

PURGES, PAYBACK, DISRUPTIONS, POWER GRABS – TRACKING THE DAMAGE, AND THE PUSHBACK

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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.

“The struggle of man against power is the struggle of memory against forgetting.” Milan Kundera, Czech novelist.

Topics covered in this Note:

[Introductory Note](#)

[Flood the Zone](#)

[Dismantling the Guardrails](#)

[Domestic Consequences](#)

[Concluding Thoughts](#)

[Executive Actions/Other Presidential Actions:](#)

[Birthright Citizenship](#)

[CDC](#)

[Christian Bias](#)

[Content Moderation](#)

[Climate Change and EVs](#)

[Death Penalty](#)

[DEI](#)

[Electoral College](#)

[Energy](#)

[Federal Regulation](#)

[Federal Workforce](#)

[FEMA](#)

[Foreign Agents Registration Act](#)

[Foreign Corrupt Practices Act](#)

[Foreign Influence Task Force](#)

[Foreign Terrorist Organization Designations](#)

[Kleptocracy enforcement units](#)

[Gender](#)

[Grants, Loans and Other Federal Assistance](#)

[Hatch Act](#)

[Immigration & Securing the Border](#)

[January 6th Insurrectionists](#)

[National Archive](#)

[National Nuclear Security Administration](#)

[NGOs](#)

[Public Health](#)

[Refugees](#)

[Revenge and Retribution](#)

[Revocation of Prior Executive Orders](#)

[Second Amendment](#)

[Security Clearances](#)

[Sovereign Wealth Fund](#)

[Undocumented Migrants](#)

[Visitors to the United States, generally](#)

[Fighting Back:](#)

[American Bar Association](#)

[Birthright Citizenship](#)

[Buyouts](#)

[Department of Education](#)

[Department of Health & Human Services](#)

[Department of Justice/Danielle Sasso](#)

[Department of State](#)

[Department of Treasury](#)

[FBI](#)

[Federal Election Commission](#)

[Inspectors General](#)

[Musk/DOGE](#)

[National Labor Relations Board](#)

[Office of Management and Budget](#)

[Office of Personnel Management](#)

[Office of Special Counsel](#)

[Transgender Rights](#)

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“**Updated**” indicates new material since the prior version.

INTRODUCTORY NOTE – updated

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 piece [“Musk’s Junta Establishes Him as Head of Government.”](#)

Joyce Vance [characterized](#) the events of since Inauguration Day as a “coup” – “a hostile, undemocratic takeover of government.” Ruth Ben-Ghiat similarly has 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 US 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.

Time Magazine [placed](#) Elon Musk on the cover of its February 24th issue, sitting behind the Resolute Desk. Time says, “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, has 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 a number of his actions since then are end-runs around Congress, fly in the face of the 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.

There is plenty to digest and unpack in the pages that follow. If there is one development, however, that stands out as the most compelling example of the

constitutional crisis we face, it is the [resignations](#) of Department of Justice prosecutors over the Trump administration's decision to drop charges against NYC Mayor Eric Adams. The resignations are on par with the "Saturday Night Massacre" during the Watergate scandal and highlight 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 DoJ is nothing short of seismic, and I would urge 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 is official corruption, pure and simple. And, as Dahlia Lithwick noted in her [Amicus Podcast](#), accusations of "weaponization" is 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.

And from the department of you-can't-make-this-stuff-up, 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](#) now are scrambling to rehire them. Second prize goes to DOGE for posting 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](#).

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, 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.

The pace of new orders has continued (as of February 7, there were close to 100 presidential actions posted on the White House [website](#)), 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 6th 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 arguably 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

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.”

was 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.

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 Week Two was out align with Project 2025. But, hey, Trump 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. Resistance and resilience will mean sifting through the noise to focus, in the words of Senator Slotkin, on the "strategic and irreversible." The more damaging is proving to be the less visible.

DISMANTLING THE GUARDRAILS

Those who warned in the run-up to the election of looming dangers often were met by responses along the lines of: the US 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.

Government agencies

Central Intelligence Agency – updated

Trump has 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 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 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 6th or of Trump (numbering close to 6,000 of the 38,000-strong FBI workforce), initially employee ID numbers, and eventually names, were provided through a classified system.

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 has been 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).

Department of Defense

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 will need 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.

I have not fully assessed the impact, but in another shake-up of who covers official Washington, the Pentagon as part of a media rotation has replaced the New York Times, NBC News, National Public Radio and POLITICO with One America News Network, the New York Post, Breitbart and HuffPost.

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.

Department of Education

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.”

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 of the Salt Typhoon hack of the US telecom infrastructure by Chinese intelligence) and the Homeland Security Advisory Council (comprised of former secretaries of Homeland Security, DEA administrators, 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 who focused on misinformation, disinformation and foreign influence operations aimed at US elections had been placed on administrative leave.

Department of Justice

During 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.

Week Two of the Trump regime, acting Attorney General James McHenry [fired](#) more than a dozen career federal prosecutors who worked under Special Counsel Jack Smith on the January 6th 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 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 the new US Attorney in Washington, D.C., Edward Martin, of a memorandum announcing a "special project" to review the prosecution of the January 6th 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.

Update: 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 her February 5th [internal memorandums](#), the Criminal Division is to focus its FCPA efforts on foreign bribery that facilitates 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 has civil enforcement powers in respect of the FCPA.
- Per a second February 5th [internal memorandum](#), “Recourse to criminal charges under [FARA] and 18 U.S.C. § 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 TCOs, 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.

US Attorney 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 against by Musk and his henchmen government employees who resisted the hostile takeovers of their agencies. As Joyce Vance [notes](#), 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](#).”

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.”

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 ax 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.

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.

Equal Employment Opportunity Commission and National Labor Relations Board

Trump reportedly 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 and its general counsel and fired the Democratic chair of the National Labor Relations Board (NLRB). These removals leave both five-member boards without enough 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 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 6th 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 [reports](#) that, in 2021 following the January 6th 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 Week Two, the senior agent at the FBI's NYC field office 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.

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 6th 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!

Update: Separately, the FBI will disband the [Foreign Influence Task Force](#) (FITF), the unit tasked with combatting foreign interference in US elections. This action is pursuant to one of the Attorney General’s February 5th [internal memoranda](#), cited above. The FTIF was established in 2017 by Director Christopher Wray to address the targeting of US officials and other US 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.

Inspectors General

During Week One of the Trump regime, inspectors general (IGs) in nearly all Cabinet-level agencies (Department of Justice (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. It is believed that 18 were fired. 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.”

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? 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 Department of Health and Human Services (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 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.”

USAID

There are [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 comes 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](#).

At the end of 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 2nd [Lucid post](#), Musk is subject to no Congressional or other oversight because he has no official legal function.

As 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.

Individual government positions

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

The media

It remains to be seen who will cause more damage to the media – the Trump regime or self-censorship to curry favor with the administration. The chairman of the Federal Communications Commission (FCC) Brendan Carr ordered an investigation of 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](#) 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.”

THE EXECUTIVE ORDERS AND OTHER PRESIDENTIAL ACTIONS

Immigration & Securing the Southern Border

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](#), 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](#)).

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.

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 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](#).)

Analysis: 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 chronicled in a [prior briefing note](#), 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.

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.

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, 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.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 (*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 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.

The DoJ issued an [internal memorandum](#), citing the Supremacy Clause of the Constitution, directing US 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 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).

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

Analysis: The New York Times recently [published](#) an analysis of the targets of Trump's deportation agenda. The analysis notes 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.

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.

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 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.

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.

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, 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 (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 Merit Systems Protection Board.

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](#). 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.

Update: 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.

Federal Workforce – The Military

During 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'!

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. 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.”

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 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 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 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 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 officials duties had no obvious connection to DEIA. Some believe they were singled out merely for having attended routine DEIA training programs.

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.

Update: 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.

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 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, 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 DoJ, the Securities and 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 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 a special prosecutor, John H. Durham, 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 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 6th Select Committee and alleged failures of security at the Capitol.

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) 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.”

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.

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.](#)”

Week Four, CBS [reports](#) that the CDC could lose up to 10% of its workforce due to purges of federal government employees.

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 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.

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

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 of offenses related to January 6th. (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 6th 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, 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 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. Week Two, Senate Democrats, led by Senators 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.

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.

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 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 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.”

Update:

International Criminal Court. 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.

UN and Other International Organizations. In his [Withdrawing from and Ending Funding to Certain UN Organizations and Reviewing Support to all International Organizations](#) EO, Trump 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

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 Week Two, Trump levied tariffs on 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 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 to become the 51st 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.

NGOs

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.”

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). 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.

Other Actions – Updated

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

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. 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.

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.

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](#).

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.

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 administering the process by which the Constitution is amended;
- responsible 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 Week Three Trump dismissed the head of NARA, the Archivist of the United States, perhaps the most apolitical position in Washington, D.C.

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.

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.

DEMOCRACY FIGHTS BACK - Updated

Introduction

The remaining guardrails appear to the courts and the stock market. Here are some of the litigation trackers:

- [Just Security](#)
- [Lawfare](#)
- [Washington Post](#)
- [Democracy Forward News & Updates](#)

Robert Hubbell [has 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 must be faithfully executed (Article II, Section 3);
- all appropriations are to be authorized by Congress (Article I, Section 9);
- 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).

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 [reports](#) that sworn affidavits from the DoJ provide 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 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 Jan. 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 on Sunday 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.

Marin K. Levy, professor at Duke Law School, told CNBC via e-mail on Sunday: “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.”

AFL-CIO, Department of People Who Work for a Living

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.

American Bar Association

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. 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 [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.” The ABA 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.

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.”

Week Three, a second federal judge 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[nin]g counter to our nation’s 250-year history of citizenship by birth.”

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 support 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.”

Buyout of Federal Employees

The American Federation of Government Employees, 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.

Department of Education

The University of California Student Association has [sued](#) the Department of Education accusing DOGE of illegally accessing “sensitive personal and financial information” of about 42 million federal student loan borrowers.

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.

Department of Justice

Week Four, Danielle R. Sassoon, the interim US Attorney for the Southern District of New York (SDNY) and two officials in the Criminal Division of the DoJ resigned after the DoJ ordered that the corruption charges against New York City Mayor Eric Adams be dropped. An additional three officials, essentially the leadership of DoJ’s Public Integrity Section, reportedly resigned shortly thereafter, later joined by the lead prosecutor in the Adams case Assistant US Attorney for SDNY Hagan Scotten. 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 acting Deputy Attorney General 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 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" Sassoon refers to, 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!

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.

Department of Labor

The AFL-CIO and various other unions, represented by [Democracy Forward](#), [sued](#) the Department of Labor and DOGE to halt access by DOGE-affiliated personnel to Department of Labor 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).

Department of State/USAID

The American Foreign Service Association and the American Federation of Government Employees, 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.

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.

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.C. § 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.

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 American Foreign Service Association and the American Federation of Government Employees.

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 separate actions brought by the AIDS Vaccine Coalition and the Global Health Council 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.

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 of Retired Americans 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. 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.

Energy Emergency

Senators Tim Kaine and Martin Heinrich have tabled [legislation](#) challenging Trump's declaration of an [energy emergency](#).

Federal Bureau of Investigation

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 6th 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 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 6th 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 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](#).

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.

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 Equal Employment Opportunity Commission 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.

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 6th 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.

National Labor Relations Board

Gwynne Wilcox, who was fired by Trump from the NLRB, has [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.

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).

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 [Impoundment Control Act of 1974](#) (ICA). An OMB [FAQ](#) claims that the temporary pause is not an impoundment under the ICA. Law Professor Steve 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 [ICA].” Vladeck goes on to say that the administration is likely to challenge the constitutionality of the ICA, 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.

Another federal judge (Chief Judge John J. McConnell, Jr.) granted a [temporary restraining order](#) (1/21/25) 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.

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.”

Office of Personnel Management

A group of federal employees together with multiple employee unions, including the American Federation of Government Employees 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 Procedures 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.

Transgender Rights

A federal judge has 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.

DOMESTIC CONSEQUENCES

This new section will be my next area of focus. In the meantime, I start with this:

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.”

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.”

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.

CONCLUDING THOUGHTS

The Law and the Constitution

Our legal system is under threat. Professor Lawrence Tribe properly [frames](#) 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 has 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?

* * *

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, ending Week Four, with January 6th 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. Vladimir Putin can only be impressed.

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 need to do more than leave it to a foreign leader ([Justin Trudeau](#)) to so eloquently frame the damage and place the blame where it belongs.

All that said, we should find solace in the fact that Trump while significant damage has already been done, that damage has been at the hands of Musk rather than Trump. As Dan Pfeiffer in his Substack post (“[Don't Fall for Trump's Strongman Gambit](#)”), notes “If you break with conventional wisdom and look at the details of Trumps’ first two weeks the picture that emerges is a lame-duck president unable to execute on fairly simple tasks and too weak to get Congress to pass his agenda. Instead, he is relying on a series of legally dubious executive orders that resemble press releases more than policy documents. In his first two weeks, he has made countless errors, backed down from fights he picked, and been rebuked by the courts.” Pfeiffer concludes by urging us not to validate what Trump is doing; rather, we should be calling out his failings. “Wannabe authoritarians are beaten by exposing their weaknesses rather than worrying about their strength.”

* * *

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).