

# Key Portions of President Trump’s Anti-Diversity, Equity and Inclusion Executive Orders on Hold

Alert

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On Friday, February 21, 2025, a federal district court in Maryland issued a nationwide injunction against enforcement of three key provisions in Executive Order 14173, “Ending Illegal Discrimination and Restoring Merit-Based Opportunity,” restricting diversity, equity, and inclusion programs.

As described in a prior [Stinson alert](#), Executive Order 14173 had significant implications for federal contractors because it revoked a decades-old executive order providing for much (but not all) of federal affirmative action requirements. The court enjoined the “Termination Provision,” the “Certification Provision,” and the “Enforcement Threat Provision” in Executive Order 14173, collectively referred to by the court as the “Challenged Provisions.”

## WHAT DOES THIS COURT DECISION CHANGE?

In a 63-page order, the court found that the Challenged Provisions of Executive Order 14173 are likely unconstitutional. The court’s order is not the final word on whether the Challenged Provisions are unconstitutional, but the court decided to enjoin and preserve the status quo until courts determine if the provisions are constitutional. Here is a summary of the Challenged Provisions:

- **Termination Provision:** This provision directs federal executive branch agencies to terminate “equity-related grants’ or contracts.” The court held the Termination Provision is likely unconstitutional as being “void for vagueness” under the Fifth Amendment for two reasons: (1) the vague term could lead to arbitrary or discriminatory enforcement and (2) it does not give sufficient notice about whether and how to avoid termination of current contracts.

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- **Certification Provision:** This provision will require federal contractors to certify they do not “operate any programs promoting diversity, equity and inclusion that violate any applicable Federal anti-discrimination laws.” According to the court, at oral argument, “the government refused to even attempt to clarify what the Certification Provision means.” Thus, the court held the Certification Provision “induce[s] ... federal contractors to apply an over inclusive definition of illegal diversity, equity and inclusion to avoid risking liability.” The court held the Certification Provision is also likely unconstitutional under the First Amendment because it is viewpoint discrimination and retaliatory punishment to government contractors and grantees for engaging in speech on matters of public concern.
- **Enforcement Threat Provision:** This provision directs the U.S. Attorney General to take “appropriate measures to encourage the private sector to end illegal discrimination and preferences, including diversity, equity and inclusion,” and to “deter” such “programs or principles” through “potential civil compliance investigations.” The court noted that the Enforcement Threat Provision “applies broadly to the private sector” and covers “pure private speech regulated by the First Amendment as opposed to the speech of federal contractors.” As such, the court held the Enforcement Threat Provision is “textbook viewpoint-based discrimination” because it “expressly targets, and threatens, the expression of views supportive of equity, diversity and inclusion.” The court also held the Enforcement Threat Provision was likely unconstitutionally void for vagueness, in part, because President Trump’s executive orders had “rescinded swaths of existing executive branch guidance on what the executive branch considers the federal civil rights law to require, prohibit, or allow.”

The court took note of the practical issue that if these provisions were permitted to go into effect and then later found to be unconstitutional, the doctrine of sovereign immunity would likely prevent damages being recovered from the government after the fact.

### WHAT DOES THIS COURT DECISION NOT CHANGE?

The court did not overturn Executive Order 14173 entirely. The court’s order does not change the fact that Executive Order 11246 (which dates back to September 24, 1965) was validly revoked on January 21, 2025, when President Trump signed Executive Order 14173. Thus, federal affirmative action requirements that relied on Executive Order 11246 remain rescinded. Other affirmative action requirements that do not rely on Executive Order 11246 also remain in effect. These include, for example, federal affirmative action requirements under the Vietnam Era Veterans’ Readjustment Assistance Act and Section 503 of the Rehabilitation Act, or any affirmative action requirements arising under state or local laws.

Also, the court’s order does not change any existing requirements for diversity, equity and inclusion programs to be operated in compliance with anti-discrimination laws. Most anti-discrimination laws arise from acts of Congress, state legislatures, or county and municipal governments – not from executive

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orders. Employers have always had to operate their diversity, equity and inclusion programs in compliance with anti-discrimination laws, and most existing diversity, equity and inclusion programs do not inherently violate anti-discrimination laws. In fact, the regulations implementing the now-rescinded Executive Order 11246 already made clear that quotas, set-asides and preferential hiring – key complaints of anti-diversity, equity and inclusion advocates – were unlawful and that contractors cannot “hire a person who lacks qualifications to perform the job successfully, or hire a less qualified person in preference to a more qualified one.”

## WHO IS AFFECTED BY THIS LITIGATION?

The court’s order notes that “approximately 20% of the nation’s labor force works for a federal contractor.” The outcome of this litigation will have significant impacts for all federal contractors but also private sector employers who were under threat of investigation related to their diversity, equity and inclusion programs. As things stand, the Challenged Provisions are on hold while their constitutionality is determined. Federal contractors are strongly encouraged to work with their counsel to assess how they will respond to this partial pause of Executive Order 14173.

For more information and guidance regarding this injunction, please contact [Patrick Busch](#), [Amy Conway](#), [Pat Konopka](#), [Kelly Maxwell](#), [Bernadette Sargeant](#), [Stephanie Scheck](#) or the Stinson LLP contact with whom you regularly work.

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