

Update on National Council of Nonprofits Litigation

04.26.25 | Linda J. Rosenthal, JD



The First One Hundred Days of the current Trump administration have been a 24/7 rollercoaster of developments, large and small.

We had been warned during the campaign and transition that the opening weeks would be a reprise-on-steroids of the 2017 Shock and Awe strategy. A key feature of the plan this time included rolling out “...an unceasing flow of initiatives” at “breakneck speed” to knock the “rivals off balance”

The Deluge of Executive Orders

Beginning on Inauguration Day 2025, there has been a non-stop barrage of constitutionally dubious executive orders and other over-the-top presidential directives. As we approach Day 100, the administration continues to churn them out. See the White House website.

As if anyone needs reminding of the sheer volume and alarming scope of this onslaught, there are handy reference tools that chronicle each day's developments. See, for example: *All of the Trump Administration's Major Moves in the First XX Days*, Karen Yourish et al, *The New York Times* [“The New York Times is tracking the actions and significant statements of President Trump and his administration during the first 100 days of Mr. Trump's second term. This page will be updated daily.”] There are filters for 20 categories including Climate, D.E.I., Education, Immigration, and Staffing.

Executive Orders as Chaos Factor

Early on, the president and his closest staff hoped and expected that, from the initial lineup of new initiatives, the Day 8 sudden and secretive freezing of over \$3 trillion of federal grant and contract funds would be one of the early blockbusters of chaos. See OMB Memorandum (M-25-13) (January

27, 2025).

“On Tuesday,” wrote *axios.com* reporter Luke Broadwater on January 28th, “just when Democrats thought they might come up for air, news broke that Mr. Trump had ordered a freeze on trillions of dollars in federal grants and loans, prompting a new round of outrage.”

Courtesy of a press leak on that late January Monday night, word about the privately circulated secret memorandum reached key civic and governmental figures right away. They scrambled for 12 hours overnight to prepare and file excellent federal lawsuits.

On Tuesday morning – January 28th – the National Council of Nonprofits and three other plaintiffs filed their complaint in federal district court in the District of Columbia, got a hearing scheduled immediately, and won a temporary restraining order before close of business.

Later on Tuesday, a coalition of twenty-three Democratic state attorney general had filed their own lawsuit in federal district court in Rhode Island. By midday Wednesday, January 29th, they also won a hearing and a temporary restraining order.

In due course, the plaintiffs in these parallel lawsuits sought and were granted preliminary injunctions.

The full docket information including links to all source documents and exhibits is available free-of-charge online courtesy of courtlistener.com, a project of Free Law. See –

- *National Council of Nonprofits v. OMB*, District Court of the District of Columbia, Case No. 1:36-cv-00239 [filed 1/28/25]; preliminary injunction entered 2/25/25 with nationwide application, Document #51; Notice of Appeal filed 4/24/25, Document #62 – Judge Loren K. AliKhan, presiding
- *State of New York et al v. Trump et al*, District Court of the District of Rhode Island, Case No: 1:25-cv-00039, [filed 1/28/25 by a coalition of the 23 Democratic state attorneys general as plaintiffs]: preliminary injunction entered 3/6/25 with application limited to the 23 jurisdictions, Document #161, Notice of Appeal filed 3/10/25, Document #162 – Chief Judge James J. McDonnell, Jr., presiding

We’ve covered this story extensively in February and March through the granting of preliminary injunctions. For background, see: *Federal Funding “Pause”: Five-Alarm-Fire, Doused for Now* (February 4, 2025) *FPLG Blog*; *Preliminary Injunction Granted Re Freezing-Funds Directive* (February 27, 2025) *FPLG Blog*; *Another Preliminary Injunction in OMB Memorandum (M-25-13) Litigation* (March 12, 2025), *FPLG Blog*; and *The Preliminary Injunctions Re OMB Memorandum (M-25-13): A Closer Look* (March 18, 2025) *FPLG Blog*.

Special Issues on Appeal

It’s generally expected that the losing side will appeal the granting of a preliminary injunction. Ordinarily, the filing of a Notice of Appeal is of no special concern.

Late last week, Diane Yentel, president and CEO of the National Council of Nonprofits, expressed confidence on news that the government filed its appeal in *NCN v. OMB* just ahead of the 60-day

statutory deadline. “...This is the case ... challenging (and halting) the Trump administration’s radical and reckless freeze of all federal funding. The preliminary injunction prevents the administration from again attempting to freeze all federal funding, while the underlying case is considered. The consequences of the admin’s attempted funding freeze would be catastrophic for the nonprofit sector, and for the people and communities we serve. We’ll do all we can to stop it from happening. We await a hearing date in the US Court of Appeals.”

However, she voiced alarm about one aspect of the *NCN v. OMB* litigation success in the District of Columbia that is being challenged – separately – in the United States Supreme Court in mid-May 2025. See below.

By way of background, NCN had persuaded Judge AliKhan to rule in its favor on three highly significant aspects of the preliminary injunction ruling, without which it would be a hollow victory.

First, NCN persuaded the court to deny the government’s request for an appeal bond. Among the reasons is the amount of the bond requested – i.e., full security (which could have been several trillion dollars). Judge AliKhan, in denying a security bond in any amount noted that she had never encountered such a request in a lawsuit with such astronomical estimated damages. With little trouble, she denied the plea for security.

Second, NCN persuaded the court to deny the government’s request for a stay pending the ultimate outcome of the litigation. Early on, in granting the plaintiffs’ request for a temporary restraining order, Judge AliKhan noted that the NCN litigants have a “strong likelihood of success on the merits” and the granting of a stay would render the TRO illusory. For similar reasons, she refused the government’s plea not to immediately enforce the preliminary injunction.

Third, NCN argued successfully, at both the TRO and preliminary injunction stages, for a ruling effective nationwide: Plaintiff NCN, America’s largest nonprofit membership association, represents organizations in each and every U.S jurisdiction.

In the second part of her [LinkedIn post](#) on April 24, 2025, Ms. Yentel called attention to an unwelcome development raised in *entirely separate litigation* that could affect the outcome here: “In the meantime, the Supreme Court has scheduled oral arguments in mid-May on a challenge to the authority of lower court judges to implement nationwide preliminary injunctions. The outcome of that case will have significant impacts on our and dozens of other lawsuits that are preventing immediate harm from the Trump administration’s actions.”

Three separate lawsuits have been filed in connection with the administration’s directive on birthright citizenship: *Protecting the Meaning and Value of American Citizenship*. (January 20, 2025). In those lawsuits, the government has made clear it wants the Supreme Court to strike down the nationwide scope of the preliminary injunction. See *Trump asks Supreme Court to curb judges’ power to block policies nationwide* (March 13, 2025, updated 6:26 pm EDT) Josh Gerstein, [politico.com](#).

Although the Supreme Court will not hear the case on the merits – that is, the issue of birthright citizenship – until much later in the year, it’s just been announced that the justices will get to the “nationwide injunction” aspect of the case much sooner. See *Supreme Court to hear arguments on*

Trump's bid to start implementing his plan to end birthright citizenship (April 17, 2025, 3:27 pm EDT)
Erica Orden, *politico.com*.

"In a terse order Thursday, the Supreme court agreed to hold a special oral argument on May 15 on the question of district judges' authority to issue such rulings. It is rare for the court to schedule arguments on emergency appeals, and the move is a sign that the justices are taking the Trump administration's position seriously."

Politico's Erica Orden further explained: "If the high court agrees with Trump that the judges overstepped their authority, it could allow the administration to begin immediately enforcing its citizenship policy in some parts of the country."

Conclusion

Nationwide injunctions are not unusual and certainly permitted where appropriate. But the practice is controversial to some degree, especially when it appears that a plaintiff may be "judge-shopping." This issue has been a hot topic in recent years. See, e.g., *District Court Reform: Nationwide Injunctions* (April 2024) 137 Harv. L. Rev. 1701.

– Linda J. Rosenthal, J.D., FPLG Information & Research Director