



DAY ONE EXECUTIVE ORDERS – SO, WHERE DO WE START?

The time-honored pomp and circumstance of the presidential inauguration on Inauguration Day has come and gone. 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, the Trump White House published a flurry of presidential actions (26 Executive Orders (EOs), 12 memoranda, four proclamations and four staffing announcements)¹ consistent with the America First priorities [posted](#) shortly after Donald Trump was inaugurated. These are summarized below.

In brief, Trump:

- has ordered the promised massive crack down on immigration, including attempting to end birthright citizenship guaranteed by the Constitution;
- seeks to reverse significant portions of the Biden legacy;
- seeks 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 and inclusion (“DEI”), 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 of the January 6th insurrectionists who were convicted, pleaded guilty or were, as of yesterday, still under investigation.

It is hard to figure out where to start in highlighting and then assessing the damage that these EOs and the efforts they authorize will do to our communities, to our society more broadly, to the rule of law and to our Republic. In addition to the appalling pardons of insurrectionists, there is the declaration of a national emergency at the southern border and orders to use the US military to deal with the border situation. There remains the potential invocation of the Alien Enemies Act and 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 proposed designation of drug cartels as foreign terrorist organizations also raises the spectre of deploying the military for law enforcement purposes.

¹ 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 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.” Incidentally, Trump has not only weaponized the “national emergency” designation, but he has also invoked the notion of an “invasion,” to justify further abuses of presidential power.

In addition, there are myriad consequences lurking just below the surface, embedded in EOs that by their very nature leave much to interpretation. 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.

As the breaking news chyrons often posit, “this is a developing story.”

Immigration & Securing the Southern Border

National emergency

Trump has [declared](#) a “**national emergency**” at the southern border, which will allow 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](#), 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, 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, available [here](#)).



“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 “Reman-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 deployment of active-duty military in particular is tremendously troubling. It weakens the institution, weakens democracy and undermines the rule of law. Moreover, it is likely to undermine the morale and readiness of the active-duty military, which for years has been plagued by recruitment and retention challenges.

Role of the military

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 is 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.

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 mass deportations, 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, address myriad aspects of the US asylum system and strengthened Central American asylum systems);
 - 14011 (establishing 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 facilitate 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.C. § 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.C. § 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;
- 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 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 provisions of the INA or other relevant statutory provisions.

It has been reported that the acting Secretary of Homeland Security has 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.

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 10th 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, 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.

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.

The ACLU, among others, Monday night [sued](#) the Trump administration, 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.”



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.

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 calls 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.

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.” The Alien Enemies Act, as I set out in a prior [briefing note](#), has only been invoked three times, each during a war declared by Congress. 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 person 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.

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 to dismiss a lawsuit brought by Mexico accusing them of aiding and abetting the illegal trafficking of firearms to Mexican drug cartels.)

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.

Climate, Energy 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 and the United Nations Framework Convention on Climate Change (UNFCCC), and to revoke any purported US financial commitment under the UNFCCC. 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.”

Federal Workforce

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 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, prioritize 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 Office of Personnel Management 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 Merit Systems Protection Board.

DEI and a New Target "Accessibility" (DEIA)

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. This EO, as [noted](#) by Axios, revokes an EO (11246) signed by President Lyndon Johnson in September 1965.

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.”

Today, Trump issued a fact sheet [targeting the FAA's](#) DEI hiring policies. It is now widely reported that an Office of Personnel Management memo today 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.”

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.

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.



Online Content Moderation

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](#), [here](#) and [here](#).)

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*) 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 to 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](#)), 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, which in 2016 was tasked with countering foreign disinformation and propaganda and coordinating related interagency efforts and was [shut down](#) in December. 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.

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 intelligence community against perceived political enemies and unprecedented, third-world weaponization of prosecutorial power to upend the democratic process, including the January 6th 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 Department of Justice, the Securities and Exchange Commission and the Federal Trade Commission, and any other agency exercising civil or criminal enforcement authority, during the past four years and prepare recommendations for remedial action. The Director of National Intelligence is directed to undertake the same in respect of the intelligence community.

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 regularly calls 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 a special prosecutor, John H. Durham, to investigate the FBI's handling of its inquiry into the Trump campaign's alleged ties to Russia. Yesterday, 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. Yesterday, Trump also fired Brian Hook, his former special envoy to Iran who was leading the State Department transition team and had also been targeted by Iran.

This afternoon, House Speaker [announced](#) that the House will be establishing a Select Subcommittee of the Judiciary Committee to continue House "efforts to uncover the truth" by further investigating the work of the original January 6th Select Committee and alleged failures of security at the Capitol.

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.

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.

Security Clearances

President Trump has 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 intelligence community related to the letter, and disciplinary action if warranted. The EO also revokes John Bolton’s security clearance.

January 6th Defendants

In an EO [addressing](#) the January 6th 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 offenses related to January 6th. The Attorney General is directed to dismiss all pending indictments with prejudice. 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 Amit 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 6th speech was a protected official act or a part of his re-election campaign.

This is perhaps the most appalling of the Day One actions. Only a few Republican 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.

Foreign Policy – 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 aid 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).

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.”

Trade

No tariffs were announced as part of 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.

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, that have extraterritorial effect. (See my prior briefing note, available [here](#).)

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).

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 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.

Other Actions

Trump established the [Department of Government Efficiency](#).

In his [Unleashing Alaska's Resource Potential](#) EO, Trump takes aim at “the punitive restrictions implemented by the previous administration that specifically target resource development on both State and Federal lands in Alaska.”

Trump takes 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.



Rescission of “Harmful Executive Orders”

Among the 78 EOs issued by President Biden that were [rescinded](#) Monday (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.

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January 22, 2025



APPENDIX A – RESCINDED BIDEN EXECUTIVE ORDERS

- Executive Order 13985 of January 20, 2021 (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government).
- Executive Order 13986 of January 20, 2021 (Ensuring a Lawful and Accurate Enumeration and Apportionment Pursuant to the Decennial Census).
- Executive Order 13987 of 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).
- Executive Order 13988 of January 20, 2021 (Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation).
- Executive Order 13989 of January 20, 2021 (Ethics Commitments by Executive Branch Personnel).
- Executive Order 13990 of January 20, 2021 (Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis).
- Executive Order 13993 of January 20, 2021 (Revision of Civil Immigration Enforcement Policies and Priorities).
- Executive Order 13995 of January 21, 2021 (Ensuring an Equitable Pandemic Response and Recovery).
- Executive Order 13996 of January 21, 2021 (Establishing the COVID-19 Pandemic Testing Board and Ensuring a Sustainable Public Health Workforce for COVID-19 and Other Biological Threats).
- Executive Order 13997 of January 21, 2021 (Improving and Expanding Access to Care and Treatments for COVID-19).
- Executive Order 13999 of January 21, 2021 (Protecting Worker Health and Safety).
- Executive Order 14000 of January 21, 2021 (Supporting the Reopening and Continuing Operation of Schools and Early Childhood Education Providers).
- Executive Order 14002 of January 22, 2021 (Economic Relief Related to the COVID-19 Pandemic).
- Executive Order 14003 of January 22, 2021 (Protecting the Federal Workforce).
- Executive Order 14004 of January 25, 2021 (Enabling All Qualified Americans To Serve Their Country in Uniform).
- Executive Order 14006 of January 26, 2021 (Reforming Our Incarceration System To Eliminate the Use of Privately Operated Criminal Detention Facilities).
- Executive Order 14007 of January 27, 2021 (President’s Council of Advisors on Science and Technology).
- Executive Order 14008 of January 27, 2021 (Tackling the Climate Crisis at Home and Abroad).
- Executive Order 14009 of January 28, 2021 (Strengthening Medicaid and the Affordable Care Act).
- Executive Order 14010 of 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).



- Executive Order 14011 of February 2, 2021 (Establishment of Interagency Task Force on the Reunification of Families).
- Executive Order 14012 of February 2, 2021 (Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans).
- Executive Order 14013 of February 4, 2021 (Rebuilding and Enhancing Programs To Resettle Refugees and Planning for the Impact of Climate Change on Migration).
- Executive Order 14015 of February 14, 2021 (Establishment of the White House Office of Faith-Based and Neighborhood Partnerships).
- Executive Order 14019 of March 7, 2021 (Promoting Access to Voting).
- Executive Order 14020 of March 8, 2021 (Establishment of the White House Gender Policy Council).
- Executive Order 14021 of March 8, 2021 (Guaranteeing an Educational Environment Free From Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity).
- Executive Order 14022 of April 1, 2021 (Termination of Emergency With Respect to the International Criminal Court).
- Executive Order 14027 of May 7, 2021 (Establishment of the Climate Change Support Office).
- Executive Order 14030 of May 20, 2021 (Climate-Related Financial Risk).
- Executive Order 14031 of May 28, 2021 (Advancing Equity, Justice, and Opportunity for Asian Americans, Native Hawaiians, and Pacific Islanders).
- Executive Order 14035 of June 25, 2021 (Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce).
- Executive Order 14037 of August 5, 2021 (Strengthening American Leadership in Clean Cars and Trucks).
- Executive Order 14045 of September 13, 2021 (White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics).
- Executive Order 14049 of October 11, 2021 (White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Native Americans and Strengthening Tribal Colleges and Universities).
- Executive Order 14050 of October 19, 2021 (White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Black Americans).
- Executive Order 14052 of November 15, 2021 (Implementation of the Infrastructure Investment and Jobs Act).
- Executive Order 14055 of November 18, 2021 (Nondisplacement of Qualified Workers Under Service Contracts).
- Executive Order 14057 of December 8, 2021 (Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability).
- Executive Order 14060 of December 15, 2021 (Establishing the United States Council on Transnational Organized Crime).
- Executive Order 14069 of March 15, 2022 (Advancing Economy, Efficiency, and Effectiveness in Federal Contracting by Promoting Pay Equity and Transparency).
- Executive Order 14070 of April 5, 2022 (Continuing To Strengthen Americans' Access to Affordable, Quality Health Coverage).



- Executive Order 14074 of May 25, 2022 (Advancing Effective, Accountable Policing and Criminal Justice Practices To Enhance Public Trust and Public Safety).
- Executive Order 14075 of June 15, 2022 (Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals).
- Executive Order 14082 of September 12, 2022 (Implementation of the Energy and Infrastructure Provisions of the Inflation Reduction Act of 2022).
- Executive Order 14084 of September 30, 2022 (Promoting the Arts, the Humanities, and Museum and Library Services).
- Executive Order 14087 of October 14, 2022 (Lowering Prescription Drug Costs for Americans).
- Executive Order 14089 of December 13, 2022 (Establishing the President’s Advisory Council on African Diaspora Engagement in the United States).
- Executive Order 14091 of 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).
- Executive Order 14096 of April 21, 2023 (Revitalizing Our Nation’s Commitment to Environmental Justice for All).
- Executive Order 14099 of May 9, 2023 (Moving Beyond COVID-19 Vaccination Requirements for Federal Workers).
- Executive Order 14110 of October 30, 2023 (Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence).
- Executive Order 14115 of February 1, 2024 (Imposing Certain Sanctions on Persons Undermining Peace, Security, and Stability in the West Bank).
- Executive Order 14124 of July 17, 2024 (White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity Through Hispanic-Serving Institutions).
- The Presidential Memorandum of January 6, 2025 (Withdrawal of Certain Areas of the United States Outer Continental Shelf from Oil or Natural Gas Leasing).
- The Presidential Memorandum of January 14, 2025 (Certification of Rescission of Cuba’s Designation as a State Sponsor of Terrorism).
- The Presidential Memorandum of January 14, 2025 (Revocation of National Security Presidential Memorandum 5).