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DEI Executive Orders Are Back in Force with Court of Appeals Ruling

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On Friday, March 14, 2025, ruling on a Government motion for a stay pending appeal, the United States Court of Appeals for the Fourth Circuit issued an Order staying a preliminary injunction that was issued in *National Association of Diversity Officers in Higher Education (NADOHE) et al. v. Trump* three weeks prior.

The unanimous ruling by a three-judge panel allows for full enforcement of two Executive Orders (EOs) regarding "Diversity, Equity, and Inclusion" (DEI), lifting the nationwide injunction against specific provisions that we explained here.

The Fourth Circuit panel issued its decision shortly after a District Court hearing on an emergency motion filed by the plaintiffs, who requested a status conference to review the U.S. Department of Justice's alleged refusal to comply with the preliminary injunction. Four days earlier, on March 10, 2025, the District Court had issued a Clarified Preliminary Injunction along with a Memorandum Opinion, explaining that the February 21st ruling did not apply to the President, but applied to all federal executive branch agencies, departments, and commissions, and their heads, officers, agents, and subdivisions.

The Fourth Circuit panel unanimously agreed to stay the District of Maryland's preliminary injunction based on the factors under *Nken v. Holder*, a 2009 Supreme Court decision that sets forth the standard for a U.S. Court of Appeals to apply in considering whether to grant a stay of a district court's order while it assesses the order's legality. The Order is remarkable, however, in that it was accompanied by concurring opinions written by all three panel judges.

Chief Judge Albert Diaz prefaced his commentary to state that he felt compelled to address "what

seems to be (at least to some) a monster in America's closet—[DEI]." Discussing the two EOs at issue in the lawsuit, Judge Diaz noted that "neither Order ever defines DEI or its component terms." Judge Diaz further used the concurrence to voice support for DEI, writing that "despite the vitriol now being heaped on DEI, people of good faith who work to promote diversity, equity, and inclusion deserve praise, not opprobrium."

In a second concurring opinion, Judge Pamela Harris wrote that a stay was warranted because the government was persuasive in explaining that the EOs are of "distinctly limited scope." However, Judge Harris signaled that a more thorough review of this "difficult case" will be forthcoming, and that the present "vote to grant the stay comes with a caveat": Any agency enforcement actions that go beyond the EOs' narrow scope "may well raise serious First Amendment and Due Process concerns, for the reasons cogently explained by the district court." She also concurred with Judge Diaz's positive comments regarding diversity, equity and inclusion.

Judge Allison Jones Rushing used her concurrence as an opportunity to raise potential defense arguments such as ripeness and standing, in addition to criticizing the scope of the preliminary injunction, stating that its breadth "should raise red flags: the district court purported to enjoin *nondefendants* from taking action against *nonplaintiffs*." Judge Rushing also responded to the comments by Judge Diaz in support of DEI, writing about "the boundaries of our constitutional role and the imperative of judicial impartiality… A judge's opinion that DEI programs 'deserve praise, not opprobrium' should play absolutely no part in deciding this case."

On March 17, the Fourth Circuit Court of Appeals requested the parties to respond by March 24 to a proposed briefing schedule that would extend written filings into late May, if adopted. We will continue to monitor this case.

Staff Attorney Elizabeth A. Ledkovsky contributed to the preparation of this article.

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