



MEMORANDUM

March 7, 2025

TO: TRIBAL HOUSING CLIENTS

FROM: Ed Clay Goodman
HOBBS, STRAUS, DEAN & WALKER, LLP

RE: ***Preliminary Injunction Granted in States Case Challenging the Federal Funding Freeze & Other Litigation Updates***

As discussed in our update on February 28, the U.S. District Court for the District of Columbia ("D.D.C.") granted a preliminary injunction in the Nonprofits Case¹ challenging the OMB Memo and the categorical funding freeze it effectuated. Since that time, there have been several developments in the funding freeze cases, the most notable of which was a District for Rhode Island ("D.R.I.") order this week imposing a preliminary injunction in the States Case,² as discussed in detail below.

States Case. On February 28, the Plaintiff States filed a second motion to enforce the Court's temporary restraining order ("TRO"). In their motion, Plaintiffs identified FEMA grant funds that have remained frozen since February 7 despite the Court's TRO disallowing any categorical funding freezes tied to OMB's Memorandum M-25-13 ("OMB Memo") or the President's various EOs, and which required that funds subject to open awards and obligations flow. They argued that, by withholding such funds, FEMA—which had admitted that it was withholding funds in order to conduct a review of federal financial assistance—had effectively categorically and indefinitely frozen many its grants in direct contravention of the TRO. However, the Court ultimately issued its order granting a preliminary injunction ("PI") before further briefing occurred on the second motion to enforce the TRO, thereby dissolving the TRO and mooting the Plaintiffs' second motion to enforce it. Accordingly, the Court addressed the FEMA issues in its PI order, as noted below.

The Court imposed a PI in the States Case in a lengthy memorandum opinion and order issued on March 6. At the outset of its opinion, the Court noted that the "Executive's categorical freeze of appropriated and obligated funds fundamentally undermines the distinct constitutional roles of each branch of our government," and that, specifically, "[h]ere, the Executive put itself above Congress." It then provided an

¹ *Nat'l Council of Nonprofits v. Off. of Mgmt. & Budget*, No. 1:25-cv-00239 (D.D.C. filed Jan. 28, 2025).

² *New York v. Trump*, No. 1:25-cv-00039 (D.R.I. filed Jan. 28, 2025).

overview of the Congressional appropriation process and Executive agencies' and departments' limited spending powers.

As it found previously when it issued a TRO, the Court again found that the Plaintiffs' claims, or at least their request for preliminary relief, are not moot. It noted that substantial evidence put forth by the Plaintiffs has shown that categorical funding freezes resulted from the OMB Memo and related EOs and guidance documents and that, while the federal government may have rescinded the OMB Memo, the evidence of agency action since the rescission shows that the general policy of indiscriminately freezing funds nevertheless continued. Much like the D.D.C. concluded in its PI order in the Nonprofits case, the Court found that the evidence overwhelmingly shows that the categorical, indefinite funding freezes that have occurred over the last month and a half are attributable to the OMB Memo's clear directives to pause federal financial assistance rather than the result of individualized assessments made pursuant to the terms of relevant statutory authorities and grant terms.

With respect to the Plaintiffs' likelihood of success on the merits of their claims, the Court found that Plaintiffs' will likely win their claims that Defendants acted contrary to law and exceeded their statutory authority in effectuating the funding freeze. As the Court noted, federal agencies' power is limited to their statutory authority granted by Congress, and any action taken that is beyond the limits of such statutory authority is therefore unlawful. Specifically, the Court noted that the Impoundment Control Act "permits the Executive to defer or decline the expenditure of appropriated federal funds only under certain limited conditions," which conditions—such as sending a "special message" to Congress explaining, in specific terms, proposed deferrals of federal funds—the Defendants did not satisfy in this case before they withheld federal funds based on the OMB Memo, associated EOs, and related guidance documents.

The Court also found that Plaintiffs are likely to win their claim that Defendants' actions in carrying out the funding freeze were arbitrary and capricious and thus contrary to law. It found that the Defendants have not identified a rational reason why their need to "safeguard valuable taxpayer resources" justified such an immediate and sweeping pause of billions of dollars of federal financial assistance all at once and without any particularized determinations. The Court found little, if any, evidence the Defendants considered the consequences such a pause would have on communities nationwide, impacting the States' abilities to provide critical services in areas such as healthcare, public safety, education, childcare, transportation, emergency preparedness and more. Like the D.D.C. found in the Nonprofits Case, the Court found that the OMB Memo essentially amounted to a mandate to agencies to immediately "effectuate [a] blanket pause and then decide later which funding streams they actually had lawful authority to withhold."

Finally, the Court noted the evidence on the record at this point overwhelmingly shows that Defendants have sustained significant harm as a result of the funding freeze

and would continue to sustain significant, irreparable harm if a PI were not granted to prevent the freeze from continuing during the pendency of the litigation. As the Plaintiff States utilize the federal funds at issue to provide a vast array of critical services and resources to the public, it found the public interest also weighs heavily in favor of a PI.

Ultimately, the Court ordered that:

1. The Agency Defendants are enjoined from reissuing, adopting, implementing, giving effect to, or reinstating under a different name the directives in [the OMB Memo] with respect to the disbursement and transmission of appropriated federal funds to the States under awarded grants, executed contracts, or other executed financial obligations.
2. The Agency Defendants are enjoined from pausing, freezing, blocking, canceling, suspending, terminating, or otherwise impeding the disbursement of appropriated federal funds to the States under awarded grants, executive contracts, or other executed financial obligations based on the OMB [Memo], including funding freezes dictated, described, or implied by Executive Orders issued by the President before rescission of the OMB [Memo] or any other materially similar order, memorandum, directive, policy, or practice under which the federal government imposes or applies a categorical pause or freeze of funding appropriated by Congress. This includes, but is by no means not limited to, Section 7(a) of Executive Order 14154, Unleashing American Energy.

Finally, the Court noted that its TRO expired upon the issuance of the PI, thus rendering moot the Plaintiffs' second motion to enforce the terms of the TRO with regard to withheld FEMA funding. However, the Court ordered FEMA to file a report by March 14 informing the Court of the status of FEMA's compliance with the PI. The Court also denied Defendants' request to stay enforcement of the PI pending any appeal of it to the First Circuit.

Nonprofits Case. Since our last report, on March 4, the Plaintiff Nonprofits filed a motion seeking clarification of the scope of the Court's PI order. In their motion, Plaintiffs noted that Defendants indicated in their notice confirming compliance with the PI that they interpret the Court's references to requiring funding to flow under "all open awards" to actually mean "not 'all' open awards but instead only those open awards that have been 'partially disbursed.'" This interpretation has resulted in more than 3 million dollars of HUD funding already awarded to various recipients, including members of Plaintiff National Council of Nonprofits, remaining frozen. Plaintiffs have asked the Court to clarify that the PI's directives regarding "'all open awards'" apply to "all awards that have been *awarded*—i.e., that the recipient has been notified of the decision to award the grant, loan, or other financial assistance or the award has otherwise been made

public." Per the Court's order, Defendants are to respond to the motion to clarify by March 7, and Plaintiffs may thereafter file a reply by March 10.

Also on March 4, the parties filed a joint status report regarding proposed next steps in the proceeding. In that joint status report, Plaintiffs indicated they believe that the case should proceed in the ordinary course according to deadlines imposed by the Federal Rules of Civil Procedure. Defendants, however, have asked the Court to postpone further deadlines in the case for a period of 60 days following entry of the Court's PI order to give the Acting Solicitor General time to consider whether to appeal the PI.

Conclusion

If you have questions or would like additional information about anything discussed above, please do not hesitate to contact me at egoodman@hobbsstrauss.com or by phone at (503) 242-1745.