

USAID Ruling May Be Beginning of the End for Musk. By Noah Feldman, Bloomberg, 21 Mar 2025

The decision that the billionaire's actions likely violated the Constitution in "multiple ways" is a sign it's time for him to move on.

Time to go.

A federal [judge has held](#) that Elon Musk and DOGE's actions to shut down the US Agency for International Development likely violated the Constitution in "multiple ways." US District Court Judge [Theodore D. Chuang](#) also ordered the reversal of many of the steps Musk directed to be taken to close the agency. The decision could mark the beginning of the end for the extraordinary role Musk has played in the early months of President Donald Trump's second administration. Although the ruling allows legally authorized officials to validate Musk's actions after the fact, it effectively bars him from independently issuing orders to government departments and employees.

Musk could appeal and hope the Supreme Court eventually reverses the decision. However, it might be easier for him to begin his retreat from day-to-day government operations and get back to running his businesses, which [appear to need him](#) more than Trump does.

The basis for the court's decision is the [appointments clause](#) of the Constitution, which says that "officers of the United States" must be appointed by the president "with the advice and consent of the Senate." The only exception to Senate confirmation provided is when Congress has "vested" the appointment of specific "inferior officers" in the president or someone else. As the Supreme Court has interpreted this clause, officials who exercise "significant authority" count as "principal officers" who must be confirmed by the Senate to do their jobs. Put simply, Musk functioned as a US official without being appropriately appointed as one by Trump.

In court, Musk and the Trump administration did not claim that Musk was an inferior officer exempt from confirmation. Instead, they insisted Musk was a special adviser to Trump who exercised no actual authority to order anyone in the government to do anything.

Judge Chuang rejected that claim, pointing to Trump's repeated statements that Musk is in charge of the Department of Government Efficiency and Musk's own multiple brags of having achieved various results — including the closing of USAID — through DOGE acting under his direction. In essence, the court refused to accept the Trump administration's legal argument that Musk didn't do anything himself.

It's important to understand that presidents are entitled to choose their advisers, who don't have to be Senate-confirmed. In the modern presidency, those advisers include officials as powerful as the White House chief of staff and the national security adviser. Formally, these White House officials can't order anyone outside their offices to do anything. In

practice, their directives to departments and agencies are always channeled through Senate-confirmed officials in or at the top of those departments.

In his ruling, Chuang acknowledged that Musk could, in principle, function like those more familiar White House advisers. Thus, he held that if other legitimately confirmed officials, such as Secretary of State Marco Rubio, effectively validated Musk's orders by ordering them independently to be carried out, that would be lawful. In practice, that means much of what Musk and DOGE have done is either already lawful or could become so.

But the court held that when it came to ordering the closure of USAID, neither Rubio nor any other official with authority initiated the agency's shutdown, ordered the permanent closure of its headquarters, or ordered the taking down of its website. Those actions, the court concluded, were unlawfully ordered by Musk and must be reversed unless a lawfully appointed official subsequently validates them.

As it stands now, Judge Chuang's decision would likely survive an appeal to the US Court of Appeals for the Fourth Circuit. The appeals court isn't allowed to revisit factual findings, and Chuang factually determined that no other government official ordered those USAID actions. Legally, the decision closely tracks existing law.

The Supreme Court could conceivably reach a different legal outcome by holding, as the administration urged in court, that the appointments clause doesn't apply to Musk because he holds no formal legal authority. In effect, that would mean Trump would have the inherent authority to let Musk do whatever he himself could do. But that would be a stretch under the clause, which contemplates that the president's main employees, his principal officers, would be confirmed by the Senate. As Chuang noted, this theory "would open the door to an end-run around the appointments clause."

Chuang also noted evidence that "Musk and DOGE, despite their alleged advisory roles, have taken other unilateral actions without any apparent authorization from agency officials." As examples, he mentioned the shutdown of the Consumer Financial Protection Bureau headquarters and the firing of employees at the US Department of Agriculture, National Nuclear Security Administration, and FEMA. These observations can be read as a warning that other courts would reach similar conclusions in cases arising from those DOGE actions.

Rather than fight it out through the appeals process, Musk and Trump may find it more convenient to declare victory and have Musk depart the field. They will be able to claim, with some justification, that Musk had a significant effect on various cuts and closures. Musk will have avoided, for now, the direct conflict with Trump that many observers have been predicting as inevitable between two men who both seem to believe they are running the show in their relationship. Musk can still advise Trump; he just won't be running a made-up government "department" without constitutional authorization. Some such end to DOGE will happen eventually. Musk's job was never supposed to go past July 4, 2026. If it

happens sooner, maybe no one will be unhappy — especially not Musk's [Tesla shareholders](#).