

The Court of Federal Claims and the Trump Administration's Contract and Grant Terminations: A Primer for Federal Grantees and Contractors

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The Trump Administration's unprecedented terminations of federal contracts and grants have affected organizations seeking options and remedies. Universities, academic research institutions, federal contractors, and state and local governments have been particularly impacted. But seeking judicial redress is not straight-forward; courts considering such challenges have identified jurisdictional problems when seeking relief from a federal district court under the Administrative Procedure Act. Enter the United States Court of Federal Claims.

This briefing paper introduces Dorsey clients to the Court of Federal Claims, a specialized and lesser-known federal court that will be increasingly important and relevant as the battle over federal grants and contracts continues through the Second Trump Administration.

What is the Court of Federal Claims?

The Court of Federal Claims ("COFC")—in its current form—was created by the Federal Courts Administration Act of 1992.^[1] But the COFC's history long precedes its current iteration. In 1855, Congress created the Court of Claims to "relieve the pressure on Congress" to handle "private bills," meaning claims against the federal government, which were then the responsibility of Congress. The Court of Claims lacked authority to render final judgments, however, and instead merely made recommendations to Congress.^[2]

In 1863, during the height of the Civil War, the Court of Claims' recommendations regarding claims against the government became too voluminous for Congress to handle, so Congress empowered the Court of Claims to issue final judgments against the United States.^[3] The Court of Claims' jurisdiction was refined a few decades later through the Tucker Act in 1887,^[4] which remains the statutory basis for the Court of Federal Claims today.^[5] The Court of Claims' remit was refined again in 1925 by Act of

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Congress that reorganized the Court of Claims into a trial division and appellate division. [6] The Federal Courts Improvement Act of 1982 abolished the Court of Claims, folded its appellate division into the newly created United States Court of Appeals for the Federal Circuit, and established the United States Claims Court. [7] In 1992, the Federal Courts Administration Act renamed the United States Claims Court to the United States Court of Federal Claims. [8]

The COFC is an “Article I court,” referring to Article I of the United States Constitution which governs the legislative branch. [9] As an Article I court, the COFC is a “legislative” court that hears cases only under specific circumstances delineated by statute (discussed below). [10] COFC judges are appointed by the President, with the consent of the Senate, for a fifteen-year term. [11] There are sixteen active COFC judgeships. [12] Currently, there are also five active senior judges and no vacancies. Among the judges, ten were appointed by President Trump, five by President Biden, and one by President Obama. [13] Judgments of the COFC are appealable to the Federal Circuit, which is an “Article III court.” [14]

Sovereign Immunity and COFC Jurisdiction

As an Article I court, the COFC is not a court of general jurisdiction like federal district courts. Instead, the COFC can hear only those matters within its statutory grant of jurisdiction. And there is only one defendant for lawsuits brought in the COFC: the United States. [15]

Sovereign immunity generally bars claims against the United States. The Tucker Act, however, resolves this bar for certain claims. [16] In passing the Tucker Act, Congress waived sovereign immunity with respect to certain money-damage actions and prescribed the jurisdictional boundaries of the COFC. [17] The Tucker Act provides, in relevant part:

(a)(1) The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort . . .

(2) To provide an entire remedy and to complete the relief afforded by the judgment, the court may, as an incident of and collateral to any such judgment, issue orders directing restoration to office or position, placement in appropriate duty or retirement status, and correction of applicable records, and such orders may be issued to any appropriate official of the United States . . . [18]

Thus, the Tucker Act provides the COFC jurisdiction to hear “actions pursuant to contracts with the United States, actions to recover illegal exactions of money by the United States, and actions brought pursuant to money-mandating statutes, regulations, executive orders, or constitutional provisions.” [19] But “the Court of Federal Claims’ limited jurisdiction does not include tort claims, criminal-law claims, or non-money-

mandating constitutional provisions.”[20]

Important in the context of recent litigation, the Federal Circuit has held the COFC, as an Article I court, “lacks the general federal question jurisdiction of the district courts, which would allow it to review the agency’s actions and to grant relief pursuant to the Administrative Procedure Act, 5 U.S.C. §§ 701-706 (1994).”[21] And when a “plaintiff has another suit for or in respect to [a] claim pending against the United States” in another court, the Court of Federal Claims “has no jurisdiction over [that] claim” while the other suit is pending.[22]

Cases in the COFC do not follow the Federal Rules of Civil Procedure (“FRCP”). Instead, the COFC has its own rules,[23] which in some instances differ from the FRCP. For example, because the only defendant in the COFC is the United States, COFC Rule 4 does not detail the process for a “Summons” like FRCP 4 but rather addresses “Serving a Complaint on the United States.”[24]

Statute of Limitations

The general statute of limitations for monetary claims against the federal government is six years.[25] But certain claims have other potential time-bars. For example, some contract claims are governed by the Contract Disputes Act and must first be submitted to and adjudicated by a contracting officer, whose decisions generally must be challenged in the COFC within one year.[26] As another example, bid protest actions based on ambiguities or errors identified in the government’s solicitation (rather than errors in the evaluation-and-award process) generally must be brought before the deadline to submit offers in response to the solicitation.[27]

Permissible Remedies at COFC

The COFC’s principal remedy is a money judgment—think damages associated with a breach of contract.[28] “The United States Court of Federal Claims does not have general authority to issue injunctive relief.”[29] Despite COFC’s lack of “general authority” to grant equitable relief, however, the COFC has limited authority to issue equitable relief “as an incident of and collateral to any such [money] judgment.”[30] For example, COFC can order the government to correct its records.[31]

Litigation in the COFC

For administrative challenges leading up to a COFC action, the federal agency whose decisions or actions gave rise to the claim is often represented by their own agency’s counsel. Once the action is filed in the COFC, however, the Department of Justice (“DOJ”) steps in to represent the agency. Each case and set of facts is different, but new counsel coming into the case can be beneficial for informal resolution between the parties because DOJ attorneys will often take a fresh look at the issues in dispute. The DOJ section that represents the United States at the COFC—the “National Courts Section” of the Civil Division—has historically had a reputation as pragmatic and apolitical. Further, because DOJ represents the United States in litigation, DOJ gets to

settle a case or dispute, even over the objection of the agency.

In addition, funds to settle claims and lawsuits at COFC can come from a different funding source than, for example, the funding supporting the contract or grant in dispute. Instead, the United States Judgment Fund “pays court judgments and compromise settlements of lawsuits against the [federal] government.”^[32]

Examples of Tucker Act Cases at COFC

The COFC, and its predecessor courts, have heard a wide variety of cases brought under the Tucker Act in the nearly 140 years since its passage. Some relatively recent and significant examples have shaped the scope of the COFC’s jurisdiction to hear grant and contract claims. While the bulk of the COFC’s cases involve contracts governed by the Contract Disputes Act—a law that does not cover terminated federal grants or even all contracts with the United States—there are numerous examples of non-CDA contract disputes that have resulted in recovery against the United States for breach.

First, in *Thermalon Industries, Ltd. v. United States*, the COFC held that federal grants qualify as the type of contract for which a plaintiff can sue for wrongful termination in the COFC.^[33] There, the COFC explained that the National Science Foundation (“NSF”) awarded a grant to Thermalon and, after work began, the NSF audited Thermalon’s invoices and disallowed certain costs Thermalon submitted.^[34] Thermalon stopped work and the NSF terminated the grant.^[35] Thermalon sought relief from the NSF, which the NSF denied, so Thermalon filed suit in the COFC.^[36] The NSF moved to dismiss, arguing the Tucker Act did not confer jurisdiction because Thermalon’s grant was not a contract.^[37] The COFC denied the motion to dismiss, reasoning that the Tucker Act covers more than just “situations that involve the government ‘stepping off the throne and engaging in [the] purchase and sale of goods’ in the market place.”^[38] Ultimately, the COFC determined that “contracts enforceable under the Tucker Act result only if there is a mutual intent to contract, including an offer, acceptance, and consideration,” and that “the government always has the choice when designing a grant scheme to select a scheme that does or does not involve contracts.”^[39] Since *Thermalon*, the law is clear that instruments with the United States that have the traditional indicia of contracts are contracts for purposes of COFC jurisdiction.^[40]

Second, in the “*Winstar*” cases, the COFC held (and the Supreme Court affirmed) that even the United States’ exercise of a sovereign power can support a breach-of-contract claim. In those cases, financial institutions sued in the COFC for breaches of contracts that had promised regulatory relief.^[41] The financial institution plaintiffs had agreed to purchase savings-and-loan institutions during an industry crisis in the 1980s in exchange for, among other things, reduced regulatory burdens, such as lower reserve requirements.^[42] The contracts provided that if those regulatory benefits were reversed, the United States would owe damages.^[43] Years after the contracts were signed, Congress enacted legislation that prohibited some of the very incentives the financial institutions had contracted to obtain. The COFC awarded the financial institutions damages for breach of contract.^[44] The Federal Circuit (*en banc*) and United States Supreme Court affirmed the damages awards, explaining that although the federal

government cannot agree in a contract that it will not exercise a sovereign power (such as enacting legislation), it can agree that it will pay costs caused by exercising that power, and the COFC has jurisdiction to hear such cases.^[45] Following this decision, more than 100 separate—but similar—cases were filed in the COFC, the last of which was finally resolved in 2015.^[46]

Third, in a line of cases known as the “Spent Nuclear Fuel” cases, the COFC maintained plaintiffs’ right to seek monetary relief when forced to incur costs based on an agency’s failure to meet contractual obligations. In these cases, electric utilities brought claims for breaches of contracts in which the utilities agreed to dispose of spent nuclear fuel (“SNF”) produced at the utilities’ power plants.^[47] Congress enacted the Nuclear Waste Policy Act of 1982, in which the federal government recognized that it must provide for “permanent disposal of high-level radioactive waste,” and that the “generators and owners” of the waste must have the primary responsibility to pay for disposal of it and for the interim costs of storage pending disposal.^[48] The Act mandated that the utilities contract with the Department of Energy (“DOE”) and required disposal of waste to begin no later than January 31, 1998.^[49] But in 1994, DOE announced the repository to dispose of SNF would not be available until 2010 and that DOE had no obligation to provide for disposal by the deadline.^[50]

The utilities brought actions for judicial review of DOE’s decision in the D.C. Circuit, which held DOE did have an obligation to begin disposing of the waste by the January 31, 1998 deadline.^[51] Nevertheless, DOE informed certain utilities that it would not accept waste by the deadline, so the utilities went back to the D.C. Circuit seeking writs of mandamus to force DOE to comply with the deadline.^[52] But the D.C. Circuit held instead that the utilities could pursue contractual remedies—sue for damages caused by the breach of the contracts with DOE.^[53] The utilities then filed breach-of-contract actions against DOE in the COFC seeking money damages for the costs to be incurred with extended storage of SNF and alleged an unconstitutional taking of property (the interim storage facilities) by failing to dispose of SNF.^[54] The government moved to dismiss on the ground that the utilities had failed to exhaust administrative remedies required by the contract when filing contractual claims.^[55] The utilities moved for partial summary judgment on the issue of liability for their breach-of-contract claims. *Id.* The COFC denied the government’s motion to dismiss because there was no applicable administrative dispute process for specific breach claims.^[56] The court also granted partial summary judgment for the utilities on liability, explaining that it was undisputed that DOE had failed to begin accepting, transporting, and disposing of the SNF.^[57] The Federal Circuit affirmed.^[58]

Fourth, the COFC hears breaches of settlement agreements. As one example, a former employee of the United States Office of Personnel Management (“OPM”) alleged OPM violated confidentiality provisions in his settlement agreement and brought a claim for money damages.^[59] The COFC concluded it had jurisdiction over such claims under the Tucker Act, but dismissed the claim because it had already been litigated before the Merit Systems Protection Board.^[60] The Federal Circuit affirmed that the Tucker Act conferred the COFC jurisdiction over this breach claim and reversed dismissal under the

doctrine of *res judicata*.^[61]

New Questions Over the Scope of APA Jurisdiction and Remedies in Recent Actions

Under the Second Trump Administration, federal district courts have faced a deluge of new lawsuits from states and organizations seeking injunctions to pause terminations of grants, contracts, or other federal programs. To date, these challenges have often been brought as statutory causes of action under the Administrative Procedure Act (“APA”).^[62] Some district courts have granted interim injunctive relief from which the Administration has often sought relief from the circuit courts of appeal and even the Supreme Court. For example, multiple states brought an action under the APA in federal district court seeking an injunction preventing the Department of Education from “terminating various education-related grants” and “requir[ing] the Government to pay out past-due grant obligations and to continue paying obligations as they accrue.”^[63] The district court granted preliminary injunctive relief, which was not stayed, and the Administration sought emergency relief from the Supreme Court. In a relatively short order on the Administration’s request, the Supreme Court granted a stay of the injunction, ruling that the government was likely to succeed in its defense against the claims because the claims were, in essence, seeking “to enforce a contractual obligation to pay money,” which is a claim in the remit of the Court of Federal Claims.^[64]

Since the Supreme Court’s order in *Department of Education*, courts have expressed increased skepticism over the scope of APA jurisdiction when reviewing challenges to grants and contracts. In a recent example, the D.C. federal district court heard a challenge from a union and associations of scientists and academics over termination of NSF grants designed “to support underrepresented groups in STEM [Science, Technology, Engineering, and Math] fields.”^[65] NSF terminated those grants following issuance of subregulatory guidance entitled “Statement of NSF Priorities” in April 2025,^[66] as part of a sweeping termination of approximately 1,600 similar grants totaling over \$1 billion.^[67] The plaintiffs challenged termination of the grants on several bases, one of which was an APA challenge to NSF’s termination of the grants that sought injunctive relief from the court ordering NSF to reinstate the grants at issue.^[68] Relying in part of the *Department of Education* decision, the federal district court determined that it lacks jurisdiction to hear those APA claims, despite that the claims “do[] not overtly seek monetary relief, nor expressly invoke contractual claims,” because the rights at issue “stem from the cancelled grant agreements and [plaintiffs] seek specific performance of those agreements.”^[69]

In a similar challenge, the Supreme Court cast doubt on a grantee’s ability to obtain monetary relief or grant reinstatement through an APA challenge. In *National Institutes of Health v. American Public Health Association*, a plurality of the Supreme Court explained that the APA does not allow federal district courts to adjudicate claims based on terminations of research-related grants or to order relief that amounted to an obligation to pay money damages based on such grants.^[70] In that case, the plaintiffs brought an APA action in federal district court to challenge agency-issued guidance that

resulted in the National Institutes of Health terminating hundreds of grants.

The Supreme Court's recent emergency orders in *Department of Education* and *National Institutes of Health* are proving to be a hurdle—though not an impossible one—when seeking relief in the federal district courts. Though the APA path may still be available in certain fact patterns, organizational leaders should understand that there are other options—including the Court of Federal Claims—to seek redress for wrongs wrought by the decisions of policy makers in Washington, D.C.

Dorsey's government-contracts team has appeared in many Court of Federal Claims matters and advises organizations assessing federal grant or contract terminations, seeking termination and settlement costs from federal agencies, pursuing administrative appeals, or litigating those disputes in the federal district courts or Court of Federal Claims.

[1] Pub. L. No. 102-572, 106 Stat. 4506.

[2] See *Glidden Co. v. Zdanok*, 370 U.S. 530, 552 (1962) (superseded by statute on other grounds).

[3] See *id.* at 553.

[4] 24 Stat. 505 (1887).

[5] See *Glidden*, 370 U.S. at 556; see also 28 U.S.C. § 1491.

[6] See Pub. L. No. 68-451, 43 Stat. 964.

[7] See Pub. L. No. 97-164, 96 Stat. 25.

[8] See Pub. L. No. 102-572, 106 Stat. 4506.

[9] See, e.g., *Indus. for the Blind, Inc. v. United States*, 120 Fed. Cl. 132, 135 (2015).

[10] See *Courts: A Brief Overview*, Federal Judicial Center, <https://www.fjc.gov/history/courts/courts-brief-overview>.

[11] See 28 U.S.C. §§ 171-172.

[12] See 28 U.S.C. § 171.

[13] See *Judges*, United States Court of Federal Claims, <https://www.uscfc.uscourts.gov/judges>.

[14] See *Seaboard Lumber Co. v. United States*, 903 F.2d 1560 (Fed. Cir. 1990).

[15] See *Double Lion Uchet Express Tr. v. United States*, 149 Fed. Cl. 415, 420 (2020)

("[I]n the Court of Federal Claims, 'the only proper defendant . . . is the United States, not its officers, nor any other individual.'" (quoting *Stephenson v. United States*, 58 Fed. Cl. 186, 190 (2003))).

[16] See 28 U.S.C. § 1491.

[17] See *United States v. Testan*, 424 U.S. 392, 399-400 (1976) (describing the Tucker Act's waiver of sovereign immunity for certain claims against the United States).

[18] 28 U.S.C. § 1491(a). The COFC also has jurisdiction to hear bid protests, 28 U.S.C. § 1491(b), which are challenges to the federal government's procurement decisions. Dorsey has extensive expertise and experience in representing and advising organizations on myriad federal procurement issues.

[19] *Roth v. United States*, 378 F.3d 1371, 1384 (Fed. Cir. 2004).

[20] *Chisum v. United States*, No. 2025-1562, 2025 U.S. App. LEXIS 25967, 2025 WL 2836408, at *6 (Fed. Cir. Oct. 7, 2025).

[21] *Crocker v. United States*, 125 F.3d 1475, 1476 (Fed. Cir. 1997).

[22] *United States v. Tohono O'odham Nation*, 563 U.S. 307, 311 (2011); see also 28 U.S.C. § 1500.

[23] Rules of the United States Court of Federal Claims (2024), available at https://www.uscfc.uscourts.gov/sites/cfc/files/rcfc_complete.pdf.

[24] Compare Fed. R. Civ. P. 4 with Ct. Fed. Cl. R. 4.

[25] See 28 U.S.C. § 2501 ("Every claim of which the United States Court of Federal Claims has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues.").

[26] See 41 U.S.C. §§ 7103-7104.

[27] See generally *Blue & Gold, Fleet, L.P. v. United States*, 492 F.3d 1308 (Fed. Cir. 2007).

[28] See 28 U.S.C. § 1491(a)(2).

[29] *Sergent's Mech. Sys. v. United States*, 157 Fed. Cl. 41, 46 (2021) (citing *Richardson v. Morris*, 409 U.S. 464, 465 (1973) ("[T]he [Tucker] Act has long been construed as authorizing only actions for money judgments and not suits for equitable relief against the United States.")).

[30] 28 U.S.C. § 1491(a)(2).

[31] *Id.*

[32] *Judgment Fund*, Bureau of the Fiscal Service, <https://fiscal.treasury.gov/judgment-fund/>; see also 31 U.S.C. § 1304.

[33] 34 Fed. Cl. 411 (1995).

[34] *Id.* at 414.

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] *Id.* at 417 (quoting *Kania v. United States*, 650 F.2d 264 (Ct. Cl. 1981)).

[39] *Thermalon*, 34 Fed. Cl. at 421.

[40] *Hometown Fin., Inc. v. United States*, 409 F.3d 1360, 1364 (Fed. Cir. 2005) (identifying “(1) mutuality of intent to contract; (2) offer and acceptance; (3) consideration; and (4) a government representative having actual authority to bind the United States”).

[41] See, e.g., *United States v. Winstar Corp.*, 518 U.S. 839 (1996).

[42] See *id.*

[43] See *id.*

[44] See *Winstar Corp. v. United States*, 21 Cl. Ct. 112 (1990).

[45] See *Winstar*, 518 U.S. at 881.

[46] Timothy Curry & Lynn Shibut, *The Cost of the Savings and Loan Crisis: Truth and Consequences*, 13 No. 2 FDIC Banking Review 26, 33 (2000).

[47] See *Maine Yankee Atomic Power Co. v. United States*, 225 F.3d 1336 (Fed. Cir. 2000).

[48] See *id.* at 1337 (citing 42 U.S.C. §§ 10131(a)(4)).

[49] *Id.*

[50] See *id.* at 1338.

[51] See *Indiana Michigan Power Co. v. Dep’t of Energy*, 88 F.3d 1272 (D.C. Cir. 1996).

[52] See *Northern States Power Co. v. Dep’t of Energy*, 128 F.3d 754, 760 (D.C. Cir. 1997).

[53] *Id.*

[54] See *Maine Yankee Atomic Power*, 225 F.3d at 1337.

[55] See *Yankee Atomic Elec. Co. v. United States*, 42 Fed. Cl. 223, 225 (1999).

[56] *Id.* at 235.

[57] See *id.*

[58] *Maine Yankee Atomic Power*, 225 F.3d at 1337.

[59] See *Cunningham v. United States*, 748 F.3d 1172 (Fed. Cir. 2014).

[60] See *Cunningham v. United States*, 108 Fed. Cl. 208, 221 (2012).

[61] *Cunningham*, 748 F.3d at 1174.

[62] See 5 USC § 551 *et seq.*

[63] See *Dep't of Education v. California, et al.*, 604 U.S. 650, 650 (2025).

[64] *Id.* at 651.

[65] *Am. Ass'n of Physics Tchrs., Inc. v. Nat'l Sci. Found.*, No. 25-cv-1923, 4, 2025 U.S. Dist. LEXIS 176901, at *7 (D.D.C. Sept. 10, 2025).

[66] *Id.* at *2.

[67] *Id.* at *2-3.

[68] See *id.* at *3.

[69] *Id.* at *7.

[70] 606 U.S. ___, ___, 145 S. Ct. 2658 (2025).