

OneAID Community Flash Update

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Overview and Analysis of Preliminary Injunction Ruling in Does v. Musk/DOGE

On March 18, Judge Chuang of the U.S. District Court for the District of Maryland [issued](#) a favorable [preliminary injunction](#) and order in the Does v Musk/DOGE case, which ordered the defendants (DOGE and Musk) to temporarily stop the further dismantling of USAID. This case was brought by 26 anonymous USAID direct hire staff and Personal Service Contractors (PSCs) who sued DOGE and Musk alleging that the DOGE's role in dismantling USAID was unconstitutional.

The preliminary injunction granted the following relief:

1. Musk and DOGE need “to reinstate access to email, payments, security measures, and other electronic systems, including restoring deleted emails, for current USAID employees and PSCs” - whether on active status or on administrative leave – and provide written confirmation to the court within 7 days (by March 25)
2. Musk/DOGE cannot further disclose outside of the Agency any PII or other personal info about current or former USAID employees and PSCs, including the posting of unredacted PII of PSCs on the DOGE website (even if that PII is otherwise publicly available elsewhere).
3. Musk/DOGE cannot take “any actions in relation to ***additional*** terminations or placements on administrative leave of USAID personnel; terminations of USAID contracts or grants; closures or shutdowns of USAID buildings, bureaus, offices; or permanent shutdowns or terminations of USAID information technology systems, including permanent deletions of the contents of the USAID website or collections of USAID electronic records.”
4. Musk/DOGE cannot engage “in any actions related to USAID without the express authorization of a USAID official with the legal authority to take or approve the action.”
5. Musk/DOGE has up to 14 days to either a) get written agreement that USAID can reoccupy the headquarters in the event of a final ruling in favor of the plaintiffs; or b) get approval from the Acting Administrator of USAID or another “Officer...with authority” to permanently close the HQ.

Key Takeaways

- 1) Judge Chuang's order is based primarily on the lack of authority of the defendants—DOGE and Musk—to dismantle USAID. The judge found that Musk and DOGE were likely in control of aspects of the dismantling of USAID, specifically with respect to the shutdown of USAID's headquarters and its website, which he found to likely be unconstitutional as they do not have the authorities to do so.
- 2) The judge found that Musk acted in his official capacity as the head of DOGE, without authority, as he was neither appointed nor confirmed into the proper role, and, in some instances, acting without input or approval of USAID officials with the authorities to make these decisions.

- 3) The judge found that based on the evidence submitted that it was likely that Secretary Rubio and Pete Marocco (as acting USAID Deputy Administrator) either authorized or approved major decisions involving the termination of personnel and contracts, but not the decision to permanently eliminate the agency.
- 4) While the order does not stop duly appointed USAID officials from acting within the scope of their authority, the judge found that the executive branch does not have the authority to dismantle an agency, even one related to foreign policy. This power lies with Congress, which was not properly consulted nor did it permit the dismantling.
- 5) Because of these actions, the plaintiffs (26 anonymous USAID staff and PSCs) and the public interest suffered harms (notably, including reputational harms, [pgs. 56-59](#)).

Analysis

While Judge Chuang issued a favorable preliminary injunction sending a strong signal that Musk's dismantling of USAID is likely unconstitutional, the impact may be limited and short-term. In ordering the defendants, (DOGE and Musk) to stop the further dismantling of USAID, the judge also noted that duly appointed USAID officials may authorize or ratify certain decisions originally made by DOGE. However, the opinion is a thorough and strong rebuke to the position of the defendants that Musk was merely an advisor and did not direct the dismantling of USAID and other agencies.

Perhaps most notably, Judge Chuang found Musk and DOGE were in complete control of dismantling USAID and that Musk did so in an official government capacity, in some cases acting without USAID input or approval such as the decision to shutter headquarters and take down the agency website (www.usaid.gov).

To receive a preliminary injunction, the plaintiffs must show that they have a likelihood of success on the merits. Here, the judge found that the plaintiffs are likely to prevail on the merits of two constitutional claims: violations of the Appointments Clause and the principle of Separation of Powers. Analyzing Musk's and Trump's public statements and social media posts, along with plaintiff statements, the judge determined that Musk illegally exerted the significant authority which Article II of the Constitution reserves for duly appointed Officers of the United States.

The judge also determined that the executive branch alone may not unilaterally dissolve an executive agency, and that Musk and DOGE permanently closing USAID undermines the role of Congress in USAID's establishment as an independent agency and close oversight over USAID's statutorily required activities. The judge characterized the dismantling of USAID as the executive branch taking measures incompatible with the express wish of Congress, citing the role of Congress in establishing and abolishing agencies and its previous outright rejection of efforts to abolish USAID.

While this order is certainly a positive outcome, there is a major caveat in that the decision only enjoins DOGE and Musk. Duly appointed USAID officials can take many actions that DOGE and Musk cannot and may authorize or ratify actions that DOGE initiated. That being said, Judge

Chuang also noted that if Secretary Rubio, as USAID's Acting Administrator, or another "officer" with authority wants to reorganize USAID, reduce the workforce, close the headquarters, etc., they could; however these actions would still require consultation and approval from Congress. The judge makes this explicit in his order, offering Acting Administrator Rubio the opportunity to ratify the decision to shutter USAID offices. Nevertheless, there is still the separation of powers concern which limits even appointed USAID officials from encroaching into the authorities of the Congress, and Judge Chuang provided a careful and wide ranging analysis of how USAID's closure is likely unconstitutional executive overreach.

The defendants can appeal the ruling.

The judge seems inclined to order discovery before making a final determination on the merits, creating an opportunity for the plaintiffs to strengthen the record further.