [Protect Democracy](#);
  - [Democracy Forward](#);
  - [Brennan Center for Justice](#);
  - [Public Citizen](#);
  - [Democracy 2025](#);
  - [Common Cause](#);
  - [Renew Democracy Initiative](#);
  - [Democracy Fund](#); and
  - [States United Democracy Center](#);
- **reinvigorate civic education** in your local community and support efforts that promote civic [deliberation](#), [collaboration](#), [respectful dialogue](#), and [social connection](#) across partisan, racial, and religious divides;
- **donate some of your time and skill** to the cause of defending democracy and building civic solidarity. Those targeted need legal support, cyber defense, mental health support and strategic communications. Fired workers need jobs;
- **form partnerships for action**, whether by attending town halls or rallies, or by considering collective forms of resistance including consumer boycotts:

- **participate actively in the electoral process**, by donating time and money to candidates. Knock on doors. Attend rallies. Use social media creatively but wisely. Write postcards and make phone calls to voters in swing states;
- **be a democratically conscious consumer**; and
- **resist apathy, resignation, and fear**.

Stacey Abrams' [ten steps](#) to countering authoritarianism is also worth considering:

1. **Commit** - understand what's happening – not simply the headlines but the effects of policies on you and your community. Our strength lies in our numbers - join in.
2. **Share** - stay informed and share the facts on social media, in group chats, and in your circles - not just why you care but how you're taking action. Remember, others feel this way too.
3. **Organize** - create a group of friends, family and allies who want to work towards a common goal. Pick your issue.
4. **Mobilize** - share banned books. Help immigrants. Join a tenants union. Host public events and regular conversations. It's not about size but movement.
5. **Litigate** – you do not have to be an attorney to be part of litigation. If you or someone you know has been harmed, be a plaintiff or a witness. If you are in the legal field, volunteer to help vulnerable populations.
6. **Disrupt** – Do not be part of their system of disinformation and compliance. Protest. Then do more. Like film violations of civil rights or hand out “Know Your Rights” cards in occupied cities. Block propaganda and call it out.
7. **Deny** – refuse to be complicit in how authoritarians strip us of our language, engagement and connections. Create community, practice non-violent civil disobedience, and boycott groups that are hurting us.
8. **Engage** - work with your elected officials to introduce policies and proactive legislation, especially at the state and local levels. Do it yourself if the rules allow it - start ballot initiatives, public petitions, and more.
9. **Elect** – while federal elections are crucial, we cannot forget that harm can come at every level of government. So can change - we must give people something to believe in again. Participate in your local elections for city council, county commission, state legislature, judicial — every single one.
10. **Demand** – it is not enough to just reclaim what we had. We must demand more and build a better government. Be clear about what we deserve - from our allies and from those who would destroy democracy. Do not meekly ask for what we think we can get. Declare what kind of country we intend to build. Then get to work.

**Y1, Week Forty-Seven**, as we approach the one-year anniversary of the second Trump administration, Professors Steven Levitsky, Lucan A. Way and Daniel Ziblatt, writing in Foreign Affairs (“[The Price of American Authoritarianism](#)”) offer insights on what Americans can do to reverse the decline of Democracy in the country.

They start from the proposition that while the country has tipped into competitive authoritarianism, and the authoritarian offensive is well underway, it is reversible. To do so, they posit, we must recognize and counter what they call “the twin dangers of complacency and fatalism.” By underestimating the threat posed to democracy as much of the establishment did a year ago, treating Trump and his administration as simply politics as usual, “enables authoritarianism by encouraging inaction in the face of systematic abuse of power.”

At the same time, by overestimating the impact of authoritarianism, and feeling we have reached a point of no return, discourages the efforts necessary to defeat the authoritarians in “the most important arena for contestation against a competitive authoritarian regime, upcoming elections. The gravest danger, they warn, “is not repression but demobilization.” We must not “treat a Trump dictatorship as a fait accompli and repression and rigged elections as inevitable.” Doing so risks creating a self-fulfilling prophecy. That dictatorship becomes more likely if elites and ordinary citizens give up – “when, out of fear, exhaustion, or sheer resignation, promising candidates decline to run for office, donors pull back, lawyers stop filing lawsuits, and citizens tune out.” Whether or not that dictatorship becomes a reality depends less on the actions of Trump and his enablers, than on our willingness to continue to believe fighting back matters and on our willingness then to fight back.

**Y2, Week One**, E. J. Dionne Jr., in his op-ed (“[Trump Is Engineering Regime Change, Right Here at Home](#)”), warns that, following a month that witnessed the shocking murder by federal agents of two American citizens in Minneapolis, more corrupt pardons, criminal investigations of the Fed chair, Gov. Walz, Minnesota Attorney General Keith Ellison, and Minneapolis Mayor Jacob Frey, as well as six Democrats for reminding servicemembers of their obligation to not obey illegal orders, the threat to seize Greenland by force and impose tariffs in retribution for the support by eight European countries for Greenland, Trump’s thinly veiled direction to the Attorney General to investigate Jack Smith after he testified in public on the Hill, we can no longer ignore what has been suspected for months, “Trump is actively seeking regime change, not in Venezuela, where a dictatorship remains in power despite the apprehension of Nicolás Maduro, but in the United States.

Dionne concludes his op-ed, “Recognizing that the nature of our regime is the central question in our politics will not make other issues go away. But failing to confront what’s at stake would be a generational failure. The danger now is not alarmism but complacency.”

In a similar vein, George Packer in his column (“[What Should Americans Do Now?](#)”) warns we should not now be lulled into complacency. Trump may be trying to dial down the temperature, but he has not withdrawn federal agents from Minneapolis or allowed local law enforcement to investigate the killing. Packer writes that “authoritarianism doesn’t disappear with the news cycle. The administration’s automatic lies about the killings and slander of the victims are less a cover-up of facts than a display of utter contempt for them.” The throughline for what we are experiencing now started on January 6<sup>th</sup> – and runs to Trump announcing that the only



limit to his power is what he decides it is. The Secretary of Defense [captured](#) it all: ICE > MN!

What do we do now, Packer asks. Minneapolis has shown us the way – shifting from protest to [nonviolent resistance](#). “Minneapolis is setting an example for the rest of the country: a nameless, leaderless, self-organized movement.” Packer continues, “Beyond neighbor-to-neighbor support in a moment of crisis lies a wide range of means to withhold cooperation from an illegitimate government.” He cites the late theorist Gene Sharp, who set out tactics, along with ideas for strategic planning, in two of his books, [From Dictatorship to Democracy](#) and [Waging Nonviolent Struggle](#). His work has been used by democracy activists under dictatorial regimes in Serbia, Burma and Iran, among others. “Americans,” he counsels “should pick up these books and absorb their lessons,” including boycotts and strikes; refusal to participate in administration-supported organizations and events; “quasi-legal evasions and delays” and “reluctant and slow compliance” with government edicts; and finally, nonviolent civil disobedience.

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*No portion of this Tracker has been prepared using AI.*

*While there are frequent references in this Tracker to legal cases, legal arguments and legal concepts, nothing in this Tracker is intended, or should be deemed, to constitute legal advice.*

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## PREVIOUS EDITIONS OF THIS TRACKER

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| <p><b>Year Two:</b></p> <p>Y2, Week Three <a href="#">available here</a></p> <p>Y2, Week Two <a href="#">available here</a></p> <p>Y2, Week One <a href="#">available here</a></p> | <p><b>Year One:</b></p> <p>Y1, Week Fifty-Two <a href="#">available here</a></p> <p>Y1, Week Fifty end <a href="#">available here</a></p> <p>Y1, Weeks Fifty-One/Fifty-Two <a href="#">available here</a></p> <p>Y1, Week Fifty II <a href="#">available here</a></p> <p>Y1, Weeks Forty-Nine and Fifty <a href="#">available here</a></p> <p>Y1, Week Forty-Eight <a href="#">available here</a></p> <p>Y1, Weeks Forty-Six &amp; Forty Seven <a href="#">available here</a></p> <p>Y1, Week Forty-Five II <a href="#">available here</a></p> <p>Y1, Week Forty-Five I <a href="#">available here</a></p> <p>Y1, Week Forty-Four <a href="#">available here</a></p> <p>Y1, Week Forty-Three <a href="#">available here</a></p> <p>Y1, Week Forty-Two <a href="#">available here</a></p> <p>Y1, Week Forty-One <a href="#">available here</a></p> <p>Y1, Weeks Forty <a href="#">available here</a></p> <p>Y1, Weeks Thirty-Eight/Thirty-Nine <a href="#">available here</a></p> <p>Y1, Week Thirty-Seven <a href="#">available here</a></p> <p>Y1, Weeks Thirty-Five/Thirty-Six <a href="#">available here</a></p> <p>Y1, Week Thirty-Four <a href="#">available here</a></p> <p>Y1, Week Thirty-Three <a href="#">available here</a></p> <p>Y1, Weeks Thirty-One/Thirty-Two <a href="#">available here</a></p> <p>Y1, Weeks Twenty-Nine/Thirty <a href="#">available here</a></p> <p>Y1, Week Twenty-Eight <a href="#">available here</a></p> <p>Y1, Week Twenty-Seven <a href="#">available here</a></p> <p>Y1, Week Twenty-Six <a href="#">available here</a></p> <p>Y1, Week Twenty-Five <a href="#">available here</a></p> <p>Y1, Week Twenty-Four <a href="#">available here</a></p> <p>Y1, Week Twenty-Three <a href="#">available here</a></p> <p>Y1, Week Twenty-Two <a href="#">available here</a></p> <p>Y1, Week Twenty-One <a href="#">available here</a></p> <p>Y1, Week Twenty <a href="#">available here</a></p> <p>Y1, Week Nineteen <a href="#">available here</a></p> <p>Y1, Week Eighteen <a href="#">available here</a></p> <p>Y1, Week Seventeen <a href="#">available here</a></p> <p>Y1, Week Sixteen <a href="#">available here</a></p> <p>Y1, Week Fifteen <a href="#">available here</a></p> <p>Y1, Week Fourteen <a href="#">available here</a></p> <p>Y1, Week Thirteen <a href="https://bit.ly/3Y6AMUB">https://bit.ly/3Y6AMUB</a></p> <p>Y1, Week Twelve <a href="https://bit.ly/4lvQi6y">https://bit.ly/4lvQi6y</a></p> <p>Y1, Week Ten-Eleven <a href="https://bit.ly/3YbRrGv">https://bit.ly/3YbRrGv</a></p> <p>Y1, Week Eight <a href="https://bit.ly/4bwCuUM">https://bit.ly/4bwCuUM</a></p> <p>Y1, Week Seven II <a href="https://bit.ly/4iqWiva">https://bit.ly/4iqWiva</a></p> <p>Y1, Week Seven <a href="https://bit.ly/3QKcXOa">https://bit.ly/3QKcXOa</a></p> <p>Y1, Week Six <a href="https://bit.ly/3XnkZjL">https://bit.ly/3XnkZjL</a></p> <p>Y1, Week Five <a href="https://bit.ly/4k7Lq6X">https://bit.ly/4k7Lq6X</a></p> <p>Y1, Week Four <a href="https://bit.ly/4hELfy7">https://bit.ly/4hELfy7</a></p> <p>Y1, Week Three <a href="https://bit.ly/3WNtqou">https://bit.ly/3WNtqou</a></p> <p>Y1, Week Two <a href="https://bit.ly/40V58Lz">https://bit.ly/40V58Lz</a></p> <p>Executive Orders <a href="https://bit.ly/3E7Mt6g">https://bit.ly/3E7Mt6g</a></p> |
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## **APPENDIX A – RESCINDED BIDEN EXECUTIVE ORDERS**

- EO 13985 - January 20, 2021 (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government).
- EO 13986 - January 20, 2021 (Ensuring a Lawful and Accurate Enumeration and Apportionment Pursuant to the Decennial Census).
- EO 13987 - January 20, 2021 (Organizing and Mobilizing the United States Government To Provide a Unified and Effective Response To Combat COVID-19 and To Provide United States Leadership on Global Health and Security).
- EO 13988 - January 20, 2021 (Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation).
- EO 13989 - January 20, 2021 (Ethics Commitments by Executive Branch Personnel).
- EO 13990 - January 20, 2021 (Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis).
- EO 13993 - January 20, 2021 (Revision of Civil Immigration Enforcement Policies and Priorities).
- EO 13995 - January 21, 2021 (Ensuring an Equitable Pandemic Response and Recovery).
- EO 13996 - January 21, 2021 (Establishing the COVID-19 Pandemic Testing Board and Ensuring a Sustainable Public Health Workforce for COVID-19 and Other Biological Threats).
- EO 13997 - January 21, 2021 (Improving/ Expanding Access to Care/Treatments for COVID-19).
- EO 13999 - January 21, 2021 (Protecting Worker Health and Safety).
- EO 14000 - January 21, 2021 (Supporting the Reopening and Continuing Operation of Schools and Early Childhood Education Providers).
- EO 14002 - January 22, 2021 (Economic Relief Related to the COVID-19 Pandemic).
- EO 14003 - January 22, 2021 (Protecting the Federal Workforce).
- EO 14004 - January 25, 2021 (Enabling All Qualified Americans To Serve Their Country in Uniform).
- EO 14006 - January 26, 2021 (Reforming Our Incarceration System To Eliminate the Use of Privately Operated Criminal Detention Facilities).
- EO 14007 - January 27, 2021 (President’s Council of Advisors on Science and Technology).
- EO 14008 - January 27, 2021 (Tackling the Climate Crisis at Home and Abroad).
- EO 14009 - January 28, 2021 (Strengthening Medicaid and the Affordable Care Act).
- EO 14010 - February 2, 2021 (Creating a Comprehensive Regional Framework To Address the Causes of Migration, To Manage Migration Throughout North and Central America, and To Provide Safe and Orderly Processing of Asylum Seekers at the United States Border).
- EO 14011 - February 2, 2021 (Establishment of Interagency Task Force on Reunification of Families).
- EO 14012 - February 2, 2021 (Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans).
- EO 14013 - February 4, 2021 (Rebuilding and Enhancing Programs To Resettle Refugees and Planning for the Impact of Climate Change on Migration).
- EO 14015 - February 14, 2021 (Establishment of the White House Office of Faith-Based and Neighborhood Partnerships).
- EO 14019 - March 7, 2021 (Promoting Access to Voting).
- EO 14020 - March 8, 2021 (Establishment of the White House Gender Policy Council).
- EO 14021 - March 8, 2021 (Guaranteeing an Educational Environment Free From Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity).
- EO 14022 - April 1, 2021 (Termination of Emergency With the International Criminal Court).
- EO 14027 - May 7, 2021 (Establishment of the Climate Change Support Office).
- EO 14030 - May 20, 2021 (Climate-Related Financial Risk).
- EO 14031 - May 28, 2021 (Advancing Equity, Justice, and Opportunity for Asian Americans, Native Hawaiians, and Pacific Islanders).

- EO 14035 - June 25, 2021 (Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce).
- EO 14037 - August 5, 2021 (Strengthening American Leadership in Clean Cars and Trucks).
- EO 14045 - September 13, 2021 (White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics).
- EO 14049 - October 11, 2021 (White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Native Americans and Strengthening Tribal Colleges and Universities).
- EO 14050 - October 19, 2021 (White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Black Americans).
- EO 14052 - November 15, 2021 (Implementation of the Infrastructure Investment and Jobs Act).
- EO 14055 - November 18, 2021 (Nondisplacement of Qualified Workers Under Service Contracts).
- EO 14057 - December 8, 2021 (Catalyzing Clean Energy Industries/Jobs Via Sustainability).
- EO 14060 - December 15, 2021 (Establishing the United States Council on Transnational Organized Crime).
- EO 14069 - March 15, 2022 (Advancing Economy, Efficiency, and Effectiveness in Federal Contracting by Promoting Pay Equity and Transparency).
- EO 14070 - April 5, 2022 (Continuing To Strengthen Americans' Access to Affordable, Quality Health Coverage).
- EO 14074 - May 25, 2022 (Advancing Effective, Accountable Policing and Criminal Justice Practices To Enhance Public Trust and Public Safety).
- EO 14075 - June 15, 2022 (Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals).
- EO 14082 - September 12, 2022 (Implementation of the Energy and Infrastructure Provisions of the Inflation Reduction Act of 2022).
- EO 14084 - September 30, 2022 (Promoting the Arts, the Humanities, Museum and Library Services).
- EO 14087 - October 14, 2022 (Lowering Prescription Drug Costs for Americans).
- EO 14089 - December 13, 2022 (Establishing the President's Advisory Council on African Diaspora Engagement in the United States).
- EO 14091 - February 16, 2023 (Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government).
- The Presidential Memorandum of March 13, 2023 (Withdrawal of Certain Areas off the United States Arctic Coast of the Outer Continental Shelf from Oil or Gas Leasing).
- EO 14096 - April 21, 2023 (Revitalizing Commitment to Environmental Justice for All).
- EO 14099 - May 9, 2023 (Moving Beyond C-19 Vaccination Requirements for Federal Workers).
- EO 14110 - October 30, 2023 (Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence).
- EO 14115 - February 1, 2024 (Imposing Certain Sanctions on Persons Undermining Peace, Security, and Stability in the West Bank).
- EO 14124 - July 17, 2024 (White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity Through Hispanic-Serving Institutions).
- The Presidential Memorandum - January 6, 2025 (Withdrawal of Certain Areas of the United States Outer Continental Shelf from Oil or Natural Gas Leasing).
- The Presidential Memorandum - January 14, 2025 (Certification of Rescission of Cuba's Designation as a State Sponsor of Terrorism).
- The Presidential Memorandum - January 14, 2025 (Revocation of National Security Presidential Memorandum 5).

## APPENDIX B - UNDERSTANDING ICE VERSUS CBP

In light of the events playing out in various cities, and most recently in Minneapolis, at the hands of federal agents, Garrett Graff [set out](#) in some detail the history of, and the differences between, the principal players in what is fast becoming a fascist police force answerable only to the president - CBP and ICE.

Graff notes that CBP and ICE in the Obama or Biden years — or even the first Trump term — were neither perfect nor deeply humane organizations dedicated to respecting civil rights and liberties. There were plenty of CBP and ICE horror stories since 9/11, but something deeply sinister has emerged in the past year. And to be clear, the viral video clips of assaults on American streets are largely of CBP strike teams under the leadership of the Border Patrol's roving commander, Gregory Bovino.

As part of the creation of DHS and the massive reshuffling of government, both Immigration and Naturalization Services (INS) and the Customs Service were broken apart. ICE brought together the "legacy INS" deportation and detention officers, which were renamed as "Enforcement and Removal Operations" (ERO), as well as the "legacy INS" and "legacy Customs" special agents to form the Homeland Security Investigations (HSI) division. The deportation officers are among the least trained and least educated law enforcement in the US government, while HSI agents are more specialized and highly trained "special agents," similar to the FBI or Secret Service, who historically handled complex "transnational" and national security smuggling cases.

Other parts of INS and Customs were reshuffled into the new, supposedly "unified" border agency of CBP. The green-uniformed Border Patrol were in charge of patrolling the border in between legal ports of entry while the blue-uniformed Office of Field Operations handled legitimate trade and travel through "ports of entry" like land crossings, seaports, and airports.

Understanding ICE and CBP requires understanding the difference between two US government "job codes," known as "1811s" and "1801s." "GS-1801s" are the federal government's street cops — the bottom ranks of law enforcement, classified in the federal employment system as "General Inspection, Investigation, Enforcement, and Compliance" positions. The positions come with less training and lower education requirements — usually only a high school degree or equivalent — as well as more limited authority. All of CBP are "1801s," as are all ICE ERO deportation officers. They are authorized to enforce immigration laws and, notably, only authorized to make arrests for federal crimes "if the offense is committed in the officer's presence, or ... if the officer has reasonable grounds to believe that the person to be arrested has committed or is committing such a felony."

"GS-1811s," known as "Special Agent / Criminal Investigator," are the government's detectives — think the FBI, Secret Service, US Marshals, and, notably, HSI agents. These positions usually require more work experience and a college degree (most FBI agents in fact have advanced degrees, either law degrees or

accounting degrees), and come with far more training (months, not weeks), and more broad investigative authority.

Overall, CBP's arrest and misconduct rate is five times higher than other federal law enforcement agencies — and, in fact, the arrest rate of CBP officers and Border Patrol agents (.5%) has been higher than the arrest rate of undocumented immigrants in the United States (.4%). Said another way, CBP officers and Border Patrol agents commit crimes at an equal or even greater rate per capita than the population of undocumented immigrants do in the United States. And, we are now in the process of repeating all of the same mistakes we made with the CBP hiring surge with ICE's new hiring surge, which is going disastrously so far.

To compound the issue, neither ICE nor CBP agents are prepared or trained for the tasks handed to them by Stephen Miller. The moment that Stephen Miller set his "3000 arrests a day" quota last spring, ICE and CBP had to abandon any pretext of doing targeted enforcement operations; it took too long and required too many officers.

ICE officers now cruise American streets without any idea who they are looking for; they conduct "Kavanaugh Stops," profiling people of color anywhere they are found. Heavily armed CBP agents, meanwhile, are raiding Home Depot parking lots to round up day laborers because this is the low-hanging fruit of immigration enforcement. Often CBP and ICE operations are conducted with no idea who they might end up finding and arresting. In one very disturbing video from Minneapolis, a Border Patrol agent accosted a US citizen because of his accent and then handcuff him in front of his daughter before later releasing him — the irony is that the Border Patrol agent himself had the same accent.

Graff adds another element to the mix: agents are acting out of fear, not strength. These agents are terrified about the public hostility they are facing. Much of that flows from the fact that ICE and CBP just are not trained for the operations they undertake.

And lastly there is a mindset problem: The average police officer does not spend his entire day interacting with criminals. Border Patrol agents are conditioned to think of interdicting criminals all day long — criminals in the sense that their targets are crossing the border illegally. Add to that the reality that in immigration and border policing, a different set of civil rights and civil liberties apply that differ from "regular" police and federal law enforcement. Simply put, they are not used to respecting the legal procedures applicable to other law enforcement agencies. In short, CBP is not well practiced in the most basic civil rights and civil liberties Americans expect, and these agents are now spread not at the border but in the interior — American cities.

In sum, Border Patrol and ICE are just not trained, prepared, or accustomed to patrolling "regular" America and rolling through neighborhoods, school grounds, parking lots. They are not trained in de-escalation techniques to deal with angry citizens or innocent people. They deploy tear gas or pepper spray as a first line of defense, rather than as a last resort, which is how you'd normally police agencies use



it. ICE and CBP are using chemical agents almost recreationally and prophylactically, in moments where there's no physical harm or risk to them – moments where their violence is the only violence at the scene. Witness too the street tactics of ICE and CBP – gangs of agents surround people or vehicles shouting competing and contradictory commands. How, at a moment of great stress, is anyone supposed to know who to follow? There is no coordinated teamwork or practiced movements; there's no one in command directing a law enforcement operation that easily can spin out of control. They resort to force faster than trained police would, use deadly force more recklessly in situations where it's not warranted, and too often turn to firearms when they get “frustrated” and not because there is any rational risk.