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## *Why Judge Boasberg's Deportation Order Is Legally Invalid*

He failed to impose a bond on plaintiffs as the law requires. Other injunctions have the same deficiency.

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By Daniel Huff

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The Trump administration is locked in a standoff with Judge James Boasberg over deportation flights under the Alien Enemies Act. Officials could face contempt proceedings, and the president and his supporters have called for the judge's impeachment. Yet the administration seems to be overlooking a critical legal tool—injunction bonds.

The argument is rock solid: Under [Rule 65\(c\)](#) of the Federal Rules of Civil Procedure, a party seeking an injunction needs to put up a bond to cover its costs. These bonds aren't optional. They're mandatory, unless the government is seeking an injunction. That means Judge Boasberg's order, and dozens like it, may not be valid at all.

President Trump identified this legal off-ramp in a March 11 [memorandum](#) directing the Justice Department to demand bonds in future injunction cases. Senate Judiciary Chairman Chuck Grassley [echoed](#) the call. But the Justice Department hasn't pressed the issue, either in Judge Boasberg's courtroom or other high-stakes cases in which activist judges have blocked major policies without requiring plaintiffs to put a single dollar at risk.

In Judge Boasberg's case, because no bond was required, the temporary restraining order never legally took effect—meaning any alleged government noncompliance is, by definition, not a violation. The same legal flaw undercuts more than 30 other injunctions issued against Trump administration policies

without any meaningful bond. Far from a technicality, this is a fundamental failure to follow Rule 65(c). The text, legislative history, and appellate court precedent—including from Judge Ruth Bader Ginsburg of the U.S. Circuit Court of Appeals for the District of Columbia—all confirm that a bond isn't optional. It's a legal precondition for an injunction to be valid.

The Fourth Circuit has [made clear](#) that the bond rule isn't discretionary. Only the government may obtain an injunction without posting a bond: "There are no other exceptions." The Third Circuit has [characterized](#) the bond as a "condition precedent" to issuing injunctive relief. According to the Fourth Circuit, "failure to require a bond before granting preliminary injunctive relief is reversible error."

These precedents faithfully reflect the plain text of Rule 65(c), which permits courts to issue injunctions or temporary restraining orders "only if" the plaintiffs post bond. They also uphold Congress's unambiguous intent in 1914, when it [repealed](#) the discretionary language of the 1911 Judiciary Code and replaced it with a mandatory bond requirement.

Yet activist judges continue to sidestep the rule by setting nominal or de minimis bonds. Courts have some discretion in setting the amount, but it must be "proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined." In practice, that cost is rarely zero—and appellate courts have repeatedly struck down attempts to treat it as such.

In *National Kidney Patients Association v. Sullivan* (1992), a district judge enjoined the government from lowering reimbursement rates for dialysis services but required only a \$1,000 bond. The D.C. Circuit remanded the case, ordering the district court to set an "appropriate bond," citing the more than \$18 million already paid out by Medicare under the injunction.

Similarly, in *Maryland Department of Human Resources v. USDA* (1992), the Fourth Circuit vacated an injunction that exposed the federal food-stamp program to significant losses because no bond had been required. That should have been a warning shot. Yet in an egregious case this month, [Maryland v. USDA](#), a district judge ordered the Trump administration to rehire 25,000 fired federal probationary employees—at a minimum cost of \$45 million a month—while setting the bond at \$100 for each plaintiff.

The judge offered three weak justifications. First, he admitted the government faced financial harm but claimed it was “too complex to calculate” the damage during an expedited hearing. But that’s precisely the scenario Rule 65(c) was designed to address. Bonds are the safeguard against costly errors in fast-moving litigation.

Second, the judge cited *Hoechst Diafoil v. Nan Ya Plastics* (1999), a Fourth Circuit case he claimed supported nominal bonds. In reality, *Hoechst* said the opposite—that the bond rule is “mandatory and unambiguous,” and the amount should reflect “the gravity of the potential harm.” The opinion references nominal bonds only in passing, and only in cases where the risk of harm is “remote.”

Finally, the judge invoked the familiar refuge of activist courts: a made-up and subjective “public interest” exception. This elitist conceit presumes that it is in the public interest to exempt activists from standard legal rules so they can block actions ordered by the president, for whom 77 million Americans voted.

That exception doesn’t hold water. In *National Kidney Patients Association*, the D.C. Circuit case, a district judge tried to invoke public interest to waive the bond. The appellate panel, which included future Justice Ginsburg, rejected that outright: “This completely overlooks a key purpose of the bond . . . to make plaintiffs consider the damage they may inflict by pressing ahead with a possibly losing claim.”

Why isn’t the Justice Department fighting back? Despite mounting taxpayer costs and widespread judicial defiance, the department still isn’t routinely invoking the bond requirement in court. In a pending request before the Supreme Court, it asks the justices to block an order to rehire 16,000 federal workers—but it hasn’t raised the absence of a bond. It should. It should raise the issue in Judge Boasberg’s courtroom too.

The Justice Department has every legal and moral justification to do so. In *U.S. v. United Mine Workers* (1947), the Supreme Court held that even unlawful laws must be obeyed if enforced through valid injunctions. But these injunctions aren’t valid. When a court issues an injunction without following the mandatory bond procedure, it is the court—not the government—that has violated the law.

The Justice Department should demand that judges require plaintiffs to post bond in every future injunction case. It should move to invalidate existing injunctions where no adequate bond was required. And it should make clear—to judges and the public—that it won't be bound by orders that are themselves invalid because the courts didn't follow the procedure required to issue them. Otherwise, millions more in taxpayer dollars will be drained, and activist judges will continue rewriting policy from the bench—leaving taxpayers to foot the bill.

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ILLUSTRATION: DAVID GOTHARD

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