

# IMPACT OF THE TRUMP SHUTDOWN

## January 17, 2019

The Trump Shutdown has significantly impacted the federal government’s ability to enforce the law, provide civil justice, and promote public health and safety.

The shutdown burdens federal law enforcement officers working at the border, the very people responsible for handling the so-called “crisis” underpinning President Trump’s demand for an expensive, ineffective border wall. It has also impacted many other federal law enforcement agencies, undermining federal law enforcement efforts across the board, and making Americans less safe.

The shutdown has also begun to affect the federal judiciary’s ability to provide civil redress, impaired federal enforcement of civil rights laws, and stymied the federal rulemaking process responsible for writing and implementing public health and safety protections.

### **Immigration and Border Security**

- **Immigration Judges:** The shutdown has caused the Department of Justice (DOJ) to furlough the majority of immigration judges, which is causing massive disruptions to the removal docket. Our immigration courts are already facing a daunting [backlog of more than 800,000 pending cases](#). As judges remain furloughed, their cases are being rescheduled several years into the future, which negatively impacts both removal efforts and the ability for some immigrants to obtain relief.
- **E-Verify:** The online system for verifying the employment eligibility of employees is [suspended for the duration of the shutdown](#). This complicates the hiring process for many employers that use the system, and in some cases could lead to unauthorized employment. Further, while the system is not mandatory nationwide, it is required for certain employers in many states, and it is unclear how such employers can comply with state laws while the E-verify system remains unavailable.
- **Impact on DHS Personnel:** During the shutdown, approximately [88 percent](#) of Department of Homeland Security employees—including 53,000 TSA employees, 54,000 ICE officers, and 42,000 Coast Guard active duty members—are working without pay. This includes the principal officers that are tasked with dealing with President Trump’s supposed “crisis.”
  - **Customs and Border Protection:** Essential CBP officers continue to work without pay, including those in the Office of Field Operations, which operates and guards ports of entry across the country, and those in the Border Patrol, which protects our land borders between the ports of entry.
  - **Immigration and Customs Enforcement:** Essential ICE officers also continue to work without pay, including those who engage in critical enforcement operations, those who operate detention centers, and those who conduct homeland security-related investigations.

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- **Transportation and Safety Administration:** The shutdown has caused [airport security lines to grow](#) as TSA agents have grown tired of working without pay and begun to call in sick. The longer the shutdown continues, the more that air travel is made vulnerable to attack and affected by delays.

### Federal Law Enforcement

- **Impact on Federal Law Enforcement Personnel:** Nearly 5,000 FBI employees, including some special agents, intelligence analysts, and support staff, have been furloughed. The President of the FBI Agents Association warns that “operations are being hindered” and “This situation is not sustainable.” The Trump shutdown has also jeopardized funding support for active investigations, such as payments to informants and evidence testing. Additionally, many law enforcement officers with the U.S. Marshals Service, the Secret Service, the Drug Enforcement Administration, and the Bureau of Alcohol, Tobacco, Firearms, and Explosives [are working without pay and without many of their support personnel](#).
- **Federal Support for State and Local Governments:** If the Trump shutdown continues, it will soon interrupt the DOJ’s administration and payment of funds for many public safety grants that provide assistance to many state and local governments. These grant programs provide critical assistance to state and local law enforcement agencies, nonprofit organizations, and other justice-related initiatives that require federal funding to operate. For example:
  - **Domestic Violence Prevention:** Under the Violence Against Women Act (VAWA), the DOJ funds programs that help prevent and respond to instances of domestic violence. Some grant recipients have been notified by the Office on Violence Against Women that grant payments will be in jeopardy after January 18. This possibility has already begun to [threaten](#) the operation of domestic violence shelters, many of which rely on federal funds on a monthly basis to pay their expenses and keep their doors open.
- **Federal Prison System:** The shutdown has severely undermined the operations of the Bureau of Prisons (BOP), the agency responsible for the administration of federal prisons.
  - **Prison Safety:** Corrections officers—many of whom face daily the possibility of injury—are currently working without pay, and despite being deemed “essential” many are not showing up for work by calling in sick. As a result of staffing shortfalls, [many remaining corrections officers are working double shifts, and other prison employees](#)—such as secretaries, janitors, and teachers are providing security, even though it is not normally their primary responsibility.

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- **Prisoner Rehabilitation:** The shutdown has [interrupted implementation of various programs that benefit prisoners](#), and which ultimately enhance public safety. It may also delay BOP's implementation of the FIRST STEP Act, a major bipartisan legislative achievement enacted in December that would help to reduce recidivism by prisoners returning to their communities.

### Courts and Administration of Justice

- **Federal Courts Face Possible Disruption Due to Funding Shortfalls After Jan. 25, 2019:** According to the Administrative Office of the U.S. Courts (AO), the Judicial Branch continues to operate by using court fee balances and other “no year” funds, [but may only be able to so through Jan. 25, 2019](#). The AO has asked courts to delay or defer non-critical expenses, such as new hires and non-case related travel in order to stretch available funds. If the funds are exhausted, courts could begin to furlough workers as each determines which staff must continue to work unpaid “to support its mission critical work.”
- **The Efficient Administration of Justice Could Become Arbitrary and Depend on Where a Civil Case is Filed:** If the AO runs out of funds, it will be up to each court to determine how to schedule and prioritize matters it must be involved in—such as hearings and trials—based on the availability of limited resources and unpaid staff. Depending upon case load and the general nature of their docket, some courts could be more affected than others. For example, the Court of Appeals for the D.C. Circuit—which handles many cases involving the federal government—is already warning the public, that if funds are exhausted on Jan. 25, [“the federal courts face serious disruption.”](#)
- **Justice Delayed is Justice Denied:** While the chance of serious disruption to the federal courts will only grow as the shutdown continues, it is already impeding the effective and timely administration of civil justice at the federal level. For instance:
  - **Civil Cases Involving the U.S. Government:** At the request of the Department of Justice (DOJ), some federal courts have already suspended, postponed, or are holding in abeyance civil cases to which the federal government is a party. The shutdown is now delaying all federal civil cases to which the federal government is a party, [“including discrimination cases, whistleblower cases, disciplinary cases and retaliation actions taken against federal employees.”](#)
  - **Employment Discrimination Claims:** The U.S. Equal Employment Opportunity Commission (EEOC)—the agency responsible for enforcing federal civil rights laws barring discrimination in private and government employment based on race, sex, religion, sexual orientation or gender identity—[is currently shutdown](#). This has a significant impact on victims of employment discrimination. All mediations scheduled to occur during the shutdown have been cancelled. And the EEOC has also sought to suspend all currently pending litigation.

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- **Federal Defender Services:** AO operations includes the federal public defender offices responsible for providing a legal defense to indigent defendants. Federal defenders, many of whom already face daunting caseloads, now face the prospect of being furloughed or continuing to work without pay after Jan. 25, 2019, which may undermine indigent defendants' Sixth Amendment right to effective assistance of counsel.

#### Public Health and Safety

- **Federal Laws and Regulations Protecting the Public May Go Unimplemented and Unenforced:** Thousands of federal workers have been furloughed across multiple federal agencies responsible for writing and implementing regulations designed to protect public health, safety, consumer rights, and the environment.
- **Disruptions to the Federal Rulemaking Process:** The Trump shutdown has affected operations at the White House's Office of Management and Budget (OMB) and the Office of Information and Regulatory Affairs (OIRA)—which plays a pivotal role in the federal rulemaking process reviewing draft regulations before they are released to the public. OIRA has only issued vague statements regarding which ongoing reviews of regulatory action have been affected by the shutdown, contributing to public confusion.
  - **Public Notice and Comment:** The three main websites providing for online public participation in rulemaking—[federalregister.gov](http://federalregister.gov), [regulations.gov](http://regulations.gov), and [reginfo.gov](http://reginfo.gov)—are [impaired](#). The Trump Administration has yet to clearly announce whether agency officials are accepting or considering requests for agency action or public comment during the shutdown.