

DEI Injunction Falls, For Now: 4th Circuit Allows Trump Administration Agencies to Enforce EOs

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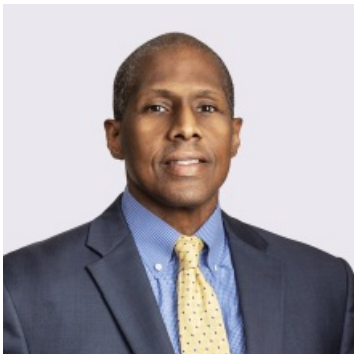
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Takeaways

- A three-judge panel of the Fourth Circuit stayed, pending appeal, the district court's 2/21/25 injunction against enforcement of aspects of two EOs banning "illegal" DEI.
- The decision is based on the administration's representation that the enjoined provisions apply only to conduct that violates existing federal anti-discrimination law.
- Federal agencies may terminate contracts and require certifications pursuant to the EOs.
- The appeal of the 2/21/25 preliminary injunction remains pending.
- Employers should continue assessment of their DEI programming.

Related links

- [*National Association of Diversity Officers in Higher Education, et al. v. Trump, et al.* \(order\)](#)
- [Court Clarifies: DEI Injunction Applies Across Government](#)
- [DEI Injunction Stands: Court Denies Trump Administration's Motion to Stay](#)
- [Federal Court Blocks Provisions of Trump Administration's 'Illegal DEI' Executive Orders](#)
- [Trump Administration Revokes EO 11246, Prohibits 'Illegal' DEI: What the EO Ending Illegal Discrimination and Restoring Merit-Based Opportunity Means for Employers](#)
- [Post-EO DEI Assessments: What Are They and Why Should You Do Them?](#)
- [Ten State Attorneys General Launch Inquiry into Major Financial Institutions' DEI & ESG Programs](#)

Article

A three-judge panel of the U.S. Court of Appeals for the Fourth Circuit on March 14, 2025, granted the Trump Administration's motion to stay enforcement of the district court's preliminary injunction against President Donald Trump's enforcement of aspects of executive orders (EOs) that ban "illegal" diversity, equity, and inclusion (DEI) programs. [*National Association of Diversity Officers in Higher Education, et al. v. Trump, et al.*, No. 25-1189.](#)

The Maryland federal district court's [initial ruling](#) on Feb. 21 granting a nationwide preliminary injunction temporarily prohibited the Trump Administration from enforcing certain aspects of the EOs, pending further legal proceedings. That order addresses provisions in Executive Orders 14151 and 14173, which involve terminating equity-related grants or contracts and enforcing the aspects of the EOs relating to the concept of "illegal DEI."

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The Fourth Circuit panel ruled without explanation that the Trump Administration satisfied grounds for a stay of enforcement of the preliminary injunction pending appeal. All three panel judges issued concurring opinions.

Chief Judge Albert Diaz acknowledged that “it’s unclear what types of programs—formal or informal—the administration seeks to eliminate” and “agency action that goes beyond the narrow scope set out in this motion would implicate Fifth Amendment vagueness concerns.” Judge Diaz expressed support for DEI initiatives stating, “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.”

Judge Pamela Harris joined the Order granting the administration’s motion to stay pending appeal, but she stated, “[F]or now, I believe the government has shown sufficient likelihood of success to warrant a stay until we can hear and decide its appeal.” She went on to opine that, “as the government explains,” the challenged EOs are limited in scope. She stated, “The Executive Orders do not purport to establish the illegality of all efforts to advance diversity, equity or inclusion, and they should not be so understood. Instead, the so-called ‘Certification’ and ‘Enforcement Threat’ provisions apply only to conduct that violates existing federal anti-discrimination law.” She further stated that her vote to grant the stay comes with the caveat that “[a]gency enforcement actions that go beyond the Orders’ narrow scope may well raise serious” constitutional concerns. She concluded by saying that she agrees with Chief Judge Diaz and instructed that her “vote should not be understood as agreement with the Orders’ attack on efforts to promote diversity, equity, and inclusion.”

Judges Diaz and Harris’s statements that the scope of the EOs do not extend beyond existing civil rights laws appear based on representations in the government’s motion for a stay that the certification and other provisions “simply require recipients to certify their compliance with existing legal obligations under the ‘applicable’ federal civil rights laws such as Title VI of the Civil Rights Act of 1964, which applies to all recipients of federal assistance, 42 U.S.C. § 2000d-1—laws that are binding independent of any certification requirement.”

Judge Allison Rushing joined the Order and questioned whether the case was even ripe for adjudication and whether the plaintiffs had standing, because the case “does not challenge any particular agency action implementing the Executive Orders.” She stated, “Ripeness and standing doctrines ‘prevent the judicial process from being used to usurp the powers of the political branches,’”

Employers should conduct privileged assessments of their DEI programming and initiatives and federal contractors should be on the lookout for agency requests for certification.

Jackson Lewis attorneys are closely watching developments in this area.

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