



Our USAID Community legal roundup, December 2025

There has been a lot of action lately in the courts on issues related to the federal workforce. In the meantime, USAID-related cases continue in various fora. What's the latest with the USAID cases? And given the wider legal landscape, what accountability is possible?

USAID-related cases in federal courts:

1. **AFSA/AFGE/Oxfam v. Trump: on appeal in DC:** On July 25, DC District Court Judge Nichols issued an opinion [dismissing](#) the AFSA/AFGE/Oxfam case, finding that plaintiffs lack standing to challenge any of the non-personnel actions involved in USAID's dismantling—and that the unions' personnel-related claims must be heard in administrative fora like the Merit Systems Protection Board (MSPB). AFSA, AFGE and Oxfam appealed the dismissal to the DC Circuit Court of Appeals in August. In their [brief](#), submitted November 26, counsel for AFSA, AFGE and Oxfam argued that the District Court erred in dismissing their complaint for lack of standing to challenge the dismantling of the Agency. They also argue that Judge Nichols was wrong in narrowing the scope of the case to consider only employment claims without addressing the larger questions the unions and Oxfam raised, which focus on whether the actions taken to shut down the Agency are lawful and constitutional—questions which can only be addressed in federal court, not by administrative bodies. This case is one of several challenging the constitutionality of the shuttering of Congressionally-created agencies. While a number of injunctions barring the termination of employees have been granted, only a few have been upheld on appeal; in DC, an appeals panel of the DC Circuit vacated the injunction in the Consumer Financial Protection Bureau case, finding that employee claims had to go to MSPB, and that relief being sought by unions was too broad. Plaintiffs in that case have petitioned the full DC Circuit to re-hear the appeal.
2. **PSC Association v. Trump: on appeal in DC:** The PSC Association (PSCA)'s request for a preliminary injunction was denied in July at the same time as the unions' lawsuit was dismissed; Judge Nichols found that the Court of Federal Claims or the Board of Contract Appeals is likely where the PSC Association's claims should be heard. The PSCA suit also brought constitutional claims for violations of the separation of powers, asserting that the President had violated the Separation of Powers since Congress directs how federal funds must be spent, and only Congress can shutter a Congressionally created Agency. The preliminary injunction requested by the PSCA would have enjoined the Administration from continuing to eliminate, reorganize, or downsize USAID; refuse to apportion to USAID the full funding Congress had appropriated to USAID; and require the Administration to develop and file a plan showing how they would timely obligate Congressionally appropriated funds, maintain staffing at USAID at levels adequate to carry out statutorily mandated activities; and reinstate USAID's PSCs. In its appeal brief, counsel for the PSCA argued that Judge Nichols fundamentally misconstrued the PSCA's claims as being personnel and contracts claims that should be channeled to the Court of Federal Claims, when in fact the Association was challenging the Administration's violations of the Constitution and

the Administrative Procedure Act (APA), which the Court of Federal Claims cannot consider and is unable to address. The brief also argues that a preliminary injunction should have been granted, in order to prevent the Administration from shuttering USAID before any court could consider the legality of those actions.

3. **Does v. Musk: in discovery in Maryland:** The Does case survived a motion to dismiss and was certified as a class action in August; Judge Chuang found that a class of all USAID direct hire employees and PSCs met the requirements of a class since they all were impacted by Musk's decision to shut down USAID. These decisions enabled a case to proceed in federal court that considers whether Musk directed USAID's dismantling in violation of the Appointments Clause and whether the Administration's plan to shutdown independent USAID operations via RIFs and terminations violates Constitutional Separation of Powers principles. The case is currently in discovery. The Administration has requested extensions to respond to discovery requests, citing the complexity of processing Agency data, and has argued that Elon Musk, Jeremy Lewin and Pete Marocco cannot be deposed as they are "high ranking" officials who can only be deposed in extraordinary circumstances. Plaintiffs objected to this motion, noting that each of the proposed deponents have special knowledge of and personal involvement in the dismantling of USAID. Judge Chuang is currently considering the parties' briefs related to this issue.
4. **AIDS Vaccine Alliance and Global Health Council: in District Court in DC:** These related cases were brought by two coalitions of USAID implementers in February to challenge the Trump Administration's Executive Order on foreign aid—specifically, the stop work order and the impoundment of foreign assistance funds, as violations of the Constitution, the Administrative Procedure Act and the Impoundment Control Act. Despite a preliminary injunction issued in March prohibiting the administration from withholding or canceling obligated funds, the Administration continued to slow roll disbursements and prohibit new FY24 obligations. In September, District Court Judge Ali issued an injunction requiring the Administration to obligate the FY24 obligated funds. However, on August 29, the Administration announced its intent to cancel \$4.9 billion of expiring funds via a pocket rescission. On September 19, the Supreme Court essentially greenlit the Administration's pocket rescission of \$4 billion in foreign assistance, ensuring that the funds would expire before they could be obligated in line with Congressional appropriations. The Administration has filed a motion to dismiss in these cases, claiming that DC District Court has no subject matter jurisdiction over the plaintiffs' claims because they are contractual and therefore should be brought before the Court of Federal Claims—and that plaintiffs have no standing to bring claims under the Impoundment Control Act. The brief from the government is due December 30. The plaintiffs response brief is due on January 29, and the government's reply brief is due on February 19.
5. **Union busting cases: on appeal in DC and CA:** Both AFGE and AFSA have brought lawsuits to challenge [Executive Order 14251 Exclusions from Federal Labor-Management Relations Programs](#), which ended collective bargaining rights for large swaths of the federal workforce, utilizing a little known law that excludes employees of federal agencies from collective bargaining when the President determines

that the primary function of their agency is national security. Both AFSA and AFGE have challenged the Executive Order, arguing that the Administration is singling out specific unions for their efforts to challenge the Administration—and that these actions are retaliation for speech protected by the First Amendment. While District Court judges granted injunctions in both unions' cases, the injunctions won by the unions were stayed on appeal. Appeals are pending in the Ninth Circuit (for AFGE) and the DC Circuit (for AFSA), and parties are submitting briefs; oral arguments are not yet scheduled in the AFGE case, and in the AFSA case, they are scheduled for December 15.

6. **NEW: Greene v. USAID: in District Court in DC:** On December 3, three former USAID employees who had worked on DEIA issues at USAID filed suit in DC District Court to challenge their dismissal within days of the second Trump term, arguing that their dismissal violated the merit-based principles set forth under the Civil Service Reform Act, as well as the Administrative Procedures Act and the Constitution. The case was initially brought as a mixed case appeal before the MSPB, asserting both an unlawful termination and a violation of federal equal employment opportunity laws; as 120 days had elapsed with no decision from the MSPB, plaintiffs exercised their right to appeal to district court. The [complaint](#) alleges that the sole grounds for placing plaintiffs on administrative leave and ultimately terminating them appeared to be based on their association with DEIA programs, which is viewpoint discrimination that violates the First Amendment. It argues that the Administration's failure to define DEI and DEIA makes employment actions based upon these terms arbitrary and capricious, and that placement of DEIA staff on administrative leave was an adverse employment action as it was constructive suspension—and also retaliation for civil rights activity. The complaint also lays out the myriad ways that the RIF violates federal statute and regulations—and argues that the actions taken by DOGE, OPM and OMB to terminate plaintiffs were not authorized and this were contrary to law. Plaintiffs are seeking restoration of assignments and duties, as well as all benefits, back pay, front pay and damages, as well as an injunction that would bar the Government from continuing to enforce the guidance and orders that led to Plaintiffs' termination. A similar mixed case class action, [Fell v. Trump](#), was also filed in DC District Court on December 3. That case, which was brought on behalf of federal employees from 27 agencies who were terminated from federal service because they served or were perceived to have served in DEIA roles at some point in their careers, argues that the Administration's imposition of unlawful RIFs discriminates based on perceived political affiliations in violation of the First Amendment, as well as on the basis of advocacy for protected racial and/or gender groups in violation of Title VII of the Civil Rights Act.

USAID related cases in other fora:

1. **AFGE arbitration:** American Federation of Government Employees (AFGE) filed a union grievance on March 12, 2025, challenging the USAID RIF as a violation of the USAID–AFGE collective bargaining agreement on behalf of USAID bargaining unit employees. Per AFGE's Collective Bargaining Agreement (CBA), after 20 business days with no response from the agency, AFGE initiated arbitration through the Federal Mediation and Conciliation Service (FMCS). Despite coordination with AFGE and USAID

representatives leading up to the hearing, in September 2025, AFGE, along with three USAID BU members, participated in a one-sided arbitration hearing with the arbitrator assigned to the case, after USAID representatives withdrew a week before the hearing. On November 14, AFGE filed its final brief with the arbitrator. Per the terms of the CBA, AFGE should receive the arbitrator's decision on or around December 14. It is likely that the arbitrator will need to weigh any potential relief or favorable outcome against concerns regarding enforceability.

2. **Merit Systems Protection Board (MSPB) appeals: most individual appeals now filed at MSPB, consolidation and discovery pending:** In July, requests for the certification of classes filed by a number of law firms on behalf of Civil and Foreign Service Officer staff were denied by the Washington regional office of the MSPB. This was not unexpected; while the certification of classes would have significantly reduced the administrative burden for USAID staff seeking to challenge the RIF before the MSPB, the MSPB does not commonly approve class certification requests. As a result of these class certification denials, each Civil Service or Foreign Service employee interested in making an appeal to the MSPB must do so individually. As of late November, more than 2100 individual appeals have been filed by former USAID employees with the MSPB, representing more than 10% of all appeals filed at the MSPB this year. The Administrative Law Judge in the case has begun to issue consolidation orders, with additional consolidation decisions expected in January; thus we do not expect discovery to start for most of the appeals before February. In October, Trump MSPB Board nominee James Woodruff was confirmed by the Senate; he was sworn in following the reopening of the government. Thus, the MSPB Board has regained a quorum.
3. **Deferred Resignation Program appeal at EEOC:** A group of between 150-200 USAID employees who are over 40 years old has filed a class action with the Equal Employment Opportunity Commission (EEOC). The lawyers representing the prospective class agent for the group recently reached out to the EEOC to inquire about the status of the class certification motion and is waiting to hear about a timeframe for any ruling. The lawyers noted that this is a typical response from judges and their clerks, and that even prior to this year the EEO administrative process at the EEOC has often involved significant delays.
4. **PSC suit with Court of Federal Claims:** The PSC damages class action, led by the law firm Crowell & Moring and separate from the PSCA litigation, is being pursued in the U.S. Court of Federal Claims and continues to move forward. After the Government filed an initial motion to dismiss the original complaint, Crowell and Moring, counsel for the PSCs, filed an amended complaint on November 18 that both responded to the government's arguments and added three additional class representatives. Plaintiffs requested certification of a class action on December 4. The government has until December 9 to respond and is expected to file a renewed motion to dismiss. If that motion is denied, the case will proceed to full briefing on class certification, which will determine when eligible PSCs can formally join the class. It is not too late for interested PSCs to participate, and there are no upfront costs to join.