The Limits of Deference: Judicial Review of Pretextual National Security Rationales

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Courts generally afford the executive branch wide deference in matters of national security in recognition that one of the executive branch's primary responsibilities is to oversee our military and national defense.[1] However, courts have also cautioned that a hands-off approach may create an incentive for the executive branch to use national security grounds to insulate its decisions from meaningful judicial review.[2]

The second Trump administration has cited national security as the principal justification for several actions, including actions that will have environmental implications. In asserting this justification, the administration has offered limited explanation for why national security is implicated or how the administration's actions will address such a risk. Examples include a range of environmental and energy actions, such as stop work orders for offshore wind developments[3] and exemptions for coal plants from air pollution requirements.[4]

There is limited case law addressing the intersection of judicial review under the Administrative Procedure Act's arbitrary and capricious standard and judicial forbearance on national security issues. Nonetheless, we are seeing courts reinforce that they can probe official explanations for agency decisions, even when they rest on national security rationales.[5] These decisions also highlight the legal vulnerabilities in policies that arise after an administration clearly articulates its policy goal without an apparent connection to national security, and later relies upon a "national security" rationale for the agency action implementing the resulting policy.[6]

This paper explores the tension between judicial review and courts' longstanding deference to agencies' national security justifications, identifies the administration's unusual and expansive reliance on national security rationales, and describes how courts are responding to those rationales.

Judicial review: The "reasoned explanation" requirement meets national security deference

The APA's "reasoned explanation" requirement

Under the Administrative Procedure Act (APA), courts set aside actions that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."[7] Under this standard, courts require agencies to explain their decisions with reasoning, not just assertions. An agency must provide a "reasoned explanation" for its action,[8] where the agency must "examine the relevant data and articulate a satisfactory explanation for its decision, including a 'rational connection between the facts found and choice made.'"[9]

Reviewing courts determine whether an agency considered the relevant factors in its decision making and whether there was a "clear error of judgement" on the part of the agency.[10]

While this standard of review is deferential to the agency, it is not toothless; the agency must disclose the true basis of its decision. If a court finds the agency has relied on a justification that is pretextual, then the action is arbitrary and capricious under the APA.[11]

When reviewing an agency's action to determine if it was reasonable, courts are generally limited to reviewing the administrative record — the data and materials the agency considered in reaching its decision.[12] To determine if the decision is supported by the record, courts presume the validity of the record and hesitate to look beyond it. This presumption "reflects the recognition that further judicial inquiry into 'executive motivation' represents 'a substantial intrusion' into the workings of another branch of Government and should normally be avoided."[13]

However, a court may look beyond the record if it fails to support the government's stated rationale and the court suspects that the agency's reason for its action is pretextual, allowing judicial review to be more "than an empty ritual."[14] But the bar for such an intrusion is high, requiring a "strong showing of bad faith or improper behavior."[15] Evidence of "bad faith" and pretext can be when an agency strays from its well-established practices without explanation,[16] when there are inconsistencies in the administrative record,[17] or when public statements by executive branch officials give a court reason to question an agency's stated reasons.[18]

When there is evidence of "bad faith" and pretext, a court may allow litigants to introduce extra-record evidence, allow limited extra-record discovery, or hold a hearing to assist in their review of the agency's action. If the evidence undermines the agency's given explanation for its action, a court may then conclude the agency's decision was pretextual, and, therefore, arbitrary and capricious.

National security deference in judicial review

While courts may in certain circumstances find it appropriate to probe beyond the administrative record, when an agency's decision involves issues of foreign policy or national security, courts are more hesitant to question that decision.[19] The Supreme Court has made clear that those issues "are rarely proper subjects for judicial intervention."[20] A degree of deference in these areas makes sense, as handling them is one of the executive branch's primary functions, and courts assume that the executive branch acts in these areas with expertise and democratic accountability. But some legal scholars contend that this deference has gone too far, reducing judicial capacity to meaningfully review the executive branch's actions.[21] Some also note there is no widely accepted bright-line rule for or approach to national security deference, causing confusion as "litigants and judges have struggled to determine whether and to what extent deference might be warranted."[22]

Tensions between meaningful APA review, national security rationales, and potential evidence of pretext

That courts afford agencies wide deference in matters of national security may create an incentive for agencies to justify their actions using national security claims to avoid deeper scrutiny of their motivations. Thus it is important to understand the tension between heightened deference on one hand and the bar on pretextual rationales on the other. There is no clear standard for how courts should handle cases where national security is cited but there are signs that an agency's reasoning may not be genuine.

Courts have repeatedly reasoned issues of national security do not ordinarily warrant judicial intervention, though the Supreme Court has also cautioned that "national-security concerns must not become a talisman used to ward off inconvenient claims — a 'label' used to 'cover a multitude of sins.'"[23]

There are limited examples of agencies providing national security justifications for decisions reviewable under the APA's arbitrary and capricious standard. But the dissenting and majority opinions in *Trump v. Hawaii,* while not a case involving judicial review under the APA, exemplify the Court's struggle to identify at what point national security deference is no longer appropriate when trying to determine the legitimacy of an agency's stated reasoning for a decision. In that case, litigants challenged President Trump's first term "travel ban," which restricted the entry of nationals from certain countries.[24] Plaintiffs argued that the administration's cited "national security risks" were pretextual and that the restriction was instead based on religious animus against Muslims. The majority held that because there was some evidence that the suspension was grounded in national security concerns, the Court must accept that explanation.[25]

Writing in dissent, Justice Sotomayor, joined by Justice Ginsburg, labeled the government's stated national security concerns as "window dressing" for anti-Muslim animus, referencing multiple discriminatory statements made by the president.[26] Justice Sotomayor urged there must be a limit to the deference courts give the executive branch in matters of national security, stating "deference is different from unquestioning acceptance" and "[t]he Government's invocation of a national-security justification . . . does not mean that the Court should close its eyes to other relevant information."[27]

New patterns of reliance on national security rationales in the second Trump administration

Justice Sotomayor's warning during the first Trump administration has taken on new significance in the second, as the administration has displayed a pattern of citing national security concerns as a justification for a broad set of policies and priorities. President Trump cited national security concerns stemming from trade deficits as justifications for the now-overturned sweeping tariffs,[28] the DOJ classified the White House ballroom project as

"imperative for reasons of national security,"[29] and he declared an "energy emergency" characterizing energy demands and shortages an "unusual and extraordinary threat to our . . . national security."[30] The administration also invoked a never-before-used national security provision in the Endangered Species Act, exempting oil and gas activities in the Gulf of Mexico from the Act's requirements.[31]

Challengers to agency actions by the second Trump administration allege the administration is citing national security concerns and using regulatory exceptions in ways that deviate from historic practice. They also argue that the administration's explanation of its national security concerns is so thin that it suggests it is a pretextual rationale for achieving an unrelated policy goal. In response, courts reviewing agency actions taken under the mantle of "national security" have in some instances shown a willingness to take seriously challengers' allegations of pretext.

Novel uses of "national security" to grant sweeping environmental exemptions

In issuing exemptions to coal-fired power plants from the Mercury and Air Toxics Standards (MATS), President Trump invoked Section 112(i)(4) of the Clean Air Act (42 U.S.C. § 7412(i)(4)), which allows the president to exempt a stationary source from air pollution standards if the president determines "the technology to implement such a standard is not available" and "it is in the national security interests" to give such an exemption. Challengers to these exemptions have pointed out that this provision, prior to this administration, had never been used before.[32]

The Trump administration used the same provision to provide exemptions to eleven coke plants from the 2024 National Emission Standards for Hazardous Air Pollutants for Coke Ovens ("the Coke Ovens Rule").[33] Challengers to these exemptions assert that this administration has not just used Section 112(i)(4) for the first time in the fifty-five years since Congress enacted it, but that "[t]o date, President Trump has done so seven times for more than 180 facilities."[34] Challengers to the coke ovens exemption argue that the "scope, content, and context" of the exemption "show it for what it really is: a pretext to relieve . . . polluters from complying with the Coke Ovens Rule."[35]

President Trump has also used Section 112(i)(4) to exempt "50 chemical manufacturers from ethylene oxide and other hazardous air pollutant standards, one of two copper smelters from toxic metals standards, and the entire taconite iron-ore processing industry" all under the mantle of "national security interests."[36]

And, as previously mentioned, the administration in March 2026 used a national security provision to exempt offshore oil and gas activities in the Gulf of Mexico from Section 7 of the Endangered Species Act.[37] That provision has existed since 1978, yet no prior administration used it. The exemption decision — technically by a body called the Endangered Species Committee, but resting fully on findings by the Secretary of Defense — has now been challenged by several sets of environmental groups. Those groups have

pointed out the unusual nature of this move and the government's expansive interpretation of its powers under this provision.[38]

Insufficient evidence and inconsistent rationale

In addition to the administration's novel applications of national security exemptions, some challengers to national security-based actions taken by the Trump administration have also argued that these uses of national security exemptions and rationales rest upon thin reasoning, with agencies failing to provide adequate evidence or explanations supporting their actions.

The environmental groups challenging the coke oven exemptions contend "the Coke Ovens Proclamation included no facility-, standard-, or technology-specific determinations. Instead, the Coke Ovens Proclamation broadly and conclusory purported to 'determine' that the technology to implement the Coke Ovens Rule (in its entirety) was not available and that exemptions are in the national security interests of the United States."[39] In doing so, the groups allege "[t]he President indiscriminately granted exemptions from all compliance obligations of the Coke Ovens Rule" without giving the particularized considerations necessary to determine whether an exemption is necessary.[40]

Similarly, challengers to the MATS exemptions granted to coal-fired power plants allege the president has not "provided any factual basis, reasoning, or other support" for the national security exemptions.[41]

In December 2025, the Department of the Interior issued a stop work order for five large-scale offshore wind projects, citing "reasons of national security."[42]The challengers to this order highlighted that the administration did not disclose the national security risks with any precision, and instead referred only to classified information.[43] In a legal challenge to a different stop work order issued just months earlier, Revolution Wind called the administration's national security concerns "vague," stating, "when pressed . . . about the purported national security justification for the Stop Work Order, Secretary Burgum made only loose references to 'radar' and 'undersea drones,' and attempted to justify the Stop Work Order mostly on the basis of other issues."[44]

The Trump administration has also invoked national security to justify using Section 7103(b)(1) of the Federal Service Labor-Management Relations Statute (FSLMRS) to remove collective bargaining rights from about two-thirds of the federal workforce.[45] Section 7103(b)(1) allows the president to exclude any agency or subdivision thereof from coverage of the FSLMRS if the president determines the "agency or subdivision has as a primary function intelligence, counterintelligence, investigative, or national security work," and the statute's provisions "cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations."[46]

One agency impacted by this action is the National Weather Service (NWS). In justifying its action, the Trump administration stated the National Weather Service "provide[s] weather and climate data that inform the weather forecasting used to plan U.S. military deployments."[47] In their challenge to the administration's action, the National Weather Service Employees Organization (NWSEO) points out, however, this "simply isn't" true, as the "NWS does not provide the military with weather forecasts for military operations."[48] NWSEO further argues the president exceeded his authority in exercising this exemption power, as "'national security work' is not a responsibility of NWS . . . no less their 'primary function.'"[49]

Judicial review of national security rationales during the second Trump administration

Although only a few courts have issued decisions in cases where challengers have alleged this administration's national security rationales have been pretextual, those courts have signaled a willingness to engage with challengers' assertions, indicating that national security deference has limits. As evidence of pretext, courts have considered whether earlier campaign and post-election statements suggest that agencies' later official, but contradictory, rationales may not be genuine.[50]

This February, the District Court for the District of Columbia granted a stay to postpone the effective date of the termination of Haiti's Temporary Protected Status (TPS) designation.[51] Former Department of Homeland Security Secretary Noem stated the termination decision was based upon concerns of "national security threats posed by aliens attempting to enter the U.S. illegally."[52] In considering the question of national security deference, the court clarified "[n]ational security may justify differential treatment . . . only where there is a 'rational connection between the facts found and the choice made'" as national security is not a "talismanic shield against an Equal Protection violation."[53] In its analysis, the court explained that President Trump and then Secretary Noem's derogatory statements towards Haitians supported that plaintiffs were "likely to succeed on their claim that anti-black and anti-Haitian animus," rather than national security concerns, "motivated Secretary Noem's decision to terminate Haiti's TPS designation."[54] In March, the Supreme Court announced it will review this case before judgment by the Court of Appeals for the D.C. Circuit, a rare move by the Supreme Court typically reserved for questions where time is of the essence.

Similarly, in January 2026, the Court of Appeals for the Ninth Circuit affirmed an order setting aside Secretary Noem's vacatur of Venezuela's TPS designation and the partial vacatur of Haiti's TPS designation.[55] While the majority opinion did not address the merits of the plaintiffs' APA claims, Judge Mendoza authored a concurring opinion to "underscore why [the court] must not permit government agencies to justify their actions with pretext."[56] Judge Mendoza reasoned "when decision-makers repeatedly broadcast their impermissible reasons for making a decision, we should heed the fitting words of Maya Angelou and 'believe them the first time.'"[57] In this instance, Judge Mendoza described the "backdrop of

extraordinary statements" by decision-makers, including Secretary Noem, evincing a hostility toward Venezuelan and Haitian TPS holders.[58] Judge Mendoza stated this presented "one of the rare situations where the strong showing of bad faith needed to look beyond the administrative record is easily met" and that the case "is not a difficult one where the decision-makers were at least aware that the 'quiet part should not be said out loud.'"[59]

Statements from Trump administration officials have also provided fodder for challenges to the administration's various efforts to halt offshore wind development. All five offshore wind projects subject to December 2025 stop work orders with a "national security" basis are now moving forward after judges separately entered preliminary injunctions against the government regarding each project. In its challenge to the administration's December 2025 stop work order for its offshore wind project, Dominion Energy Virginia argued "numerous statements and actions by the current Administration indicate that the Order instead is motivated by systematic and unfounded animus against wind energy."[60]

Similarly, a judge in the District Court for the District of Columbia granted a preliminary injunction to Revolution Wind in their challenge of an earlier, August 2025 stop work order from the administration. In its complaint, Revolution Wind contended that "numerous statements of the President, the Secretary, Interior spokespeople, and Administrator Zeldin" demonstrate that "the purported basis for the Stop Work Order is pretextual, and the Stop Work Order was issued in bad faith."[61] Revolution Wind cited to a post on social media platform X, where President Trump posted, "Not only are wind farms disgusting looking, but even worse they are bad for people's health" and to the President's speech at a post-inaugural rally, where he said "We have more oil and gas than any country in the world and we're going to use it. We're not going to do the wind thing."[62]

National security exemptions: part of a broader scheme to achieve policy goals?

The current administration's novel use of and lack of explanation for "national security concerns," inconsistent administrative records, and contradictory public statements have caused courts to question the sincerity of the administration's stated rationales. This practice also raises deeper questions about whether this administration is using national security deference strategically to insulate its action from meaningful judicial review. Such efforts may also be part of a larger pattern of invoking emergency powers,[63] taking a broad view of executive authority,[64] and arguing that the administrative processes of notice and comment do not apply in order to achieve policy goals in unusual — and perhaps legally vulnerable — ways.

Upcoming decisions in challenges to the MATS and Coke Ovens Rule exemptions may shed light on courts' future approach to national security deference. And as the Trump administration invokes national security exemptions in other areas — as it has with the

Endangered Species Act — decisions on legal challenges to those actions may also prove illuminating.[65]

We will continue to watch how courts approach review of national security rationales in this developing area of administrative law.

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[1] *See Ziglar v. Abbasi,* stating "courts have shown deference to what the Executive Branch 'has determined … is essential to national security'" and that "'courts traditionally have been reluctant to intrude upon the authority of the Executive in military and national security affairs' unless 'Congress specifically has provided otherwise.'" 582 U.S. 120, 142–43 (2017).
[2] *See id.* at 143 (warning of the "danger of abuse" by the Executive Branch using national-security concerns as a "talisman to ward off inconvenient claims"); *Nat'l Trust for Historic Pres. in the United States v. Nat'l Park Serv.*, 1:25-cv-04316, 2026 WL 877779, 33 (D.D.C. March 31, 2026) (stating "[b]ald assertions of 'national security' cannot excuse the Government's failure to follow the law and then insulate those failures from judicial review").
[3] *See* Amended Complaint*, Revolution Wind, LLC. v. Burgum,* No.: 1:25-cv-2999 (D.D.C. January 2, 2026)*;* Complaint*, Vineyard Wind 1 LLC v. U.S. Dep't of Interior*, No. 1:26-cv-10156 (D. Mass. Jan. 15, 2026).
[4] *Regulatory Relief for Certain Stationary Sources to Promote American Energy*, 90 Fed. Reg. 16,777 (Apr. 21, 2025).
[5] *See Saget v. Trump,* 375 F. Supp. 3d 280 (E.D.N.Y. 2019); *Miot v. Trump*, No. 25-CV-02471, 2026 WL 266413 (D.D.C. Feb. 2, 2026).
[6] *See Miot v. Trump* (finding merit in Plaintiff's claims that former Department of Homeland Security Secretary Kristi Noem had a "predetermined agenda" to terminate Haiti's Temporary Protected Status designation and found the action by the former Secretary to be arbitrary and capricious and her reasons were pretextual.) No. 25-CV-02471, 2026 WL 266413 (D.D.C. Feb. 2, 2026).
[7] 5 U.S.C. § 706 (2)(A).
[8] *Dep't of Com. v. New York*, 588 U.S. 752, 785 (2019).
[9] *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (citing *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)).
[10] *Id.* (citing *Bowman Transp. Inc. v. Ark.-Best Freight Sys.* 419 U.S. 281, 285 (1974); *Citizens to Preserve Overton Park v. Volpe* 401 U.S. 402, 416 (1971).
[11] *Dep't of Com.*, 588 U.S. 752.
[12] *Id.* (citing *Vermont Yankee Nuclear Power Corp. v. Natural Res. Defense Council, Inc.*, 435 U.S. 519, 549 (1978); *Camp v. Pitts*, 411 U.S. 138, 142–43 (1973) (per curiam)).
[13] *Id.* at 780–81 (citing *Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 268, n. 18, (1977)).
[14] *Id.* at 785. *See also* Erika Kranz, *When Government Gets it Right: A Framework for Assessing When Agencies Deserve a Presumption of Regularity*, Harvard Environmental & Energy Law Program (July 2025), https://eelp.law.harvard.edu/wp-content/uploads/2025/07/When-Government-Gets-it-Right-Presumption-Regularity.pdf.
[15] *Dep't of Com.*, 588 U.S. at 781.
[16] *See Saget v. Trump,* 375 F. Supp. 3d 280 (E.D.N.Y. 2019) (holding that the decision to terminate Haiti's Temporary Protected Status (TPS) determination was pretextual, as the Department of

Homeland Security did not consider the country's current conditions that may warrant TPS extension, as is longstanding practice, and only considered the country's recovery from the 2010 earthquake which led to its original designation).

[17] *See Dep't of Com.,* 588 U.S. 752*,* (Supreme Court found the Department of Commerce's claim that the reinstatement of the citizenship question on the census was due to a request by the Department of Justice was pretextual, as the record showed the Department of Commerce went to great lengths to elicit that request from the Department of Justice).

[18] *See Rhode Island State Council of Churches v. Rollins,* 808 F. Supp. 3d 370 (D.R.I. 2025) (finding the Department of Agriculture's stated reasoning for not funding SNAP benefits was pretextual given numerous statements made by Trump administration officials who made it clear that SNAP benefits were being withheld for political reasons).

[19] For instance, in *Ziglar v. Abbasi,* 582 U.S. 120 (2017) the Supreme Court declined to extend the *Bivens* implied cause of action to Muslim immigrants detained in harsh conditions after 9/11, who brought claims against federal officials under the 4th and 5th amendments. The Court reasoned because the claims challenged "major elements of the Government's whole response to the September 11 attacks," they necessarily required "an inquiry into sensitive issues of national security." In granting this deference, the Court emphasized that "[n]ational-security policy is the prerogative of Congress and the President" and that courts are "reluctant to intrude upon [that] authority" unless "Congress specifically has provided otherwise."

[20] *Haig v. Agee*, 453 U.S. 280, 292 (1981); *see also Egbert v. Boule*, 596 U.S. 482, 494 (2022).

[21] *See* Robert N. Weiner, *Pretext, Reality, and Verisimilitude: Truth-Seeking in the Supreme Court*, 56 U. MICH. J. L. REFORM 385, 388, 393 (2023) (arguing for reform of "doctrines which cede judicial review of national security issues," stating such doctrines limiting review of executive branch actions "have led the Court to blind itself to obvious facts regarding government misconduct and to reach conclusions at odds with common sense").

[22] Robert M. Chesney, *National Security Fact Deference*, 95 VA. L. REV. 1361, 1366 (2009); *see also* Elad D. Gil, *Rethinking Foreign Affairs Deference*, 63 B.C. L. REV., 1603 (2022), https://bclawreview.bc.edu/articles/31/files/6399bb5e7cac4.pdf.

[23] *Ziglar*, 582 U.S. at 143 (quoting *Mitchell v. Forsyth*, 472 U.S. 511, 523 (1985)).

[24] *Trump v. Hawaii*, 585 U.S. 667 (2018).

[25] *Id.* at 706.

[26] *Id.* at 739 (dissent of Justice Sotomayor, joined by Justice Ginsburg).

[27] *Id.* at 742 at n. 6. (dissent of Justice Sotomayor, joined by Justice Ginsburg).

[28] Exec. Order No. 14,257, 90 Fed. Reg. 15,041 (April 2, 2025).

[29] Defendants' Motion to Stay Any Preliminary Injunction Pending Appeal*, Nat'l Trust for Historic Pres. in the United States v. Nat'l Park Serv.*, No. 1:25-cv-04316, 2026 WL 877779 (D.D.C. Feb 02, 2026).

[30] Exec. Order No. 14,156, 90 Fed. Reg. 8,433 (Jan. 20, 2025).

[31] *See* Erika Kranz, *When National Security Meets Endangered Species: Uncharted Legal Territory in the Gulf of Mexico*, Harvard Environmental & Energy Law Program (March 2026), https://eelp.law.harvard.edu/wp-content/uploads/2026/03/ESA-sec-7-NS-exemption-FINAL.pdf.

[32] *See* Complaint at ¶1, *Air Alliance Houston v. Trump,* No. 1:25-cv-01852 (D.D.C. Jun. 12, 2025) (referring to Section 7412(i)(4) as "a narrow and never-before-used provision").

[33] *See* Proclamation No. 10,933, 90 Fed. Reg. 54,517 (Nov. 21, 2025).

[34] Complaint at ¶7, *Greater-Birmingham Alliance to Stop Pollution v. Trump,* No. 1:25-cv-04469 (D.D.C. Dec. 22, 2025).

[35] *Id.* at ¶9.

[36] *Id.* at ¶7.

[37] *For more detail, see* Erika Kranz, *Endangered Species Committee Exempts Oil and Gas Activities in the Gulf Based on National Security Finding*, Harvard Environmental & Energy Law Program (Apr. 3, 2026), https://eelp.law.harvard.edu/endangered-species-committee-exempts-oil-and-gas-activities-in-the-gulf-based-on-national-security-finding/.
[38] *See* First Amended Complaint at 24–26, Center for Biological Diversity v. Burgum, No. 1:26-cv-00940-RC (D.D.C. filed Mar. 31, 2026).
[39] Complaint at ¶62, *Greater-Birmingham Alliance to Stop Pollution*, *v. Trump,* No. 1:25-cv-04469 (D.D.C. Dec. 22, 2025).
[40] *Id*. at ¶151.
[41] Complaint at ¶7, *Air Alliance Houston v. Trump,* No. 1:25-cv-01852 (D.D.C. Jun. 12, 2025).
[42] Director's Order, BOEM, (December 22, 2025), https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/BOEM%20Revolution%20Wind%20Suspension%20Letter.pdf?VersionId=8ZW3HfSIRj3Jxi.4iIV5.tMmJVD_uWd0.
[43] Supplemental Complaint at ¶261, *Revolution Wind, LLC. v. Burgum,* No. 1:25-cv-2999-RCL (Jan. 2, 2026); *see also* Complaint at ¶143, *Vineyard Wind 1 LLC v. U.S. Dep't of Interior*, No. 1:26-cv-10156 (D. Mass. Jan. 15, 2026).
[44] Complaint at ¶134, *Revolution Wind, LLC v. Burgum*, No. 1:25-cv-2999-RCL (Sept. 4, 2025).
[45] *See* Exec. Order No. 14,251, Exclusions From Federal Labor-Management Relations Programs, 90 Fed. Reg. 14,553; *See also* Exec. Order No. 14,343, Further Exclusions From the Federal Labor-Management Relations Program, 90 Fed. Reg. 42,683.
[46] 5 U.S.C. § 7103(b).
[47] Complaint at ¶46, *Nat'l Weather Serv. Employees Org. v. Trump*, No. 25-cv-02947 (D.D.C. Sept. 2, 2025).
[48] *Id*. at ¶46.
[49] *Id*. at ¶56.
[50] *See* Perkins Coie LLP v. Dep't of Just., 783 F. Supp. 3d 105, 162–64 (D.D.C. 2025) (finding that President Trump's statements attacking law firm Perkins Coie supported the claim that his executive order to terminate government contracts with the firm was unconstitutional and executed for the purpose of retribution for personal grievances); Am. Ass'n of Univ. Professors v. Rubio, 802 F. Supp. 3d 120, 187 (D. Mass. 2025) (finding the Trump administration's policy of targeting non-citizens engaged in pro-Palestinian or anti-Israel speech was a violation of the First Amendment, citing to public statements by the officials, including Secretary Rubio's guarantee to deport "Hamas-supporters" and those who "participat[e] in pro-Hamas events."); *Rhode Island State Council of Churches v. Rollins,* 808 F. Supp. 3d 370 (D.R.I. 2025) (finding the Department of Agriculture's stated reasoning for not funding SNAP benefits was pretextual given numerous statements made by Trump administration officials who made it clear that SNAP benefits were being withheld for political reasons).
[51] *Miot v. Trump*, No. 25-CV-02471, 2026 WL 266413, (D.D.C. Feb. 2, 2026).
[52] Termination of the Designation of Haiti for Temporary Protected Status, 90 Fed. Reg. 54,733 (Nov. 28, 2025).
[53] *Miot,* 2026 WL 266413.
[54] *Id*.
[55] *Nat'l TPS All. v. Noem*, 166 F.4th 739 (9th Cir. 2026).
[56] *Id*. at 769 (concurrence by Judge Mendoza).
[57] *Id*.

[58] *Id*. at 775.
[59] *Id*. at 775-79 (citing *Cook County v. Wolf*, 461 F. Supp. 3d 779, 783 (N.D. Ill. 2020) and Noem's statements on NBC television broadcast "Meet the Press" that "[f]olks from Venezuela that have come into this country are members of [Tren de Aragua]" and that "Venezuela purposely emptied out their prisons, emptied out their mental health facilities and sent them to the United States of America . . . so we are ending that extension of that [TPS] program").
[60] Complaint at ¶148, *Virginia Elec. & Power Co. v. Dep't of the Interior,* No. 2:25-cv-00830-JKW-LRL (E.D. Va. Dec. 23, 2025).
[61] Complaint at ¶137, *Revolution Wind, LLC v. Burgum*, No. 1:25-cv-2999-RCL (Sept. 4, 2025).
[62] Complaint at ¶118-19, *Revolution Wind, LLC v. Burgum*, No. 1:25-cv-2999-RCL (Sept. 4, 2025).
[63] *See* Erika Kranz, *One Year of Trump's 'Energy Emergency' in Context and in Court*, Harvard Environmental & Energy Law Program (Jan. 21, 2026), https://eelp.law.harvard.edu/wp-content/uploads/2026/01/One-Year-of-Trumps-Energy-Emergency-in-Context-and-in-Court.pdf.
[64] *See* Carrie Jenks, Sara Dewey, and Ari Peskoe, *Trump Administration's Aggressive Anti-Regulatory, Pro-Fossil Fuel Directives*, Harvard Environmental & Energy Law Program (April 23, 2025), https://eelp.law.harvard.edu/wp-content/uploads/2025/05/Trump-EOs-Summary-April-2025.pdf.
[65] *See* Erika Kranz, *When National Security Meets Endangered Species: Uncharted Legal Territory in the Gulf of Mexic*o, Harvard Environmental & Energy Law Program (March 30, 2026), https://eelp.law.harvard.edu/wp-content/uploads/2026/03/ESA-sec-7-NS-exemption-FINAL.pdf.