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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

March 14, 2025

The Honorable Pam Bondi
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Bondi:

I write in support of President Trump's March 6, 2025 Memorandum on Ensuring the Enforcement of Federal Rule of Civil Procedure 65(c).¹

Over the last few months, I have watched with concern as individual district judges have issued sweeping injunctions that reach far beyond the case or controversy before them. These orders are often issued as preliminary injunctions or temporary restraining orders on an expedited basis with limited hearings. In some cases, courts have issued *ex parte* orders without the government even having the opportunity to be heard.² Simply put, such judicial overreach not only violates the separation of powers, but it also silences the American people, who overwhelmingly voted for the change that the President is trying to deliver.

The Trump Administration has been particularly targeted by nationwide injunctions during both of his terms in office. According to a 2023 *Harvard Law Review* study, there have been 96 nationwide injunctions spanning the four presidencies from 2001 to 2023, but 64 of them—**2/3 of all nationwide injunctions over that time**—targeted President Trump during his first four years in office. Nearly all of those orders were imposed by judges appointed by Democratic presidents,³ and 54 of the 64 orders were issued as preliminary injunctions or temporary restraining orders.⁴

This trend has continued into the current administration. There have been dozens of orders against President Trump's administration, and more than 100 pending lawsuits.⁵ Examples include a New

¹ See also Fact Sheet: President Donald J. Trump Ensures the Enforcement of Federal Rule of Civil Procedure 65(c), The White House (Mar. 6, 2025), <https://www.whitehouse.gov/fact-sheets/2025/03/fact-sheet-president-donald-j-trump-ensures-the-enforcement-of-federal-rule-of-civil-procedure-65c/>.

² *State of N.Y. v. Trump*, No. 25-CV-01144-JAV, 2025 U.S. Dist. LEXIS 32664 (S.D.N.Y. Feb. 21, 2025); *Commonwealth of Massachusetts v. National Institutes of Health*, Case No. 25-CV-10338 (D. Mass. March 5, 2025).

³ Harvard Law Review, *District Court Reform: Nationwide Injunctions*, 137 HARV. L. REV. 1701, 1705 (Apr. 2024).

⁴ Harvard Law Review, *District Court Reform: Nationwide Injunctions*, 137 HARV. L. REV. 1701 app. (Apr. 2024).

⁵ Alex Lemonides, Seamus Hughes, Mattathias Schwartz, and Lazaro Gamio, *Tracking the Lawsuits Against Trump's Agenda*, THE NEW YORK TIMES (Mar. 11, 2025), <https://www.nytimes.com/interactive/2025/us/trump-administration-lawsuits.html>; Mattathias Schwartz, *Trump's Losses Raise a Question: Should One Judge Set National Policy?*, THE NEW YORK TIMES (Mar. 12, 2025), <https://www.nytimes.com/2025/03/12/us/trump-judges.html>.

York district judge enjoining executive branch officials' access to Treasury records⁶; a Maryland district judge enjoining the Trump Executive Order ending discrimination in federal programs and contracting⁷; and a single D.C. district judge enjoining the federal funding freeze and requiring United States Agency for International Development (USAID) to disburse \$2 billion within 36 hours of his order.⁸

Although President Trump has been the target of much of this judicial overreach, the issue is bipartisan. In the past, Democrats and Republicans have both raised concerns about the use of nationwide preliminary injunctions and temporary restraining orders.⁹ Both parties have seen their respective President's policies hamstrung by judicial orders from individual district judges, which "are overwhelmingly issued by judges appointed by a President from the opposite political party...."¹⁰ And Members of Congress from both political parties have proposed legislative solutions to no avail.¹¹ These nationwide preliminary injunctions and temporary restraining orders undermine the legitimacy and faith in the courts, by thrusting unelected judges into the position of deciding policy matters for the whole country. For those reasons alone, the improper practice of these nationwide orders, which thwarts a President's authority, should be stopped. Exacerbating the problem, however, is that these injunctions have been routinely implemented in violation of federal law.

Under Rule 65(c), courts "may issue a preliminary injunction or a temporary restraining order *only if* the movant" posts a bond equivalent to "the costs and damages sustained by any party found to have been wrongfully enjoined or restrained."¹² The injunction bond is important to protect the defendant from injury and preserve the integrity of the judicial system. This carries particular force in the context of enjoining executive action, which can cost the American taxpayers billions of dollars.

The Federal Rules of Civil Procedure are not merely guidelines, but requirements that carry the force of law. As apparent in the text of Rule 65, preliminary injunctions and temporary restraining orders are extraordinary forms of relief.¹³ These types of remedies circumvent the judicial process,

⁶ *State of N.Y. v. Trump*, No. 25-CV-01144-JAV, 2025 U.S. Dist. LEXIS 32664 (S.D.N.Y. Feb. 21, 2025). However, other district courts, such as the D.C. district court, allowed access, which led to conflicting instructions. *See Alliance for Retired Americans v. Bessent*, No. 25-CV-00313 (D.D.C. Mar. 7, 2025); Mallory Culhane, *DOGE Can Keep Access to Treasury Payments Systems, Court Says*, BLOOMBERG (Mar. 7, 2025), <https://news.bloomberglaw.com/litigation/court-declines-to-block-doge-from-accessing-treasury-systems>.

⁷ *Nat'l Ass'n of Diversity Officers in Higher Educ. v. Trump*, No. 25-CV-00333-ABA, 2025 U.S. Dist. LEXIS 31747 (D. Md. Feb. 21, 2025).

⁸ *AIDS Vaccine Advoc. Coal. v. United States Dep't of State*, No. 25-CV-400-AHA, 2025 U.S. Dist. LEXIS 27639 (D.D.C. Feb. 13, 2025).

⁹ Harvard Law Review, *District Court Reform: Nationwide Injunctions*, 137 HARV. L. REV. 1701 (Apr. 2024).

¹⁰ *Ibid.*

¹¹ *See* H.R. 6730 (115th Congress); H.R. 4292 (116th Congress); S. 2464 (116th Congress); H.R. 4219 (116th Congress); H.R. 893 (117th Congress); H.R. 9660 (117th Congress); H.R. 642 (118th Congress); H.R. 3163 (118th Congress); S. 1265 (118th Congress); S. 4095 (118th Congress).

¹² Fed. R. Civ. P. 65(c) (emphasis added).

¹³ Erin Connors Morton, *Security for Interlocutory Injunctions under Rule 65(c): Exceptions to the Rule Gone Awry*, 46 HASTINGS L.J. 1863 (1995).

provide relief prior to the existence of an injury, severely limit the time a court can consider facts and arguments, and therefore carry a higher than normal risk of error. Rule 65(c) directly addresses this concern. By requiring a bond or security, the defendant is protected from an erroneous injunction or restraining order.¹⁴ Moreover, the bond deters frivolous lawsuits. As the Supreme Court has observed, “[a] party injured by the issuance of an injunction later determined to be erroneous has *no action* for damages in the absence of a bond.”¹⁵ Without this security, the extraordinary relief provided by Rule 65 could run wild, which is exactly what we have seen in recent months and years.

Importantly, the injunction bonds outlined in Rule 65 are not discretionary.¹⁶ Adopted in 1937, Rule 65 was derived from Section 18 of the Clayton Act of 1914. Whereas the original version of the Act allowed for the security to be “in the discretion of the court or judge,”¹⁷ the amended text repealed that language and replaced it with a mandatory requirement: “No restraining order or interlocutory order of injunction shall issue, *except* upon the giving of security by the applicant....”¹⁸ The Rules Committee copied this language for Rule 65 (originally numbered as Rule 70), which required “the giving of security by the applicant” for a “restraining order or preliminary injunction.”¹⁹

For decades after its adoption, federal courts recognized the importance and necessity of these injunction bonds.²⁰ Courts occasionally crafted narrow exceptions, but noted that such exceptions are undoubtedly “so rare that the requirement is almost mandatory.”²¹ Even then, the exceptions are limited to instances where there exists “no risk of monetary loss to the defendant”²²—instances that cannot fathomably apply to the halting of federal executive policies at the American taxpayer’s expense. Unfortunately, in the 1960s, courts started to ignore the plain language of Rule 65 to craft

¹⁴ Michael T. Morley, *Erroneous Injunctions*, 71 EMORY L. J. 1137 (2022).

¹⁵ *W.R. Grace & Co. v. Local 759, Int’l Union of United Rubber, Cork, Linoleum & Plastic Workers*, 461 U.S. 757, 770 n.14 (1983) (emphasis added).

¹⁶ Michael T. Morley, *Erroneous Injunctions*, 71 EMORY L. J. 1137 (2022).

¹⁷ Act of June 1, 1872, ch. 255, § 7, 17 Stat. 196, 197 (cited by Dan B. Dobbs, *Should Security Be Required as a Pre-Condition to Provisional Injunctive Relief?*, 52 N.C. L. REV. 1091, 1174 (1974).

¹⁸ Clayton Act § 18, 38 Stat. at 738 (emphasis added).

¹⁹ See Rule 70, Report of the Advisory Committee on Rules for Civil Procedure, at 178-82 (Apr. 1937), https://www.uscourts.gov/sites/default/files/fr_import/CV04-1937.pdf.

²⁰ Dan Huff, *I was a White House lawyer and I found Trump’s way around the left’s lawfare roadblocks*, FOX NEWS (Feb. 21, 2025), <https://www.foxnews.com/opinion/i-white-house-lawyer-i-found-trumps-way-around-lefts-lawfare-roadblocks>.

²¹ *Hoxworth v. Blinder, Robinson & Co.*, 903 F.2d 186, 210 (3d Cir. 1990) (quoting *Frank’s GMC Truck Ctr., Inc. v. General Motors Corp.*, 847 F.2d 100, 103 (3d Cir. 1988)); *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 804-05 (3d Cir. 1989); *Frank’s GMC Truck Ctr., Inc. v. General Motors Corp.*, 847 F.2d 100, 103 n.5 & n.7 (3d Cir. 1988).

²² *Hoxworth v. Blinder, Robinson & Co.*, 903 F.2d 186, 210 (3d Cir. 1990).

a “public interest exception,”²³ which incorrectly interpreted the requirement of the bond itself to be discretionary rather than limiting their discretion to the amount of the bond.²⁴

However, when the Rules Committee revisited Rule 65 in 2007, it reaffirmed the mandatory language of the injunction bond or security.²⁵ This language (and its intent) persists in the Rule we have today:

Security. The court may issue a preliminary injunction or a temporary restraining order *only if* the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained. The United States, its officers, and its agencies are not required to give security.²⁶

Despite this, courts now regularly ignore this law without consideration.

The rule of law matters. Over the last decade, we have seen chaos unfold when individual district judges determine policy for the whole country. The courts should have been imposing injunction bonds on their own,²⁷ but because they have failed to so, President Trump is right to demand that the Justice Department remind the courts of their obligations under the Federal Rules. I ask you to diligently carry out President Trump’s orders and uphold the rule of law and the integrity of our judicial system.

Please know that my colleagues and I in the Senate are watching this issue closely. I will be working to solve the problem of judicial overreach, and in the meantime, commend the Administration’s efforts to enforce existing law.

Pam:
This is a very
important issue
for me! Please take strong
action!

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary

²³ Dan Huff, *I was a White House lawyer and I found Trump’s way around the left’s lawfare roadblocks*, FOX NEWS (Feb. 21, 2025), <https://www.foxnews.com/opinion/i-white-house-lawyer-i-found-trumps-way-around-lefts-lawfare-roadblocks>; see *Richland/Wilkin Joint Powers Auth. v. U.S. Army Corps of Eng’rs*, 826 F.3d 1030, 1043 (8th Cir. 2016) (“[I]t was permissible for the district court to waive the bond requirement based on its evaluation of public interest in this specific case.”)

²⁴ Michael T. Morley, *Erroneous Injunctions*, 71 EMORY L. J. 1137 (2022).

²⁵ See Fed. R. Civ. P. 65 advisory committee’s note to 2007 amendment (“The language of Rule 65 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be *stylistic only*.”) (emphasis added).

²⁶ Fed. R. Civ. P. 65(c) (emphasis added).

²⁷ Erin Connors Morton, *Security for Interlocutory Injunctions under Rule 65(c): Exceptions to the Rule Gone Awry*, 46 HASTINGS L.J. 1863 (1995); Dan Huff, *I was a White House lawyer and I found Trump’s way around the left’s lawfare roadblocks*, FOX NEWS (Feb. 21, 2025), <https://www.foxnews.com/opinion/i-white-house-lawyer-i-found-trumps-way-around-lefts-lawfare-roadblocks>.