

# A Federal Judge Just Gave the Trump Administration a Sound Spanking

“The court can think of few things more disingenuous” than rescinding the spending freeze memo”but not the freeze itself.



**Michael Mechanic**

Senior Editor

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Donald Trump during a break in his civil business fraud trial in New York City, Oct. 18, 2023. **Seth Wenig/AP**

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**Last week, after** the Office of Management and Budget released a memo ordering a vague “temporary pause” on grant and loan spending by federal agencies, pending review to ensure the spending aligned with Donald Trump’s priorities, it didn’t take long for a coalition of nonprofits and health care providers to file a lawsuit claiming the move was illegal and would cause irreparable harm.

OMB had provided less than 24 hours advance notice, creating widespread chaos and confusion. Federal district judge Loren AliKhan quickly put a temporary pause on OMB’s temporary pause to give the parties”and the court”time to respond.

In the meantime, OMB rescinded its memo, and Trump’s Justice Department declared the case moot, only to have White House Press Secretary Karoline Leavitt muddy the waters by tweeting that, well, actually, the freeze wasn’t rescinded”only the memo.



**Karoline Leavitt**   
@PressSec

This is NOT a rescission of the federal funding freeze.

It is simply a rescission of the OMB memo.

Why? To end any confusion created by the court's injunction.

The President's EO's on federal funding remain in full force and effect, and will be rigorously implemented.

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On January 31, John McConnell, Jr., a federal judge in the Rhode Island district, imposed his own temporary restraining order (TRO) in response to a related lawsuit filed by 22 states (including some red ones) and DC. The states claimed Trump's appointees were violating the Administrative Procedures Act and the Impoundment Control Act—longstanding laws that govern federal budgeting—not to mention the Constitution.

The evidence, McConnell agreed, showed that this was likely—he even quoted from a relevant ruling by Brett Kavanaugh from when he was a judge in the DC circuit. The withdrawal of the OMB memo would not make his ruling moot, McConnell wrote: “The evidence shows that the alleged rescission of the OMB Directive was in name-only and may have been issued simply to defeat the jurisdiction of the courts.”

Judge Ali Khan returned late Monday with a strongly worded 30-page ruling, extending her TRO on behalf of the nonprofit coalition. The whole document is worth a read, but I've pulled out a few highlights here. This is verbatim, except for the headings—and I removed the legal source citations for readability.

### **The administration's motion to dismiss**

Defendants [representing the Trump administration] raise two threshold jurisdictional arguments. First, they argue that Plaintiffs [the nonprofits, etc] lack standing because they have not adequately alleged injury in fact, causation, or redressability. Second, they claim that the case is now moot because OMB rescinded memorandum M-25-13 after Plaintiffs filed suit. The court is unpersuaded on both counts.

### **Injury in fact**

Plaintiffs allege that even a temporary pause in funding to their members, such as the American Public Health Association and Main Street Alliance, would destroy their ability to provide medical and low-income childcare services. On top of these economic injuries, Plaintiffs' members face First Amendment harms because the memorandum targets funds that relate to “DEI [and] woke gender ideology.”

Defendants reply that Plaintiffs “must present more than allegations of a subjective chill” and need to allege “represent objective harm or a threat of specific future harm.” At this early stage, Plaintiffs have done exactly that: they claim that Defendants have singled out their funding programs (in other words, their economic lifelines) based on their exercise of speech and association...

Plaintiffs have provided numerous declarations showing that many organizations need weekly injections of federal funds in order to continue operating. One health center pays its employees “biweekly, on Thursdays,” requiring it to “draw down grant funds on the preceding Tuesday” so that they reach the health center's bank account by Wednesday. Some of those employees “live paycheck to paycheck,” meaning that a single missed payment could prevent them from buying groceries or paying rent.

Separately, a member of a tribal organization was forced to lay off two employees on January 28 because it could not access its grant funds that day. And another nonprofit dedicated to ending homelessness was forced to suspend a birth certificate and identification card program just so that it could keep its employees on payroll...For many, the harms caused by the freeze are non-speculative, impending, and potentially catastrophic.

## Redressibility

Prior to the issuance of memorandum M-25-13, Plaintiffs' members reportedly never had problems drawing down funds or receiving financial assistance. That all changed beginning January 28, immediately after OMB issued memorandum M-25-13. Streams of funds that had steadily flowed for years without issue suddenly ran dry. If the court were to grant Plaintiffs' requested relief, Defendants would be barred from instructing all federal agencies across the board to temporarily pause (or continue pausing) financial assistance on the basis of the memorandum or its substance.

In other words, agencies would need to behave as if the memorandum were never issued. Defendants act as if any continued freeze is merely a random coincidence that could not possibly have anything to do with their memorandum. In the court's view, that explanation ignores both logic and fact. Plaintiffs have adequately shown that a ruling in their favor will alleviate their alleged injuries.

## Mootness

There is nothing stopping OMB from rewording, repackaging, or reissuing the substance of memorandum M-25-13 if the court were to dismiss this lawsuit...

By rescinding the memorandum that announced the freeze, but "NOT...the federal funding freeze" itself, it appears that OMB sought to overcome a judicially imposed obstacle without actually ceasing the challenged conduct. The court can think of few things more disingenuous...

The rescission, if it can be called that, appears to be nothing more than a thinly veiled attempt to prevent this court from granting relief. ...

Plaintiffs allege that OMB's funding freeze lacked any reasonable basis and failed to consider the disastrous effects it would have. Defendants, meanwhile, insist that "there is nothing irrational about a temporary pause in funding" when it is done "to ensure compliance with the President's priorities." But furthering the President's wishes cannot be a blank check for OMB to do as it pleases...

If Defendants intend to conduct an exhaustive review of what programs should or should not be funded, such a review could be conducted without depriving millions of Americans access to vital resources. As Defendants themselves admit, the memorandum implicated as much as \$3 trillion in financial assistance. That is a breathtakingly large sum of money to suspend practically overnight.

Rather than taking a measured approach to identify purportedly wasteful spending, Defendants cut the fuel supply to a vast, complicated, nationwide machine "seemingly without any consideration for the consequences of that decision. To say that OMB "failed to consider an important aspect of the problem" would be putting it mildly.

**In summary,** Judge Alikhan granted the extended temporary restraining order and denied the Justice Department's motion to dismiss. She gave the administration's lawyers until Friday to file a status report "apprising the court of the status of its compliance with this Order" which you can read in its entirety [here](#).

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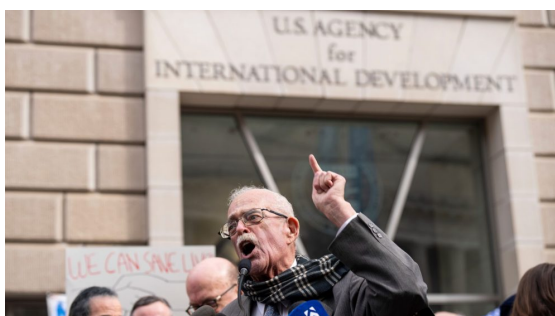
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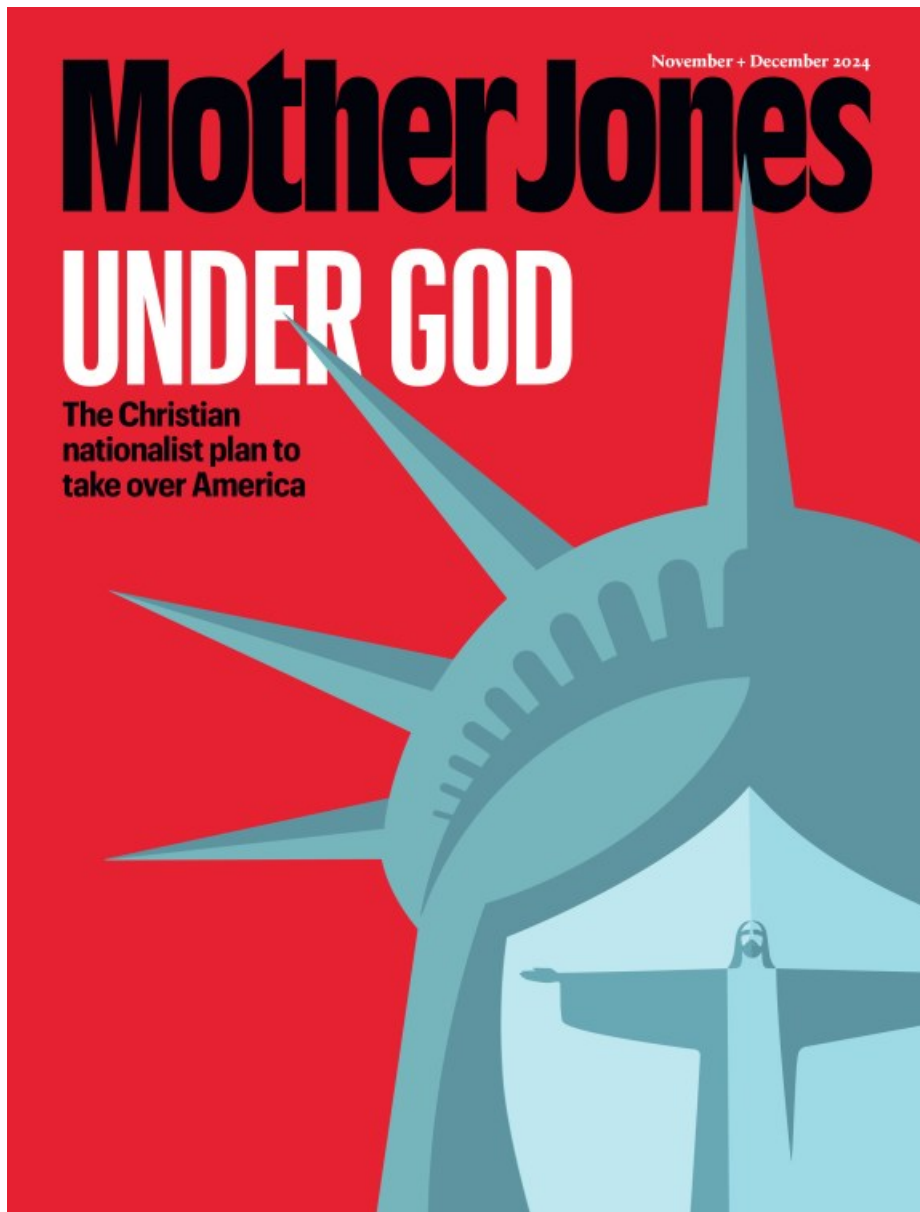
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