

# Inside Job: How Foundations Can Respond to the Challenges Facing Philanthropy in Compliance with Law and Avoid Illegality

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(Prepared for the Georgetown Conference on Representing and Managing Tax  
Exempt Organizations Not-2026)

## Introduction

In 2025, the Trump Administration and its allies in Congress, Red States and the private sector used multiple tactics and tools to advance the Trump Agenda and undermine efforts by philanthropies and not for profits working in multiple areas such as racial justice, climate change, voting rights, criminal justice reform, legal immigration, ESG in investing, transgender rights, and reproductive rights among others.

The ferocity, frequency, and scale of the attacks surprised many even though the policy proposals and approach were largely forecast in Project 2025. Soon, however, many of the efforts were challenged in courts across the country, often with success at the Federal District Court level although the Supreme Court and some appellate courts stayed or reversed some findings. This battle is continuing in 2026.

While several developments threatened in Executive Orders or rumored to happen did not occur, there remains several vectors of potential risk for foundations working in the aforementioned areas. Among those risks are the possibility that the IRS may revisit the public policy doctrine first enunciated in the Supreme Court case, *Bob Jones v. United States*, and that the IRS will use the illegality doctrine to revoke the tax exemption of those organizations whose missions the Trump Administration does not favor.

This paper describes the threats facing foundations funding in areas seen as contrary to Administration policy, how foundations can address risks consistent with their missions while staying compliant with the law and briefly analyzes the potential impact of the public policy and the illegibility doctrines.

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## Part 1: Developments in the Field

“This time is different” is considered one of the most dangerous phrases in investing but applies to philanthropy given the tumultuous past year and what’s ahead. The Administration’s approach reflects a view of robust Presidential power and a willingness to use that power in unprecedented ways to advance its agenda, seek retribution against perceived enemies, and punish those who stand in the way. Combined with demands for absolute fealty by federal agencies, Congressional allies and a supplicant Republican Congress, force multipliers in Red State Governors, Attorneys General, and legislatures, and a robust online chorus, philanthropy and civil society were - and continue to be - buffeted across multiple dimensions.

The result is an environment for the sector and foundations that is, in this author’s humble opinion, unprecedented in the modern history of American philanthropy in several respects: *the breadth of legal and other instruments mobilized; the simultaneity, rapidity, and scale of their deployment; the rhetoric used by Administration officials; and the use of Federal agencies - including the DOJ, EPA, EEOC, and, ominously for the field, possibly the IRS to come - as instruments of policy contrary to historical norms*

In the view of many, the result is an increasing threat to the rule of law and our democracy. Fortunately, for those who share that view, there has been considerable push back against many of these actions by public interest law organizations, States’ Attorneys General, labor unions, the National Council of Nonprofits, some targeted law firms, Harvard University, and others. Many of these efforts often succeeded in Federal District Courts in front of judges appointed by Presidents of both parties.<sup>1</sup>

For example, in 2025 Democracy Forward,<sup>2</sup> succeeded at the trial court level over 400 times, and the ACLU, the Lawyers Committee, and others also won notable victories. Some victories, however, were fleeting when Appellate Courts, including the Supreme Court stepped in. Lawsuits to challenge a variety of Administration actions continued in 2026 many of which continue to find a receptive audience in District Courts.

### **The District Courts as a Bulwark in Spite of Threats Against Them**

As noted, Federal District Courts served as the bulwark against further erosion of the rule of law regardless which President appointed them - often using stirring and unequivocal language in defense of constitutional principles, the rule of law, and the value of diversity equity and inclusion (see [Exhibit 1](#) for examples from District Court opinions).

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<sup>1</sup> The Trump Administration has been sued over 600 times. The New York Times created a [database of these lawsuits here](#).

<sup>2</sup>: [How Pro-Democracy Litigation Against the Lawlessness of the Trump-Vance Administration is Working](#).

Rulings contrary to the Administration's goals, however, often provoked personal attacks against the judges from the Administration and its proxies, resulting in online and other threats against judges and their families, straining the increasingly fragile threads holding our democracy together.

No court -not even the Supreme Court -was immune from hyperbolic *ad hominin* attacks against individual judges who had the temerity to thwart the Administration's will.<sup>3</sup> Adding fuel to the fire, Congressional Republicans filed impeachment articles against several judges for rulings they disliked, and the DOJ repeatedly battled Chief Judge James Boasberg of the D.C District Court. Requests for recusal, attacks in the press and the filing an ethics complaint against him - [dismissed](#) by the Chief Judge of the Sixth Circuit- were among the steps taken against the Chief Judge. Most recently, Judge Boasberg was attacked as an "activist [judge](#)" by the U.S. Attorney for the District of Columbia (Jeanine Pirro) for quashing subpoenas issued against the Federal Reserve.

These frequent verbal attacks on the Courts concern many who believe that undermining the judiciary is straight out of the autocrat's playbook and is among the most dangerous signals that the country – and the rule of law – are threatened. The apparent willingness of some in the Trump Administration to skirt orders<sup>4</sup> from federal courts, and for some courts to find that federal officials had [lied](#) in Court, further eroded the rule of law.

Many judges, however, were not hesitant to identify the Administration's penchant for [violating](#) court orders<sup>5</sup> in immigration related cases and scrutinized [representations](#) of the Justice Department and other agencies. The rule of regularity<sup>6</sup> - an unwritten rule – appears to be losing traction in many District Courts.

While District Courts have been receptive to arguments contrary to the Administration's position, it is also true that Appellate Judges [appointed](#) by President Trump often blunted or halted District Court actions. The Supreme Court, in temporary emergency docket orders, also heavily favored the Administration often without explanation, although it appears the Court is relying on the unitary executive theory under which the President enjoys vast power to control the Executive Branch under Article II of the Constitution. The final chapter on many issues are not yet written and, at least in the recent tariff ruling, the Supreme Court ruled against the President much to his dismay.

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<sup>3</sup> For a compilation of some of the comments by Trump officials against the Federal judiciary, see [Exhibit 2](#).

<sup>4</sup> Federal District Courts in Minnesota and elsewhere have documented the times orders have been violated. See [Exhibit 3](#).

<sup>5</sup> See [Exhibit 3](#) for examples of courts criticizing the Administration.

<sup>6</sup> The rule of regularity was historically a presumption by federal courts that they could rely on DOJ and other agency lawyers to be honest, candid, and provide reliable citations and resources. Time and again, courts have challenged the reliability and candor of the DOJ and other agency lawyers.

## Ten Developments Reflecting an Unprecedented Approach at the Federal and State Levels

1. Executive Orders<sup>7</sup> (“EO”) targeting a wide range of substantive areas as well as foundations by asset size with explicit instruction to identify enforcement targets. As directed by the EOs, Federal Agencies followed up with memoranda and enforcement priorities that targeted activities of “left leaning” organizations.
2. Pressure on the IRS to act as an instrument of executive policy, not an independent compliance function. To date, however, actions by the IRS in response to demands or comments of the President and others have not yet manifested.
3. Threats to terminate (and termination) of Federal funding streams to not-for-profits and quasi-government entities resulting in the closure of many and the need for emergency funding.
4. Use of certification requirements linked to federal funding requiring attestation that an organization was not engaged in “illegal” DEI, exposing organizations to substantial civil and criminal penalties for false certifications- and inviting private parties to participate and share in recoveries.
5. Congressional investigations and hearings as a political pressure tool operating parallel to and independent of executive enforcement (see [Exhibit 4](#) for a listing of many of these hearings).
6. National security framing, including linkages to “[domestic terrorism](#)” and alleged foreign influence, used by the DOJ and other agencies to threaten organizations involved in protests against immigration enforcement and other activities deemed contrary to Administration policies.
7. Threats of civil and criminal investigations by Federal and State agencies and Congressional hearings targeting not-for-profits based on social media posts by influencers.
8. A post-*Loper Bright* judicial environment in which settled IRS guidance is newly contestable, increasing rather than decreasing legal uncertainty.
9. Consolidation of the media in Administration friendly hands amid threats to block disfavored mergers, file lawsuits, and revoke broadcast licenses regardless of merit while defunding public media.
10. Linking alleged fraud, waste, and abuse allegations against not-for-profits to foreign influence and control implicating money-laundering and tax fraud claims, including a recent [initiative](#) establishing a joint Mission Control command center based at the FBI with IRS-CI agents on one year temporary assignment.

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<sup>7</sup> Six executive orders issued on Inauguration Day collectively: terminated all federal DEI programs and offices; directed agencies to rescind Biden-era climate and environmental justice actions; paused all foreign aid and grant programs for 90 days pending review; prohibited DEI criteria in federal hiring and contracting; and—most consequentially for the Foundation—directed the Attorney General to submit a strategic enforcement plan within 120 days identifying up to nine potential civil compliance investigations per agency, expressly including “foundations with assets of 500 million dollars or more.”

In a loop of affirmations and actions, right wing influencers on social and other media echoed, amplified and created talking points,– and the Administration used the social media of such influencers to justify investigations and other actions.

### **Different Vectors of Attack**

The Trump Administration launched a series of actions in furtherance of its policies that threatened foundations and not for profits operating in the fields targeted by the Administration using every tool in the Administration’s tool kit: Executive Orders, Federal Agency memoranda, investigations and regulatory changes, the creation of task forces to pursue investigations, cessation of funding sources, certification requirements, the bully pulpit with harsh rhetoric threatening “left leaning” organizations while calling out some by name, and essentially using every tool in the Administration’s toolkit. Exhibits 5-8 contain further detail regarding these vectors of attack.

## Part 2: Tax Policy as a Vector

### The Public Policy and Illegality Doctrines

There is concern in the not-for-profit community that the IRS will resurrect the public policy and illegality doctrines to challenge the tax exemptions of organizations seeking to advance diversity, equity, and inclusion, to provide support to immigrants, address climate change, provide transgender care, and support protect activities under the First Amendment. This concern was heightened by the addition of the public policy doctrine to the IRS Guidance Plan and the adoption of a rule governing forgiveness of student loans for those who engage in public service as described more fully below.

The American Alliance for Equal Rights also relied on the public policy doctrine to file a request with the IRS to investigate the Gates Foundation, LaGrant Foundation and Creative Capital Foundation with the IRS asserting that their scholarship programs excluded persons on the basis of race and therefore was violative of the public policy doctrine. While the request seemingly went nowhere in part because the Gates Foundation had earlier decided to change the terms of the scholarship program it funded, the actions cast a chill across some in the field.

**What it is:** The public policy doctrine arose out of the *Bob Jones* case (*Bob Jones v. United States*, 461 U.S. 574 (1983)) where the Supreme Court found that a university can be stripped of its tax exemption if its policies violated a fundamental public policy. In that case, Bob Jones University prohibited interracial dating and marriage while matriculating. The other organization at issue was Goldsborough College which barred Black people from admission to the University.

At the time several states still maintained laws against interracial marriage, Nevertheless, the Court found that there was a fundamental public policy expressed through the three branches of government over long periods of time that discrimination in higher education across multiple areas was improper.

A more complete description of the *Bob Jones* case can be found in the article by Ellen April and other materials that accompany the materials for the Georgetown conference.

**Illegality Doctrine:** A separate but related doctrine, the illegality doctrine<sup>1</sup> arises from prior Revenue Rulings and IRS General Counsel memorandum (and touched upon in the *Bob Jones* case ) and the inherent purposes of the Internal Revenue Code that a charitable

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<sup>1</sup> For a more complete description of the illegality doctrine and the issues associated with it can be found in the materials for this session of the conference. See also Roger Colinvaux Charitable Giving and Civil Rights: A Defense of Private Remedial Action, Yale Law Journal 2026

organization must be organized and operated “exclusively” for exempt purposes. If an organization is involved in or supports “illegal” purposes, it can be viewed as not operating exclusively for exempt purposes and its exemption application denied or its existing exemption revoked.

The doctrine has not been widely used but recent developments have raised the specter that it could again be unleashed. Raising particular concern is the recent enactment of the loan forgiveness [rule](#) for student indebtedness that was triggered by an Executive Order.

**What it Does:** The rule excludes from the forgiveness of federal student loans participation in organizations that engage in activities indicative of a substantial illegal purpose including: aiding and abetting violations of federal immigration laws, supporting terrorism or engaging in violence for the purpose of obstructing or influencing federal government policy, engaging in the chemical and surgical castration or mutilation of children in violation of Federal or state law, engaging in the trafficking of children to another state for purposes of emancipation from their lawful parents in violation of federal or state law, engaging in a pattern of aiding and abetting illegal discrimination, and engaging in a pattern of violating state laws.

**Why it Matters:** The possibility that the Administration will construe certain activities carried out by 501(c) 3 organizations as falling within the language used in the Rule has sent a chill wind across organizations whose missions have previously been found to be charitable. This is the case even though revocation remains a formal, audit-driven process with constraints. The breadth and vagueness of the language used in the Rule and that fact that prior Revenue Rulings and General Counsel opinions left open questions contributed to the unease in the sector

## **Other IRS Action**

Treasury Secretary Scott Bessent [announced new initiatives](#) Treasury will undertake in Minnesota to counter “government benefits fraud and abuse”. In his announcement, Secretary Bessent noted that the department will establish a new taskforce to specifically investigate 501(c)(3) organizations implicated in the Minnesota fraud investigations.

Memoranda from Attorney General Bondi, the recent report of the new initiative creating a mission control command center and Executive Orders from the President heightened the risk that the IRS Criminal Investigations (IRS-CI) division will be increasing scrutiny on nonprofits for misuse of funds beyond charitable purposes. The threat of criminal liability sent justifiable shivers down the spines of organizations engaged in a variety of activities.

## Part 3: What Should Foundations Do?

Foundations whose missions and grantee activities are at odds with the Administration's priorities are understandably considering a range of options depending on their own risk assessment and missions. There is no single answer that fits all foundations. What matters is the process that foundations use to assess their own risk tolerance and to take the requisite steps that align with the risk tolerance and their mission.

### Who Determines the Risk Tolerance?

The board, working closely with the chief executive, should determine the risk tolerance for the organization. This should, however, be based on a clear understanding of the legal environment and risks, the consequences of various decisions, the foundation's mission and values and other factors the board deems relevant. This requires, among other things, privileged briefings by counsel with a firm understanding of a quickly evolving legal and political environment.

It also requires clear communication to the staff of the foundation, so program officers and others understand the risk tolerance and do not by their actions or words put the foundation at greater risk than desired.

### Undertake a Risk Assessment

An effective risk assessment should assess the likelihood of the risk occurring with the impact should it occur and the relationship to the foundation's mission. For example, among the most severe risks is the possibility of criminal investigations by the DOJ or the IRS arising from funding linked to activities that have been identified by the Administration in the Presidential Memorandum, Executive Orders or DOJ memoranda as illegal (e.g. violent protests, interfering with law enforcement, support of illegal immigration, fraud and abuse, and illegal DEI) or as "domestic terrorism". This can risk the loss of tax exemption or, more ominously, freezing of assets and even criminal prosecution of individuals involved with decision making, including in rare cases, even members of the Board.

Once risks are identified a foundation should consider how it might mitigate risks consistent with its risk tolerance and without compromising its mission.

Among factors that might be considered in determining a risk tolerance are the following:

- *How critical are the activities to be funded to the mission of the foundation?* A foundation whose mission focuses on racial justice may be willing to take a more risk tolerant approach to activities that further its mission because to step back too

far would be seen as backing away from mission. On the other hand, a foundation whose mission does not include advancement of legal immigration may not want to risk its mission by funding groups involved in protests against the Trump Administration's approach to immigration or funding groups serving undocumented people. These are not always "either or propositions" or easy calls but should be reflected in the balancing of risks. A foundation may consider funding only "high conviction" grants linked to the advancement of its mission as even a limited number of grants outside its core activities can pose unwarranted risk.

- *How much of a target is the foundation?* This factor can turn on the size of the foundation, the public nature of its statements relating to the Administration, the role and perception of the chief executive of the organization, the areas in which it is making grants, and the nature of its grantees. A more aggressive, risk tolerant approach where a foundation is already on the radar of the Administration or its allies because of public statements or association with grantees under scrutiny might increase the risk of adverse action against the foundation.
- *How able is the foundation able to withstand investigations and the cost of litigation?* Investigations and lawsuits are expensive and distracting to any organization even if the cause is just and the likelihood of loss low. A foundation in the crosshairs of the Administration must understand and assess the consequences of an investigation even if it believes it is justified in what it does, including producing thousands of documents, emails, having executives deposed privately and, in the case of Congressional investigations, publicly. And even if considered remote, a foundation must consider the possibility it could lose in court, have to appeal and, in the interim, have its exemption revoked, or worse. This is not to suggest that these possibilities should cause the foundation to crawl into a shell. It does suggest a thoughtful assessment and understanding of the risks and an informed judgment made by the board.

## **One Possible Approach**

Foundations guided by their mission and values and informed by good counsel can take many approaches in responding to the environment. Here are some possibilities to consider.

- **Scrupulous adherence to the rules that govern the organization.**
  - Foundations urging support for the rule of law must follow suit by adhering to the rules governing private foundations. This is important not only as a matter of consistency to the position but also serves to protect the foundation against threats or allegations of illegality. Asking your counsel to perform privileged reviews of processes and operations to identify any

problems can be a small price to pay to avoid larger problems arising from even smaller problems (see below).

- This also means that a foundation should understand what it may be funding and avoid funding activities that would be a violation of law. For some foundations or their grantees, this position may seem contrary to the rich history of “civil disobedience” that often highlights unjust laws or other aspects of our society. This of course is not an argument about the courage of those who put themselves at risk in engaging in civil disobedience or even funding it, but an observation that it carries substantial risk and is not one that foundations should undertake without a firm understanding of potential consequences.<sup>1</sup>
- Follow the law but don’t be **anticipatorily obedient**. That means that a foundation needs to understand what the law is today, not necessarily where it is headed or where the Administration thinks it is. It is not always an easy task to frame the distinction between what the law is today and where it is headed. This is where your counsel needs to weigh in. Some foundations may, however, not want to risk action by the Administration based on the Administration’s view of the law even the Administration is stretching current law. This can be particularly problematic in the application of the anti-discrimination laws as the law evolves and new cases are decided daily.
- **Compliance, compliance, compliance.** Avoid foot faults by ensuring compliance with tax reporting and other legal requirements. Small issues can take on bigger footprints in an audit, and no organization wants to provide fodder for a larger investigation that might risk larger penalties and even loss of tax exemption if the organization is pursuing programs the Administration disfavors.
- **Rigorous due diligence** of potential grantees and investees.
  - Increasingly foundations are being viewed as responsible for the actions of their grantees. While this view is not well grounded in law, it nevertheless presents risk to a foundation given public statements and initiatives of the Administration. Actions of grantees can be linked to the funder in social and other media and lead to investigations by Congressional committees or Federal agencies including the IRS. Under memoranda issued by DOJ, there can also be allegations of conspiracy or knowing involvement in illegal activities as seen through funding decisions.

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<sup>1</sup> To be clear, MacArthur Foundation will not fund activities it knows to be in violation of the law regardless of the label.

- An effective way to avoid surprises and possible trouble is to know your grantee and to undertake robust due diligence, particularly in areas of most concern to the Administration such as political activity, foreign involvement, involvement in protests, potential violations of anti-discrimination laws, engagement with immigrant communities and transgender rights. Robust due diligence can be viewed not as a barrier to grantmaking but as a means to protect the foundation and its grantees by identifying and issues and taking steps to ensure the activity is in compliance with law.
- **Provide resources to grantees.** Consider providing resources to grantees in addition to grant funds so they can in turn ensure their own compliance and protections while pushing forward on their missions.
  - Foundations can help ensure legal compliance – and therefore diminished risk- to their grantees by providing necessary resources for counsel and for other experts to shore up any weaknesses in governance, financial oversight, cyber security and other matters.
- **Collaborating with other funders** and seeking new relationships outside the usual circles that share the respect for and importance of the rule of law.
  - It is not only “left leaning” foundations that respect the rule of law and democracy. Commitment to these values is an American value that should span political affiliation. Finding organizations that share those values, even if there may be differences in other areas of policy or substance, can amplify the importance of these core values and help stop their erosion.
- **Using all available tools**, including voice, to further mission and values.
  - Grantmaking is just one tool that foundations can bring to the table. Working in solidarity with other foundations to use individual and collective “voice” and speaking to shared values can have significant impact. Consistent messaging about the value of philanthropy, the rule of law and the freedom to give and freedom to invest can fill vacuums and respond to authoritarian voices from the Administration and its allies. This is happening, for example, through the Unite in Advance loose coalition. Supporting narratives that reflect the benefits that civil society provides and the way foundations and charities work can also serve as pushback against disinformation spread by those with agenda against certain missions and purposes.
- **Share resources with other foundations.**
  - An important value of foundations, and a distinction from other corporate actors, is that foundations are not in competition with each other. Sharing

resources and best practices can help protect the sector as a whole and individual foundations. We have seen this across multiple dimensions of foundations, including the C-Suite, general counsel, grants management and information technology. Fortunately, this ethos of sharing is something that foundations have long done and is one of the not-so-secret weapons of philanthropy.

This also includes how foundations may be effectively using artificial intelligence to create efficiencies and enhance productivity to benefit their work, including in due diligence. Developing systems where data can be safely shared can make life easier for grantees and foundations is another area of promise and opportunity.

- **Continuing to prepare for the worst while hoping for the best -and act.**
  - Foundations should undertake reviews of their policies processes, procedures and their websites to ensure they are **narrowing attack zones** and not inviting unnecessary attacks. This does not mean that all potentially problematic language should be scrubbed from the website or other communications. It is to suggest that foundations understand the tactics of opponents and how artificial intelligence is used to identify potential problems. Often, a foundation can reduce risk without jeopardizing its mission by limiting unnecessary but potentially provocative language in documents that might be discoverable. **Less can often be (paradoxically) more.**
  - Depending on their risk tolerance and posture, foundations should consult with qualified counsel to assess their governance, their readiness to withstand attacks and to prepare for possible attacks and even testimony. The range and degree of effort should of course depend on an assessment of how likely the foundation is to be a target or to be called as a witness. **Foundations can be courageous but also prudent.**
  - Foundations should review and implement any changes to a document retention and information systems to ensure that documents, emails and other communications are maintained or deleted based on the need for the mission. If a foundation faces an investigation or any request for information or documents the policy should ensure that an immediate “legal hold” is instituted so there can be no question that documents are preserved.
  - Ensure that attorney client communications are protected by being sensitive to what constitutes privileged communications, potential waivers and care not to “over label communications as attorney client when they are not

## **Conclusion**

There is no one size fits all for foundations with different missions, values, and risk tolerance. But all foundations would be wise to be aware of the evolving legal and political environment in which they operate given their mission. The political, legal, economic and geo-political environment will continue to be volatile and foundations must be prepared to be nimble and proactive.

## Exhibit 1

### Inspiring Words from District and Circuit Court Judges Across the Country

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#### Judge Samuel Frederick Biery Jr., U.S. District Court for the Western District of Texas

Judge Biery, notes the following [in his Opinion and Order of the Court](#), January 31, 2026:

Before the Court is the petition of asylum seeker Adrian Conejo Arias and his five-year-old son for protection of the Great Writ of habeas corpus. They seek nothing more than some modicum of due process and the rule of law. The government has responded.

The case has its genesis in the ill-conceived and incompetently-implemented government pursuit of daily deportation quotas, apparently even if it requires traumatizing children. This Court and others regularly send undocumented people to prison and orders them deported but do so by proper legal procedures.

Apparent also is the government's ignorance of an American historical document called the Declaration of Independence. Thirty-three-year-old Thomas Jefferson enumerated grievances against a would-be authoritarian king over our nascent nation. Among others were:

“He has sent hither Swarms of Officers to harass our People.”

“He has excited domestic Insurrection among us.”

“For quartering large Bodies of Armed Troops among us.”

“He has kept among us, in Times of Peace, Standing Armies without the consent of our Legislatures.”

“We the people” are hearing echos of that history.

And then there is that pesky inconvenience called the Fourth Amendment: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and persons or things to be seized. U.S. Constitution, Amendment IV.

Civics lesson to the government: Administrative warrants issued by the executive branch to itself do not pass probable cause muster. That is called the fox guarding the henhouse. The Constitution requires an independent judicial officer.

Accordingly, the Court finds that the Constitution of these United States trumps this administration's detention of petitioner Adrian Conejo Arias and his minor son, L.C.R. The Great Writ and release from detention are GRANTED pursuant to the attached Judgment.

Observing human behavior confirms that for some among us, the perfidious lust for unbridled power and the imposition of cruelty in its quest know no bounds and are bereft of human decency. And the rule of law be damned. –

Ultimately, Petitioners may, because of the arcane United States immigration system, return to their home country, involuntarily or by self-deportation. But that result should occur through a more orderly and humane policy than currently in place.

Philadelphia, September 17, 1787: "Well, Dr. Franklin, what do we have?" "A republic, if you can keep it."

With a judicial finger in the constitutional dike,

It is so ORDERED.

SIGNED this 31<sup>st</sup> day of February, 2026.

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## Chief Judge Albert Diaz, United States Court of Appeals for the Fourth Circuit

Opinion, February 6, 2026

Defendants represented at oral argument that there is “absolutely” DEI activity that falls comfortably within the confines of the law. I hope that’s true. But the evidence cited by plaintiffs, their amici, and the district court suggests a more sinister story: important programs terminated by keyword; valuable grants gutted in the dark; worthy efforts to uplift and empower denigrated in social media posts.\*

Footnote \*: The Administration’s obsession over so called “woke” DEI programs appears to know no bounds. This past December, Secretary of State Marco Rubio—who also serves as Acting National Security Advisor and Acting Archivist of the United States—somehow found time to rail against the Calibri typeface previously approved for State Department use by his predecessor. I kid you not.

Secretary Rubio’s predecessor made the change to Calibri (a sans serif font) to help improve accessibility for those with dyslexia or other visual impairments. So why did Secretary Rubio decree otherwise? Primarily, for the entirely defensible reasons that (1) his preferred choice (Times New Roman 14, a classic serif font) presents a more professional and formal typography for diplomatic correspondence, and (2) use of the Calibri font had (at least in the State Department’s experience) not meaningfully improved reader accessibility.

Had the Secretary left it there, I would applaud him, particularly since our court favors his font choice. But leave it there, he couldn’t. Instead, the Secretary lashed out at his predecessor for imposing yet another “illegal, immoral, radical [and] wasteful [diversity initiative]” before ordering Calibri’s demise. See, e.g., Michael

Crowley and Hamed Aleaziz, *At State Dept., a Typeface Falls Victim in the War Against Woke*, N.Y. Times (Dec. 9, 2025) [<https://perma.cc/C3UA-P8TN>]. Sigh.

### **Judge Diaz's Concurring Opinion in the [2025 4<sup>th</sup> Circuit Case](#)**

But I'm compelled to write separately to address what seems to be (at least to some) a monster in America's closet— Diversity, Equity, and Inclusion initiatives.

The Executive Orders charge that DEI (and the related DEIA, which also denotes Accessibility) policies include “dangerous, demeaning, and immoral race- and sex-based preferences” that “deny, discredit, and undermine the traditional American values of hard work, excellence, and individual achievement in favor of an unlawful, corrosive, and pernicious identity-based spoils system.” See Exec. Order No. 14,173, 90 Fed. Reg. 8633 (Jan. 21, 2025). The Orders seek to terminate all “‘equity-based’ grants or contracts” that apparently have led to “immense public waste and shameful discrimination.” Exec. Order No. 14,151, 90 Fed. Reg. 8339 (Jan. 20, 2025). But neither Order ever defines DEI or its component terms.<sup>2</sup>

<sup>2</sup>As a result, it's unclear what types of programs—formal or informal—the administration seeks to eliminate, and it could not respond to the district court's hypotheticals about the same. See *Nat'l Ass'n of Diversity Officers in Higher Educ.*, 2025 WL 573764, at \*22. At this preliminary stage of the litigation, where the Orders only purport to direct executive policy and actors, we don't find vagueness principles outcome determinative. But I repeat that agency action that goes beyond the narrow scope set out in this motion could implicate Fifth Amendment vagueness concerns.

And despite the vitriol now being heaped on DEI, people of good faith who work to promote diversity, equity, and inclusion deserve praise, not opprobrium. For when this country embraces true diversity, it acknowledges and respects the social identity of its people. When it fosters true equity, it opens opportunities and ensures a level playing field for all. And when its policies are truly inclusive, it creates an environment and culture where everyone is respected and valued. What could be more American than that?

Under the most basic tenets of the First Amendment, there should be room for open discussion and principled debate about DEI programs, and whether its corresponding values should guide admissions, hiring, scholarship, funding, or workplace and educational practices. And all Americans should be able to freely consider how to continue empowering historically disadvantaged groups, while not “[r]educ[ing]” the individuals within those groups “to an assigned racial [or sex-based] identity.”<sup>3</sup>

<sup>3</sup>Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 795, 797 (2007) (Kennedy, J., concurring in part and concurring in the judgment).

For almost 250 years, this nation's North Star has been the self-evident truth, “that all men are created equal.” The Declaration of Independence para. 2 (U.S. 1776). Even

when we have fallen short—badly at times—we have stood up, made amends, and moved forward. But a country does itself no favors by scrubbing the shameful moments of its past. Because while history may be static, its effects remain.

From boardrooms to courtrooms to operating rooms to classrooms, previously marginalized Americans are thriving in spaces long closed to them. And we are the better for it. Yet despite this success—or because of it—we owe it to ourselves to continue forging conversations that may help us achieve that “more perfect Union.”

As with most monsters in the closet, what lurks is but a mere shadow, for which the remedy is simply light.

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### Judge William G. Young, District Court for the District of Massachusetts

*Judge William Young's Decision* included his Response to an Anonymous Person who Sent him a Threatening Note:

Post card dated June 19, 2025  
(On file in Chambers)

19/June 2025

TRUMP HAS PARDONS  
AND THANKS...  
WHAT DO YOU  
HAVE?

Dear Mr. or Ms. Anonymous,  
Alone, I have nothing but my  
sense of duty.  
Together, We the People of the  
United States -- you and me --  
have our magnificent Constitution.  
Here's how that works out in a  
specific case --

This case -- perhaps the most important ever to fall within the jurisdiction of this district court -- squarely presents the issue whether non-citizens lawfully present here in United States actually have the same free speech rights as the rest of us. The Court answers this Constitutional question unequivocally “yes, they do.” “No law” means “no law.” The First Amendment does not draw President Trump’s invidious distinction and it is not to be found in our history or jurisprudence. ... No one’s freedom of speech is unlimited, of course, but these limits are the same for both citizens and non-citizens alike.

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## Judge Ana C. Reyes, United States District Court for the District of Columbia

### Memorandum Opinion, February 2, 2026

On December 2, 1783, then-Commander-in-Chief George Washington penned: “America is open to receive not only the Opulent & respected Stranger, but the oppressed & persecuted of all Nations & Religions.”<sup>1</sup> More than two centuries later, Congress reaffirmed President Washington’s vision by establishing the Temporary Protected Status (TPS) program. See 8 U.S.C. § 1254a (TPS statute). It provides humanitarian relief to foreign nationals in the United States who come from disaster-stricken countries. It also brings in substantial revenue, with TPS holders generating \$5.2 billion in taxes annually. ...

Department of Homeland Security (DHS) Secretary Kristi Noem has a different take.<sup>2</sup>



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<sup>1</sup> Letter from George Washington to Joshua Holmes (December 2, 1783).

<sup>2</sup> Dkt. 90 (Second Am. Compl.) ¶ 110 n.91. *But see supra* n.1.

So says the official responsible for overseeing the TPS program. And one of those (her word) “damn” countries is Haiti. Relevant here, three days before making the above post, Secretary Noem announced she would terminate Haiti’s TPS designation as of February 3, 2026.

Plaintiffs are five Haitian TPS holders. They are not, it emerges, “killers, leeches, or entitlement junkies.” They are instead: Fritz Emmanuel Lesly Miot, a neuroscientist researching Alzheimer’s disease, Dkt. 90 (Second Am. Compl. (SAC)) ¶ 1; Rudolph Civil, a software engineer at a national bank, id. ¶ 2; Marlene Gail Noble, a laboratory assistant in a toxicology department; Marica Merline Laguerre, a college economics major, ; and Vilbrun Dorsainvil, a full-time registered nurse, .... They claim that Secretary Noem’s decision violates the Administrative Procedure Act (APA), 5 U.S.C. § 706(2), and the Fifth Amendment of the U.S. Constitution. The Government counters that the Court does not have jurisdiction, and, in any case, the Secretary did not violate the law. ...

There is an old adage among lawyers. If you have the facts on your side, pound the facts. If you have the law on your side, pound the law. If you have neither, pound the table. Secretary Noem, the record to-date shows, does not have the facts on her side—or at least has ignored them. Does not have the law on her side—or at least has ignored it. Having neither and bringing the adage into the 21st century, she pounds X (f/k/a Twitter).

Kristi Noem has a First Amendment right to call immigrants killers, leeches, entitlement junkies, and any other inapt name she wants. Secretary Noem, however, is constrained by both our Constitution and the APA to apply faithfully the facts to the law in implementing the TPS program. The record to-date shows she has yet to do that.

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## **Judge J. Harvie Wilkinson III, United States District Court for the District of Virginia**

Order, April 17, 2025

Upon review of the government’s motion, the court denies the motion for an emergency stay pending appeal and for a writ of mandamus. The relief the government is requesting is both extraordinary and premature. While we fully respect the Executive’s robust assertion of its Article II powers, we shall not micromanage the efforts of a fine district judge attempting to implement the Supreme Court’s recent decision.

It is difficult in some cases to get to the very heart of the matter. But in this case, it is not hard at all. The government is asserting a right to stash away residents of this country in foreign prisons without the semblance of due process that is the foundation of our constitutional order. Further, it claims in essence that because it has rid itself of custody that there is nothing that can be done.

This should be shocking not only to judges, but to the intuitive sense of liberty that Americans far removed from courthouses still hold dear.

The government asserts that Abrego Garcia is a terrorist and a member of MS-13. Perhaps, but perhaps not. Regardless, he is still entitled to due process. If the government is confident of its position, it should be assured that position will prevail in proceedings to terminate the withholding of removal order. See 8 C.F.R. § 208.24(f) (requiring that the government prove “by a preponderance of evidence” that the alien is no longer entitled to a withholding of removal). Moreover, the government has conceded that Abrego Garcia was wrongly or “mistakenly” deported. Why then should it not make what was wrong, right? ...

The basic differences between the branches mandate a serious effort at mutual respect. The respect that courts must accord the Executive must be reciprocated by the Executive’s respect for the courts. Too often today this has not been the case, as calls for impeachment of judges for decisions the Executive disfavors and exhortations to disregard court orders sadly illustrate.

It is in this atmosphere that we are reminded of President Eisenhower’s sage example. Putting his “personal opinions” aside, President Eisenhower honored his “inescapable” duty to enforce the Supreme Court’s decision in *Brown v. Board of Education II* to desegregate schools “with all deliberate speed.” Address by the President of the United States, Delivered from his Office at the White House 1-2 (Sept. 24, 1957); 349 U.S. 294, 301 (1955). This great man expressed his unflagging belief that “[t]he very basis of our individual rights and freedoms is the certainty that the President and the Executive Branch of Government will support and [e]nsure the carrying out of the decisions of the Federal Courts.” *Id.* at 3. Indeed, in our late Executive’s own words, “[u]nless the President did so, anarchy would result.” *Id.*

Now the branches come too close to grinding irrevocably against one another in a conflict that promises to diminish both. This is a losing proposition all around. The Judiciary will lose much from the constant intimations of its illegitimacy, to which by dint of custom and detachment we can only sparingly reply. The Executive will lose much from a public perception of its lawlessness and all of its attendant contagions. The Executive may succeed for a time in weakening the courts, but over time history will script the tragic gap between what was and all that might have been, and law in time will sign its epitaph.

It is, as we have noted, all too possible to see in this case an incipient crisis, but it may present an opportunity as well. We yet cling to the hope that it is not naïve to believe our good brethren in the Executive Branch perceive the rule of law as vital to the American ethos. This case presents their unique chance to vindicate that value and to summon the best that is within us while there is still time.

In sum, and for the reasons foregoing, we deny the motion for the stay pending appeal and the writ of mandamus in this case. It is so ordered.

For the Court  
/s/ Nwamaka Anowi, Clerk

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## Judge Karin J. Immergut, United States District Court for the District of Oregon

[Opinion and Order](#), October 4, 2025 (emphasis supplied)

This case involves the intersection of three of the most fundamental principles in our constitutional democracy. The first concerns the relationship between the federal government and the states. The second concerns the relationship between the United States armed forces and domestic law enforcement. The third concerns the proper role of the judicial branch in ensuring that the executive branch complies with the laws and limitations imposed by the legislative branch. Whether we choose to follow what the Constitution mandates with respect to these three relationships goes to the heart of what it means to live under the rule of law in the United States.

... In sum, the President is certainly entitled “a great level of deference,” *Newsom II*, 141 F.4th at 1048, in his determination that he “is unable with the regular forces to execute the laws of the United States.” 10 U.S.C. § 12406(3). But “a great level of deference” is not equivalent to ignoring the facts on the ground. As the Ninth Circuit articulated, courts must “review the President’s determination to ensure that it reflects a colorable assessment of the facts and law within a ‘range of honest judgment.’” *Id.* at 1051 (quoting *Sterling*, 278 U.S. at 399). Here, this Court concludes that the President did not have a “colorable basis” to invoke § 12406(3) to federalize the National Guard because the situation on the ground belied an inability of federal law enforcement officers to execute federal law. *Id.* at 1051–52. **The President’s determination was simply untethered to the facts.**

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**Judge Joseph R. Goodwin, United States District Court for the Southern District of West Virginia**

[Memorandum Opinion and Order](#), February 19, 2026

Antiseptic judicial rhetoric cannot do justice to what is happening. Across the interior of the United States, agents of the federal government—masked, anonymous, armed with military weapons, operating from unmarked vehicles, acting without warrants of any kind—are seizing persons for civil immigration violations and imprisoning them without any semblance of due process. The systematic character of this practice and its deliberate elimination of every structural feature that distinguishes constitutional authority from raw force place it beyond the reach of ordinary legal description. It is an assault on the constitutional order. It is what the Fourth Amendment was written to prevent. It is what the Due Process Clause of the Fifth Amendment forbids.

... An anonymous government is no government at all. It cannot be held accountable. A masked agent freely uses force without justifying his actions, and the public cannot name him to challenge his conduct.

A regime of secret policing has no place in our society. Here, the Government's power is derived by the People, and the People must be able to identify the Government when it acts to infringe on their liberty. Masks obscure government action and deprive the public of its Fourth Amendment protections.

Therefore, the Petition for Writ of Habeas Corpus, [ECF No. 26], is GRANTED. Petitioner is ORDERED released immediately from civil immigration custody. Respondents are PROHIBITED from re-arresting and detaining Petitioner absent significant change in circumstances to justify detention or subject to the determination of a neutral and detached decisionmaker.

## Exhibit 2

### Executive Branch Criticism of Federal Judges

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President Trump's criticisms of Judges whose rulings he does not like is nothing new. The level of vitriol, however, and the chorus added by lawyers who should know better has been distressing and alarming. The following are just some of the examples.

President Trump on the Supreme Court:

“The supreme court (I will be using lower case letters for a while based on a complete lack of respect!)”

— *Social media post criticizing the Supreme Court's legitimacy following the tariff decision.*

“their ridiculous, dumb, and very internationally divisive ruling”

— *Characterizing the Supreme Court decision in derogatory terms.*

“I couldn't care less if they come.”

— *Referring to Justices attending his State of the Union address, dismissing their presence altogether.*

Called the conservative justices who ruled against him an “embarrassment to their families”.

— *A personal attack on the Justices' character.*

“I am absolutely ashamed of certain members of the court for not having the courage to do what is right for our country.”

— *Direct criticism of Justices' motives after the tariff decision.*

The ruling was a “disgrace”.

— *Describing the Supreme Court opinion itself and implicitly criticizing the Justices who authored it.*

“It's my opinion that the court has been swayed by foreign interests.”

“They're just being fools and lapdogs for the RINOs and the radical left Democrats ...”

— *Asserting without evidence that outside forces influenced the Justices.*

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Attorney General Bondi:

“The Supreme Court will get involved. ... This is an out of control judge, a federal judge, trying to control our entire foreign policy, and he cannot do it.”

— Referring to a judge who blocked the administration's use of the 1798 Alien Enemies Act, AG Bondi expanded the criticism.

“They’re deranged... I think some of these judges think they are beyond and above the law, and they are not.”

— Characterizing judges who ruled against immigration enforcement actions.

"Many judges need to be removed ... These judges obviously cannot be impartial. They cannot be objective."

— Characterizing judges who ruled against the actions of the Administration.

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Attorney General Bondi and Deputy Attorney General Blanche jointly issued a DOJ statement criticizing federal judges in the Eastern District of Virginia:

“...judges ... engaging in an unconscionable campaign of bias and hostility...”

“...no tolerance for undemocratic judicial activism...”

— Referring to judges' treatment of U.S. Attorney Lindsey Halligan and her prosecutors.

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Deputy Attorney General Blanche also used hyperbolic language to criticize Judges ruling against the Administration:

Declaration of "War": Blanche repeatedly characterized the relationship between the DOJ and certain federal courts as a "war," stating, "It's a war, man," and, "We will not win unless we keep on fighting".

Accusations of Political Bias: He accused specific, "repeat player" judges of being "as political as the most liberal governor or district attorney," alleging they use their positions to block administration policies.

"Rogue Activist" Label: Blanche targeted judges who issue nationwide injunctions against administration actions, describing them as "rogue activist judges" who are not following the law.

Defending "Lawfare": He rejected claims that the administration had weaponized the justice system, instead arguing that the judiciary was being used to hinder the executive branch.

## Exhibit 3

### Judges Increasingly Critical of the Trump Administration

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#### (Examples Below, Which Do Not Capture All Such Cases)

- **Chief Judge Patrick Schiltz** (District of Minnesota): (George W. Bush appointee) Accused ICE of violating over 96 court orders in January 2026 alone, describing a "disturbing trend" and "disregard for the rule of law". Schiltz threatened criminal contempt, stating that "one way or another, ICE will comply with this Court's orders".
- **Judge John Tunheim** (District of Minnesota): (Bill Clinton appointee) Outlined violations involving a Venezuelan family taken into custody, accusing officials of failing to follow orders to return family members to Minnesota.
- **Judge Laura Provinzino** (District of Minnesota): (Joe Biden appointee) Cited a "disturbing trend" of violations, specifically regarding an Ecuadorian citizen transferred to Texas in defiance of a court order. She also held a government official in civil contempt in February 2026 for failing to return identity documents.
- **Judge Jeffrey Cummings** (Northern District of Illinois): (Joe Biden appointee) Ordered the release of 32 immigrants, finding that immigration officials violated a consent decree and previous orders regarding conditions of release.
- **Chief Judge James Boasberg** (U.S. District Court for D.C.): (Barack Obama appointee) (*J.G.G. v. Trump* — Alien Enemies Act Deportation Flights)

Boasberg blocked the Trump administration from using the Alien Enemies Act to deport anyone and verbally told Justice Department lawyers that any plane in the air "needs to be returned" to the U.S. But the planes were not turned around.

At a subsequent hearing, Boasberg told DOJ attorney Drew Ensign: "In fact, the government acted in bad faith throughout that day. You really believed everything you did that day was legal and could survive a court challenge. I can't believe you ever would have operated in the way you did."

Boasberg ultimately found "probable cause" to hold the administration in criminal contempt, writing: "The Constitution does not tolerate willful disobedience of judicial orders — especially by officials of a coordinate branch who have sworn an oath to uphold it." He also told DOJ attorney Ensign that the government had used "intemperate and disrespectful" language that he had "never seen from the United States" in its court filings.

- **Judge Paula Xinis** (U.S. District Court for Maryland): (Obama appointee) *Abrego Garcia v. Noem* — Wrongful Deportation to El Salvador

Judge Xinis told the government: "I've gotten nothing. I've gotten no real response, and no real legal justification for not answering." She warned the parties at the outset: "There will be no tolerance for gamesmanship or grandstanding," and told the DOJ to "cancel vacation, cancel other appointments" and get "all hands on deck." In a written order, she accused the Justice Department of willful refusal to comply with her orders and attempting to "obstruct" discovery, dismissing the government's state secrets argument as "vague" and "unsubstantiated." She declared: "That ends now," calling the administration's arguments "specious."

- In a December ruling, Xinis found that the government had "affirmatively misled" the court by claiming countries like Liberia and Costa Rica were or were not viable removal options, writing that "Costa Rica had never wavered in its commitment to receive Abrego Garcia."

- **Judge Sara Ellis** (U.S. District Court for the Northern District of Illinois): (Barack Obama appointee) *Chicago Headline Club v. City of Chicago* — Operation Midway Blitz / ICE Protesters

Judge Ellis received numerous notices that her temporary restraining order blocking federal agents from using tear gas or other chemical munitions on protesters or journalists had been violated. She ordered a senior CBP official to testify, read him the restrictions she had ordered, and walked through several examples of his agents violating those restrictions. The official appeared "evasive" during his deposition, either giving "cute responses" to counsel's questions "or outright lying."

- **Judge William Alsup** (U.S. District Court for the Northern District of California): (Bill Clinton appointee) *AFGE v. OPM* — Federal Employee Layoffs

In March 2025, Judge Alsup scheduled a hearing requiring the live testimony of the Acting Director of the Office of Personnel Management in a case challenging Reduction in Force notices sent to thousands of federal employees — a significant escalation to compel compliance with his orders.

**Judge Jerry Blackwell** (U.S. District Court for Minnesota): (Joe Biden appointee) *Tobay Robles* — Minnesota Immigration Detentions

Judge Blackwell hauled DOJ lawyers into court to explain why they shouldn't be held in contempt for repeated violations of court orders in multiple cases. He told them: "Continued detention is not lawful just because compliance with release orders is

administratively difficult or because an operation has expanded beyond the government's capacity to execute it lawfully."

## **Executive Orders Targeting Law Firms**

**Judge Beryl Howell** (U.S. District Court for D.C.) (Barack Obama appointee)

In a May ruling, Judge Howell called Trump's executive order against law firm Perkins Coie "an unprecedented attack" on the U.S. judicial system.

**Judge Thomas Cullen** (U.S. District Court for Virginia) (Donald Trump appointee)

Judge Cullen criticized the administration's "concerted effort" to "smear and impugn individual judges who rule against it," referencing officials' labeling of judges as "rogue" and "activists." He wrote: "Regrettably, this lawsuit effectively pits two of those branches against one another. But it is important to remember that, at bottom, all branches — and the public officials who serve in them — share the same core sovereign interest: To support and defend the Constitution."

## Exhibit 4

### Excerpt of Congressional Hearings and Investigations

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Republican members of Congress and Committee with Republican leadership used an array of their tools to keep a constant drumbeat of investigatory tactics against not-for-profits engaged in programs and activities deemed hostile to the Administration's policies often acting as an amplifier to the Administration's efforts. The following is a list of many of the letters, threatened litigation and hearings that reflecte this approach.

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#### Letters and Reports of Congressional Committees or Subcommittees

[March 2, 2026 – Letter from the House Oversight Committee to Attorney General Bondi Requesting Insight into How DOJ is Monitoring Widespread Fraud and Social Unrest for Signs of Foreign Interference or Criminal Obstruction of Justice.](#)

In the letter, nineteen House Republicans expressed concern as to whether foreign-sourced funding or proceeds of financial crimes involving federal funds may be contributing to unrest and efforts to obstruct law enforcement. The letter requests information addressing (1) whether DOJ has identified patterns in major fraud cases suggesting systemic activity, (2) whether DOJ is assessing the routing of fraud schemes through nonprofit, community-based, or organizational entities, and (3) the extent to which DOJ is evaluating large-scale financial crimes involving federal funds.

[February 12, 2026 – Letter from Nineteen State Attorney Generals to DOJ Requesting an Investigation of Over 150 Organizations Following the Americans for Public Trust Report on Tracking Foreign Funding Sources into U.S. 501\(c\)\(3\) Organizations.](#)

In [October 2025](#), the [Americans for Public Trust](#) published a [report](#) alleging five left-wing organizations funneled foreign dark money to more than 150 U.S.-based 501(c)(3) organizations. The five left-wing foreign organizations include Oak Foundation, Children's Investment Fund Foundation, Quadrature Climate Foundation, KR Foundation, and Laudes Foundation. The domestic recipient organizations include ClimateWorks Foundation, Rockefeller Philanthropy Advisors, Ceres, the Environmental Law Institute, and the Environmental Defense Fund. The letter alleges their actions may constitute a violation of the Foreign Agents Registration Act ("FARA") and requests DOJ investigate.

[February 3, 2026 – Letter from the House Ways and Means Committee to the Future Farmers of America President demanding the organization discontinue their involvement with a foreign-entity and its DEI programs.](#)

In the letter, the House Ways and Means Committee expressed concern as to the direction of the NFFA and its decision to continue programs that the NFFA entered [1] with Chinese Communist Party (“CCP”) controlled Syngenta Group [2] and pushed to prioritize Diversity, Equity, and Inclusion (“DEI”) efforts. The Committee acknowledged National FFA's clear purpose is to serve its student members and their respective chapters, rather than play identity politics and cozy up to Communist China, however, the continuation of this relationship with Syngenta and promotion of DEI policies, such as prioritizing DEI in the National FFA's Strategic Plan and directing the organization's executives to push these initiatives, calls into question the organization's true commitment to the student members it purports to serve.

[January 20, 2026 – Letter from the House Ways and Means Committee to the Acting Commissioner and CEO of the IRS calling for increased oversight of tax-exempt organizations.](#)

In the letter, the House Ways and Means Committee expressed concern that several nonprofits are exploiting tax-exempt status to engage in non-tax-exempt purposes, including supporting terrorism. The letter urges the IRS to “utilize a more hands-on approach” when overseeing tax-exempt organizations. It cites as examples for concern the possibility that the nonprofit Feeding Our Future continued to benefit from tax-exempt status after the IRS revoked its status in June 2020, as well as ongoing investigations across multiple federal agencies into the funneling of nonprofit funds into designated terrorist organizations and other illicit purposes.

[November 20, 2025 – Letter from Congressional Democrats to Treasury Secretary Bessent urging against settlement in the National Religious Broadcasters et. al. v. Bessent lawsuit.](#)

Thirteen Congressional Democrats signed onto a letter expressing serious concerns regarding the settlement that the Internal Revenue Service (IRS) has proposed in the matter. In exempting two religious entities in terms limited to religious activities, Congressional Democrats argued the IRS is creating an Equal Protection Clause violation which could spread as organizations seize upon this Proposed Consent Decree to sue for their own exemptions. The settlement's reasoning “blows the door wide open for both secular nonprofits and all other religious organizations to petition the courts for their own free pass to engage in tax-exempt electoral speech.”

[October 28, 2025 – Letters from the Senate Judiciary Committee to Three Foundations on 501\(c\)\(3\) Compliance.](#)

In letters to the Gates Foundation, Rockefeller Brothers Fund, and the Ford Foundation, the Senate Judiciary Committee requested information about how the foundations are complying with applicable tax laws given their alleged funding of the Chinese Communist Party (CCP) and its allies. The letters cite articles from the Washington Examiner, the Free Beacon, and other news sources to back its inquiry, and request further information about whether these reports are accurate, how many foreign projects and organizations the foundations have supported, and other related topics.

[October 17, 2025 – Letter from Rep. Lance Gooden \(R-TX\) to AG Bondi urging DOJ to investigate the National Lawyers Guild.](#)

In the letter, Gooden urged DOJ to investigate the National Lawyers Guild for its “pattern of legal and logistical support to left-wing extremists engaged in violence and property destruction.” The letter notes NLG’s “close ties” with Antifa, which President Trump recently designated as a “domestic terrorist organization.” The letter suggests that the DOJ and all relevant agencies take “stringent action”, including potentially disbarring NLG’s member attorneys, revoking the NLG’s tax-exempt status, and bringing relevant criminal charges.

[October 6, 2025 – Letter from the House Ways and Means Committee to the IRS Commissioner demanding the investigation and revocation of tax-exempt status of several NPOs.](#)

Letter to the acting IRS Commissioner and CEO of the IRS from Chairman Jason Smith asking them to investigate and revoke the tax-exempt status of nonprofits it had previously referred to the IRS on [September 24, 2024](#). These organizations are Americans for Justice in Palestine Educational Foundation, American Muslims for Palestine, Alliance for Global Justice, Islamic Relief, Jewish Voice for Peace, the People’s Forum, the Tides Foundation, United Hands Relief, and Westchester Peace Action Committee Foundation. It also reiterates calls in a [June 10, 2024](#) committee letter to revoke People Media’s Project’s tax exempt status. To justify this request, the earlier letters note that acts of civil disobedience do not qualify for tax exemption and claim some of these organizations have substantial activities that do not support their exempt purpose, including supporting terrorism. The letter also notes that President Trump’s September 25, 2025 [National Security Memorandum](#) directs the IRS Commissioner “to ensure that no tax-exempt entities are directly or indirectly financing political violence or domestic terrorism.”

[September 24, 2025 – Letters from House Judiciary Committee to Rockefeller Brothers Fund and Rockefeller Philanthropy Advisors about funds from USAID, State Department, and Dept. of War.](#)

As part of an investigation into whether the Biden Administration “funneled U.S. taxpayer funds to foreign entities closely affiliated with designated terrorist groups,” these letters ask RBF and RPA about how they spent grants and other awards received from USAID, the State Department, or the Department of War. The letter to RBF asks for documents and information about these awards, including a detailed breakdown of how funds received from or donated to specific partners were spent. The named partners include USAID, the State Department, the Department of War, the Tides Network, the Foundation for Middle East Peace, New Israel Fund, Open Society Foundations, Adalah Justice Project, the Palestine Children’s Relief Fund, Alliance for Global Justice, Samidoun Palestinian Prisoner Solidarity Network, Defense for Children International Palestine, Jewish Voice for Peace, Al-Shabaka—the Middle East Policy Network, Breaking the Silence, B’Tselem, and the American Friends Service Committee.

[September 11, 2025 – Letter from 23 Members of Congress to the Speaker of the House and relevant Committee Chairman requesting the formation of a select committee to “uncover the force behind the NGOs, donors, media, public officials, and all entities driving this coordinated attack.”](#)

Twenty-three Congressional members signed on to a letter requesting the formation of a select committee on “the money, influence, and power behind the radical left’s assault on America and the rule of law.” The letter cites the 2024 assassination attempt on President Trump and the recent assassination of Charlie Kirk among other incidences as evidence of “anti-American assaults” allegedly supported by left-leaning funders and organizations such as George Soros and the Southern Poverty Law Center.

[July 29, 2025 – Letter from Rep. Malliotakis \(R-NY\) and Claudia Tenney \(R-NY\) to the IRS Commissioner concerning four legal and migrant advocacy groups.](#)

The letter expressed concern that four nonprofits were using tax-exempt resources to engage in activities that support or promote immigrants to unlawfully enter, remain in, or evade detection in the US. The letter called out the Bronx Defenders, the NY Immigration Coalition, Make the Road NY, and NY Lawyer for the Public Interest, noting that their activities “constitute[] grounds for revocation of tax-exempt status.” The letter also references President Trump’s executive order from April 2025 that directs agencies to withhold funds from sanctuary jurisdictions.

[July 29, 2025 – Letter from House Judiciary Committee to George Mason University concerning DEI.](#)

The letter expressed concern about the university's compliance with civil rights law and requested that the President appear for a transcribed interview before the House Judiciary Committee. The letter cites George Mason's creation of a Task Force on "Anti-Racism and Inclusive Excellence," its guidance to campus hiring authorities to give preference to members of "underrepresented groups," and other actions as evidence of the university's unlawful promotion of discrimination. The letter requests all documents and communications related to DEI between the university and any persons hired or contracted by or otherwise affiliated with the university.

[July 18, 2025 – Letter from members of the Congressional Freethought Caucus to IRS Commissioner In Opposition to the IRS Proposed Settlement regarding the Johnson Amendment.](#)

In the pending action between National Religious Broadcasters Assn v. IRS, the IRS proposed a Joint Motion for a Consent Agreement (Joint Motion) which proposes that certain discussions conducted by houses of worship with their congregations about electoral campaign politics constitute nothing more than "a family discussion concerning candidates." According to the Joint Motion, faith leaders endorsing political candidates from their tax-exempt pulpit are engaging in a "family discussion" because this discussion doesn't "participate" nor "intervene" in a political campaign. The Joint Motion further contends that the Johnson Amendment is unenforceable in this case because, under the IRS's own admission, the agency has not enforced the statute prior to the complaint. The letter urges the IRS to reconsider its Joint Motion without further delay.

[July 17, 2025 – Letter from the House Oversight Committee to NYU School of Law's State Energy & Environmental Impact Center.](#)

As part of an investigation into alleged ties between NYU's State Energy and Environmental Impact Center ("State Impact Center") and certain state attorneys general offices, the letter requests information about the State Impact Center's placement of fellows at state attorneys general offices, as well as the Center's communications with one of its funders, Bloomberg Philanthropies. The letter expresses concern that the State Impact Center's program that places law school fellows at offices of state attorneys general "raises ethical concerns and questions about the independence of state governments." The letter alleges that the program is a way for Michael Bloomberg to "skirt legislative bodies and effect partisan policy," and notes that State Impact Center fellows only work for Democratic attorneys general offices. The House Oversight Committee sent a similar letter to Bloomberg Philanthropies.

[June 4, 2025 – House Oversight Committee Hearing entitled “Public Funds, Private Agendas: NGOs gone Wild.”](#)

The DOGE Subcommittee held this hearing to examine how federal funds are distributed to NGOs and whether those funds are used for political or policy advocacy rather than public services. The hearing highlighted a major partisan divide. The GOP consensus was that some NGOs misuse taxpayer funds to push progressive political agendas. The Democratic consensus was that the investigation was an ideological attack on the nonprofit sector and civil society.

[April 10, 2025 – Letter from House Energy & Commerce Committee to Greenhouse Gas Reduction Fund Recipients.](#)

Letters to eight Greenhouse Gas Reduction Fund (GGRF) grant recipients as part of the Energy and Commerce Committee’s investigation into the GGRF. The letters cite concerns including the GGRF’s “unusual structure,” “large funding amounts,” “speed of the awards process,” and “reports of potential conflicts of interest.” The letters request information about how the organizations became GGRF grant recipients and details about their awards, their organizational structure, their relationship with the EPA, and other topics. The letter recipients include Coalition for Green Capital, Climate United Fund, Power Forward Communities, Justice Climate Fund, Opportunity Finance Network, Inclusiv, Native CDFI Network, and Appalachian Community Capital.

Note: a similar letter was sent to the same eight recipients from the [House Oversight Committee on March 27, 2025.](#)

[March 24, 2025 – Letter from the House Ways and Means Committee to the Acting Commissioner of the IRS regarding the activities of a Georgia-based 501\(c\)\(3\) organization.](#)

This letter encourages the IRS to investigate the New Georgia Project and revoke the organization’s tax-exempt status. The letter references the Georgia State Ethics Commission (GESC)’s finding that the New Georgia Project made illegal contributions to Stacey Abrams’ 2018 gubernatorial campaign. It further notes that the Internal Revenue Code prohibits 501(c)(3) organizations from participating in or intervening in any political campaign on behalf of or in opposition to any candidate for public office.

[February 13, 2025 – Letter from the House Ways and Means Committee to the Acting Commissioner of the IRS encouraging the IRS to change the way it operates.](#)

This letter encourages the IRS to change the way it operates and cites several causes for concern, including the IRS’ “failure to take aggressive action against tax-exempt

organizations that have caused antisemitic chaos on college campuses...and may be supporting terrorism.”

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## **Hearings of Congressional Committees or Subcommittees**

[March 4, 2026 – House Ways & Means Committee Full Committee Hearing with IRS CEO Frank J. Bisignano.](#)

The IRS CEO’s testimony primarily focused on the 2026 filing season, IRS operations and modernization, and the implementation of the Working Families Tax Cuts. Bisignano’s written testimony did not meaningfully address exempt organization compliance, and limits references to “nonprofit organizations” in the context of IRS payment modernization. In his opening statement, Chairman Jason Smith explicitly raised the committee’s investigations into “tax-exempt groups” whose activities may violate their exempt status and said the IRS must ensure the tax code is not exploited by bad actors.

[February 10, 2026 – House Ways and Means Committee Full Committee Hearing entitled, “Foreign Influence of American Non-profits: Unmasking Threats from Beijing and Beyond.”](#)

This hearing examined concerns that foreign governments, wealthy foreign nationals, and overseas foundations may be channeling money through U.S. tax-exempt nonprofits to influence American policy debates, political advocacy, and public discourse. Witness testimonies revealed evidence that foreign donors were using complex networks of section 501(c)(3) and section 501(c)(4) organizations to create “dark money” channels, which obscure the money’s origins; particularly around donor identities, DAFs, and fiscal sponsorship arrangements. Several witnesses called for stronger disclosure requirements and oversight of nonprofit finances to better identify foreign sources of funding and prevent potential misuse of charitable structures. At the same time, the hearing acknowledged the importance of protecting lawful charitable activity and donor privacy while addressing concerns about foreign influence in the U.S. nonprofit sector.

[July 23, 2025 – Senate Judiciary Committee Subcommittee on the Constitution Hearing entitled “Ending Illegal DEI Discrimination & Preferences: Enforcing our Civil Rights Laws”.](#)

This hearing focused on whether DEI initiatives in government, universities, and corporations violate federal civil rights laws by creating race- or sex-based preferences. Majority members and several witnesses argues that some DEI policies amount to unlawful discrimination and urged stronger enforcement by DOG, including investigations into institutions that continue such programs. Democratic members countered that DEI initiatives help address longstanding inequalities and

expand opportunity; warning that aggressive federal enforcement could undermine legitimate civil-rights efforts. The hearing illustrates a broader political and legal dispute over whether DEI programs conflict with or advance the principles of equal protection under U.S. civil rights law.

[June 25, 2025 – House Oversight Committee Health Care and Financial Services Subcommittee Hearing entitled “Sacrificing Excellence for Ideology: The Real Cost of DEI”.](#)

This hearing examined whether DEI initiatives promote fairness and inclusion or instead create discrimination and reduce merit-based standards. Most majority members and witnesses criticized DEI, while minority members and one witness argued that such programs are necessary to address systemic inequities. The hearing was part of a broader congressional effort led by certain lawmakers to reduce or eliminate DEI policies in federal programs or institutions. It reflects the larger national debate over DEI initiatives, affirmative action, and equal opportunity policies in the government and private sector.

[June 4, 2025 – House Oversight Committee Delivering on Government Efficiency Committee Hearing entitled “Public Funds, Private Agendas: NGOs gone Wild.”](#)

The DOGE Subcommittee held this hearing to examine how federal funds are distributed to NGOs and whether those funds are used for political or policy advocacy rather than public services. The hearing highlighted a major partisan divide. The GOP consensus was that some NGOs misuse taxpayer funds to push progressive political agendas. The Democratic consensus was that the hearings constituted an ideological attack on the nonprofit sector and civil society.

[May 21, 2025 – House Education & Workforce Committee Higher Education and Workforce Subcommittee Hearing entitled “Restoring Excellence: The Case Against DEI”.](#)

This hearing examined the role of DEI programs in higher education. Republican members and several witnesses argued that DEI initiatives promote ideological conformity, divert university resources, and may conflict with civil rights laws by encouraging race-based decision-making in hiring, admissions, and programming. Democratic members and at least one academic witness defended DEI, arguing that such programs expand opportunity and expand educational outcomes for diverse student populations. The hearing highlighted a broader policy dispute over whether DEI strategies undermine or strengthen merit-based practices and academic freedom in universities.

[March 26, 2025 – House Oversight Committee Delivering on Government Efficiency Subcommittee Hearing entitled “Anti-American Airwaves: Holding the Heads of NPR and PBS Accountable”.](#)

The hearing focused on whether NPR and PBS should continue receiving funding through the Corporation for Public Broadcasting. Republican members accused the outlets of political bias and questioned their use of taxpayer funding. NPR and PBS CEOs testified in defense of their organizations, arguing that public media companies provide essential educational programming, local journalism, and services for rural communities. Democratic members criticized the hearing as politically motivated and emphasized the public value of non-commercial media. Supporters of public broadcasting warned that eliminating federal funding could harm smaller local stations that rely heavily on those resources. The hearing highlighted a broader partisan dispute over media bias, government funding of public broadcasting, and the role of public media in the U.S. information ecosystem.

[February 26, 2025 – House Oversight Committee Delivering on Government Efficiency Subcommittee Hearing entitled “America Last: How Foreign Aid Undermined U.S. Interests Around the World.”](#)

The hearing examined U.S. foreign aid programs and whether they effectively advance American strategic interests. Several Republican members and witnesses argued that current aid policies are inefficient, poorly monitored, and sometimes support initiatives that conflict with U.S. priorities. Witnesses included policy analysts and a former USAID official who criticized how aid funds are allocated and called for reforms. A minority witness from Center for Strategic and International Studies defended foreign assistance as an important tool of U.S. diplomacy and global stability; arguing that development programs can strengthen alliances and address root causes of migration and conflict. The hearing highlighted a broader partisan disagreement over the purpose, oversight, and strategic value of U.S. foreign aid programs.

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## Exhibits 5-8

### VECTORS OF ATTACK

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#### Exhibit 5

### Diversity, Equity, and Inclusion and ESG Under Threat – Trying to put Woke to Sleep

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The backlash against social and political movements roughly mischaracterized as “woke” picked up momentum in 2025. Attacks on DEI began immediately through executive orders entered in the early days of the Administration and have not abated. Federal agencies quickly followed up with guidance and memoranda seeking to make clear the Administration would not tolerate “illegal DEI” (without defining it). Private litigants continue to play their role in establishing what they call a “color blind meritocracy” by targeting not-for-profits and corporations while Red States’ Legislatures passed laws prohibiting certain DEI related activities and Attorneys General pitched in with aggressive tactics of their own.

[President Trump Says](#) Civil Rights Led to White People Being “Very Badly Treated”.

EEOC Chair Andrea Lucas posted a video asking: *“Are you a white male who has experienced discrimination at work based on your race or sex? You may have a claim to recover money under federal civil rights law*

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Comments like the above, repeated in various forums reflected the strong Administrative push back against all things DEI. States and litigants followed suit as reflected below.

#### **2025 Executive Orders Reversing DEI**

EO 14151 – Ending Radical and Wasteful Government DEI Programs and Preferencing

EO 14170 – Reforming the Federal Hiring Process and Restoring Merit to Government Service

## EO 14173 – Ending Illegal Discrimination and Restoring Merit Based Opportunity

**What they do:** Together, these executive orders dismantle DEI infrastructure across the federal government. They eliminate DEI offices and programs, remove DEI-related criteria from federal hiring, contracting, and training, and require certain federal contractors to certify that they do not operate DEI programs that violate federal antidiscrimination laws. False certifications can give rise to substantial civil and criminal penalties. The Orders direct DOJ and OMB to identify targets for strategic enforcement, **explicitly including large nonprofits and foundations.**

**Why it matters:** While binding only on federal agencies and contractors, the Orders function primarily as overarching and integrated **policy signals** rather than isolated mandates. They reinforce DOJ guidance, shape administrative interpretation, threaten corporations and not-for-profit organizations and foundations alike, and provide a roadmap for Congressional inquiry and private litigants.

For large foundations, the impact arises through certification pressure on grantees and partners, targeted identification through EO 14173, and heightened scrutiny of DEI-related programming and grants even in the absence of direct federal contracting.

### **Piling On – Federal Agencies Increase the Pressure**

#### **DOJ Civil-Rights Guidance Memorandum, as an Enforcement Multiplier**

#### **DOJ Guidance, Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination, Attorney General Pam Bondi – July 29, 2025**

**What it does:** The guidance reframes a broad range of DEI-related concepts—such as “diversity,” “equity,” and “underrepresented” and even geography—as potential proxies for race or sex discrimination. It highlights race-exclusive scholarships, fellowships, and certain training programs as illustrative risk areas, and warns that noncompliance may result in loss of federal funding, DOJ enforcement actions, and False Claims Act exposure.

**Why it Matters:** Although formally directed at recipients of federal financial assistance, the guidance functions as a **government-wide interpretive framework**, informing agency enforcement posture, Congressional oversight, and investigative narratives well beyond direct funding relationships. DEI-related language and program design previously treated as mainstream may now be evaluated through an enforcement-first lens, increasing legal and reputational exposure across the philanthropic ecosystem.

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## Creation of Federal Task Force to Investigate and Pursue False Claims Act Violations in Connection with Civil Rights Violations

**What it Does:** The DOJ created a task force to investigate potential false claims made in connection with the Federal contracting or funding relationships with respect to diversity, equity and inclusion initiatives or violation of civil rights laws, including antisemitism. It further encourages private *qui tam* actions in which a private party may recover a portion any recovery- in effect creating a bounty-hunter system.

**Why it Matters:** The task force weaponizes the assault against DEI by threatening actions and investigations against organizations that file a certification in connection with federal funding in which it must represent that it did not engage in “illegal DEI” or antisemitism. The encouragement to private parties to participate could mean a multitude of claims by persons seeking to cash in on the alleged DEI practices.

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## Department of Education Efforts and the Dear Colleague Letter

**What it Does:** Following the Students for Fair Admissions (SFFA) case, the Department of Education launched several initiatives seeking to stretch the ruling to other aspects of university governance and programs. It further used the leverage of federal funding and allegations of antisemitism to seek or coerce changes in curriculum, faculty, and many other areas. This includes a letter seeking to extend the reasoning of SSFA case to multiple aspects of administration of universities, including to prohibit considering race in “hiring, promotion, compensation, financial aid, scholarships, prizes, administrative support, discipline, housing, graduation ceremonies, and all other aspects of student, academic, and campus life.”

The breadth of the letter, together with the actual or threat of terminating research funding sent a chill down the spine of most universities depending on Federal Funding and was coercive to an extreme.

**The Response:** In February 2025. Attorneys General from many Blue States issued multistate guidance affirming the continued legality of most DEI and DEIA initiatives under state and federal law.

Lawsuits challenging the Letter under the First Amendment and the Administrative Procedures Act were also filed.

In August 2025, Maryland Federal District Court in August 2025 temporarily enjoined the Dear Colleague letter, and the Government appealed.

In a victory for the universities and common sense, the DOE recently agreed to drop its [appeal](#) of the ruling from August.

**Why it Matters:** The push back against the letter and the ultimate decision by the Administration to drop the matter shows that the rule of law still has force if proponents will take the risks to pursue it. Damage was done, however, by the chilling effect of the letter and threats still remain but this represents a glimmer of [hope](#).

States' Attorneys General, legislatures, and public universities in Red States joined the assaults in taking steps to retreat from longstanding approaches to DEI..

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Similarly, campaigns against the use of **environmental, social, and governance factors** ("ESG") in investing ratcheted up on the federal and state levels.

Opponents claim that it harms returns and prioritizes social goals over fiduciary duty. Actions include:

- An Executive Orders were entered seeking to curtail foreign influence and political considerations in ESG in proxy [advisors](#).
  - State level anti-boycott laws.
  - Investment restrictions and directives aimed at eliminating "politicized" banking and investing.
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## Private Litigation

Building on trends since the SFFA decision in 2023, private litigants continued a pattern of suing not-for-profits, corporations, and public programs designed to pursue racial justice and equity but which the plaintiffs claim are discriminatory. The Meltzer Center at NYU Advancing DEI [Initiative](#) tracks ongoing litigation in the area and is a valuable resource for those wanting a listing of all cases in this area.

## Exhibit 6

### National Security Framing – Weaponizing National Security and Allegations of Terrorism

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#### September 22, 2025 — Executive Order Designating Antifa as Domestic Terrorist Organization

While the order lacks direct legal authority (there is no statutory category of "domestic terrorist organization" at the federal level), it directed all executive agencies to "utilize all applicable authorities" to investigate, disrupt, and dismantle Antifa and anyone claiming to act on its behalf or providing "material support." The order created an enforcement predicate for NSPM-7 three days later.

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#### September 25, 2025 — National Security Presidential Memorandum 7 (NSPM-7), Countering Domestic Terrorism and Organized Political Violence, White House

The Presidential Memorandum was followed by an implementing [memorandum](#) from Pan Bondi that further sought to chill activities and targeting groups in a manner that sought to cast a chill on protest activities.

The President and his allies also attempted to give new meaning to the term, domestic terrorism, using it widely and indiscriminately to label protesters of ICE, particularly in two tragic events in Minneapolis where two US citizens were killed by Ice and the victims immediately vilified before any investigation and contrary to video of the scenes.

**What it Does:** NSPM-7 directs DOJ, Treasury, DHS, and the IRS to adopt a holistic government approach to domestic terrorism and organized political violence. The memorandum is notable for its breadth. The memorandum identifies a list of "common threads" associated with domestic terrorism that reach far beyond any threat of violence: "anti-Americanism, anti-capitalism, and anti-Christianity; support for the overthrow of the United States Government; extremism on migration, race, and gender; and hostility towards those who hold traditional American views on family, religion, and morality."

Its directives include one to the IRS Commissioner to "take action to ensure that no tax-exempt entities are directly or indirectly financing violence or domestic terrorism. In addition, where applicable, the Commissioner shall ensure that the Internal Revenue Service refers such organizations, and the employees and offers of such organizations, to the Department of Justice for investigation and possible prosecution.

It contemplates enhanced interagency information sharing, coordinated investigations, and potential use of tax-exempt enforcement tools, including §501(p) and the public-policy doctrine derived from *Bob Jones University*.

**Why it Matters:** NSPM-7 shifts scrutiny from isolated organizational conduct to a broader lens involving funders and other actors. For foundations, the risk is primarily the possibility that advocacy alignment, issue framing, or funding relationships are treated as evidence of ideological proximity to controversial movements that are deemed violent or domestic terrorism. This framing increases the likelihood that lawful grantmaking and issue engagement become subject to **national-security-inflected review**, including through tax-administration mechanisms.

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### Memorandum from Attorney General Pam Bondi, for All Federal Prosecutors, Law Enforcement Agencies, Department of Justice Grant-Making Components

**What it Does:** The memorandum seeks to implement the memorandum by directing federal prosecutors to target individuals, organizations, and funders whom the DOJ contends are “domestic terrorists”<sup>1</sup> under a definition that links political violence to “anti-fascist” beliefs. It casts its net widely by including as domestic terrorism “organized doxing of law enforcement, rioting, swatting and violent efforts to shut down immigration enforcement, assaulting law enforcement, destroying property targeting of public officials or other political actors and including certain Antifa-aligned extremists whose animating principle is adherence to the types of extreme viewpoints on immigration, radical gender ideology, and anti-American sentiment”.

It further instructs the FBI to establish a cash reward system for information that leads to the successful identification and arrest of individuals in the leadership of domestic terrorist organizations” organizations”.

On March 18, 2026, [CBS News](#) first reported that the Federal Bureau of Investigation (FBI) and Internal Revenue Service (IRS) are forming a joint initiative to investigate nonprofit organizations over suspected links to domestic terrorism and political violence. The joint initiative will be housed at the FBI as a “mission control command center,” with IRS criminal investigation agents serving on one-year temporary assignments. [The New York Times](#) independently reported the FBI-IRS joint initiative, noting that the two agencies are close to—but have not yet finalized—an agreement to investigate nonprofit organizations.

**Why it Matters:** The breadth of the memorandum and the vagueness create broad discretion in agencies that have demonstrated to date that they will seek to punish

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<sup>1</sup> Domestic terrorism is defined in the criminal code as conduct that occurs primarily inside the territory of the United States and that involves acts dangerous to human life that appear to be intended to intimidate a civilian population; influence the policy of government by intimidation or coercion; or affect the conduct of government by mass destruction, assassination, or kidnapping.

enemies of the Administration, concoct theories to pursue adversaries, and seek to chill First Amendment activities. The recent reports if true marks a significant escalation of the Administration's enforcement posture toward groups it deems "extremist."

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### **Administration Rhetoric – the Foghorn of Disinformation**

Time and again, the President, J.D. Vance, Steven Miller, Pam Bondi and Kristi Noem, among others, have used incendiary and false rhetoric to describe people and actions as domestic terrorists -in cases where the conduct ranges from activity expressly permitted by the First Amendment to actions that might at most fall under ordinary concepts of criminal law.

**Why it Matters:** Rhetoric steeped in conspiracy, bald faced lies, or exaggerations create a toxic environment that chills free speech, encourages extra judicial action, and can incite violence putting organizations and their staffs at risk.

**What's the Response:** Foundations must ensure that they comply with the rules governing them and avoid "foot faults" or other mistakes in their filings and operations that may be used by the Administration to take action against the organization.

Due diligence will become even more important as the Administration and others seek to hold donors responsible for the actions of their grantees. MacArthur is revising and bolstering its due diligence practices and approach to meet the moment and in accordance with principles that seek to also protect grantees and minimize burdens on them.

Organizations must push back against the threats to the First Amendment rights of free speech and assembly and counter the false framing offered by the Administration.

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### **Congressional Action using Terrorism or Alleged Violence as Hook to Imperil Not-for-Profits – Solutions in Search of Problems**

In 2025 a bill passed the House which would have allowed the Secretary of the Treasury to designate a not-for-profit organization as a material supporter of terrorist organizations and suspend its tax exemption. This bill was eventually withdrawn after heavy lobbying by the sector.

There already exists a provision, section 501(p), enacted via the PATRIOT Act in 2003, that mandates the suspension of tax-exempt status for organizations designated as terrorist organizations or supporters of terrorism through a formal multi-agency process.

In late December, Sen. John Cornyn (R-TX), Sen. Tim Sheehy (R-MT), and Rep. David Kustoff (R-TN) introduced [S.3554/H.R.6800](#), (a similar bill) that would allow the Secretary of the Treasury to designate nonprofits as terrorist-supporting organizations and strip them of their tax-exempt status without robust due process protections.

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**The Stop FUNDERS [Financial Underwriting of Nefarious Demonstrations and Extremist Riots] Act**, last introduced in July 2025 with companion bills in both chambers, would expand RICO to include riot-related conduct and has gained momentum through White House support and FBI Director endorsement.

In 2026, Senator Cruz sponsored the **SPONSOR [Stop Proxy Organizations Nurturing Subversive Operations and Riots Act] Act**, (S. 3942) which would impose criminal and civil liability on 501(c)(3) fiscal sponsors (and possibly their funders) for covered activities of sponsored projects; notably, it would also create the first statutory definition of "fiscal sponsorship" in the Internal Revenue Code.

**What They Do:** The proposals amending 501(p) would authorize suspension or revocation of exemption based on broad and malleable concepts such as “material support, ”bypassing traditional IRS audit, adjudication, and judicial review processes prior to the designation. The latter two amp up the pressure on organizations funding certain activities that would in other contexts be protected by the First Amendment and seek to intimidate funders in the area.

**Why it Matters:** Bills such as the ones referenced would make tax-exempt status more vulnerable to executive discretion in the context of alleged terrorism or national security concerns as well as alleged political violence and chill activities that are lawful. Although such proposals have not been enacted, their introduction signals a willingness to delegate vast authority to a limited number of officials and limit due process. Even without enactment, this trend increases uncertainty and heightens reputational and compliance risk for organizations engaged in politically sensitive, international, or controversial work.

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## State Level Action

Some Red States used state or local laws or the power of Attorneys General over not-for-profit organizations to seek to criminalize conduct undertaken by not-for-profits or attack not-for-profits themselves.

In Texas, Governor Abbott used a state law to [designate](#) CAIR and the Muslim Brotherhood as foreign terrorist organizations and transnational criminal organizations. In Florida, Governor Santos did the same thing using state law.

**What it Does:** In Texas, the proclamation heightened enforcement actions against the organizations and prohibits them from purchasing or acquiring land in Texas. CAIR has challenged the designation in Court under the First Amendment.

In Florida, it also threatened organizations providing support to CAIR as well as depriving CAIR of certain rights. Fortunately, a court in Florida recently held the executive order unconstitutional under the First Amendment

**Why it Matters:** The designation contributes to rising Islamophobia, weakens the First Amendment and chills organization's educational and First Amendment activities.

## Exhibit 7

### Federal Funding Pauses or Revocations as a Rapid Disruption Tool

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#### OMB Memorandum M 25 13, Office of Management and Budget – January 27, 2025

**What it Does:** OMB Memorandum M-25-13 temporarily paused numerous federal grant and assistance programs, producing immediate disruption across the nonprofit sector. Disbursements were delayed or suspended, staffing and program operations were affected, and litigation quickly followed. Courts issued targeted temporary restraining orders and preliminary injunctions that limited—but did not eliminate—the memo’s effects for certain plaintiffs.

In addition, Federal agencies, including the EPA sought to freeze funding based initially on specious allegations of fraud and abuse and later shifting to policy grounds when it could not point to any fraud or abuse.

**Why it matters:** The episode and the freezing or clawback of other funding demonstrates the Executive’s willingness to use funding freezes as a regulatory lever, even outside ordinary administrative processes. It underscores the vulnerability of federally connected grantees to sudden, system-wide action and highlights the speed with which operational disruption can occur—often well before judicial review provides clarity or relief.

## Exhibit 8

### The Heat Rises on Climate Change

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Upon taking office in January 2025, President Trump immediately targeted Biden-era climate policies, signing sweeping executive orders to rescind dozens of regulations. Key actions included withdrawing from the Paris Agreement, declaring a "national energy emergency" to promote fossil fuel production, and targeting environmental justice initiatives.

#### Key Executive Orders and Actions (2025):

- [EO 14148 \(Initial Rescissions\)](#): Issued on Jan 20, 2025, this order revoked 78 Biden-era actions, focusing on eliminating regulations labeled as "climate extremism".
- [Withdrawal from Paris Agreement \(EO 14162\)](#): Formally initiated the withdrawal from the international climate accord.
- [Unleashing American Energy](#): Directs the EPA to reconsider emissions standards for power plants and methane regulations.
- [Offshore Wind Moratorium](#): Initiated steps to pause or terminate offshore wind projects and lease sales.
- [Ending Environmental Justice \(EJ\) Initiatives \(EO 14151\)](#): Mandates the termination of federal DEI and environmental justice offices and positions.
- [Rolling Back Electric Vehicle Goals](#): Targeted policies aiming to shift the automobile industry toward electric vehicles.
- [Oil and Gas Leasing Expansion](#): Reversed restrictions on drilling in the Arctic National Wildlife Refuge and other areas.

These actions aimed to dismantle the [Justice40 Initiative](#), [Climate-Related Financial Risk rules \(EO 14030\)](#), and various other sustainability efforts.

**What Happened:** The Trump administration quickly and decisively crippled the efforts to address climate change through the Infrastructure Act, and other Biden Administration efforts through executive orders, Agency Action, and the passage of the One Big Beautiful Bill. The result is that Fossil Fuels are again king in the eyes of this Administration and it is even trying to breathe new life into a dying coal industry. See [Exhibit 1](#) hereto for a listing of the actions taken.

Funding was stopped for many initiatives, including offshore wind, and the Greenhouse Gas Reduction Fund, fraud was alleged against some participants without basis, and tax incentives removed in the signature legislation the OBBB.

While organizations have pushed back against effort to strip funding – and recently appeared to find a sympathetic [en banc Court of Appeals for the District of Columbia](#), much of the damage has been done.

**Why it Matters:** The Trump Administration’s executive, agency, and legislative efforts have stalled and even reversed years of efforts to address climate change through legislation, agency action, and market forces. It forces individual states to step up to try to continue progress.