



Litigation Insights

NOVEMBER 2025



Moore's Federal Practice[®]

—TOP THREE HIGHLIGHTS

The following three summaries are this month's Editor's Top Picks from the dozens of decisions added to Moore's Federal Practice and Procedure.

INJUNCTIONS

Standing to Seek Preliminary Injunction

Moms for Liberty—Wilson Cnty. v. Wilson Cnty. Bd. of Educ.

2025 U.S. App. LEXIS 23232 (6th Cir. Sept. 9, 2025)

The Sixth Circuit held that, because a plaintiff bears the burden of establishing the elements of standing with the manner and degree of evidence required at each successive stage of the litigation, a preliminary injunction—a form of relief that requires the plaintiff to show a likelihood of success on the merits—requires the plaintiff to show a likelihood of establishing standing.

[JUMP TO SUMMARY](#)

JURISDICTION

Terrorism Risk Insurance Act

Est. of Levin v. Wells Fargo Bank, N.A.

2025 U.S. App. LEXIS 24920 (D.C. Cir. Sep. 26, 2025)

The D.C. Circuit holds that the Terrorism Risk Insurance Act applies to funds seized by the United States that were in transit through an American financial institution, so that the government's forfeiture action does not bar a later in rem proceeding against the same funds.

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JUSTICIABILITY

Standing; Ripeness

NetChoice, LLC v. Bonta

152 F.4th 1002, 2025 U.S. App. LEXIS 23261 (9th Cir. Sept. 9, 2025)

The Ninth Circuit has rejected an internet trade association's challenge to personalized-feeds provisions and age-verification requirements in California's Protecting Our Kids from Social Media Act, on grounds of lack of associational standing and ripeness.

[JUMP TO SUMMARY](#)

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The Immigration Litigation Tsunami: TROs and Lawsuits Reshaping the Legal Landscape

By Jeff Peters, Attorney at Law

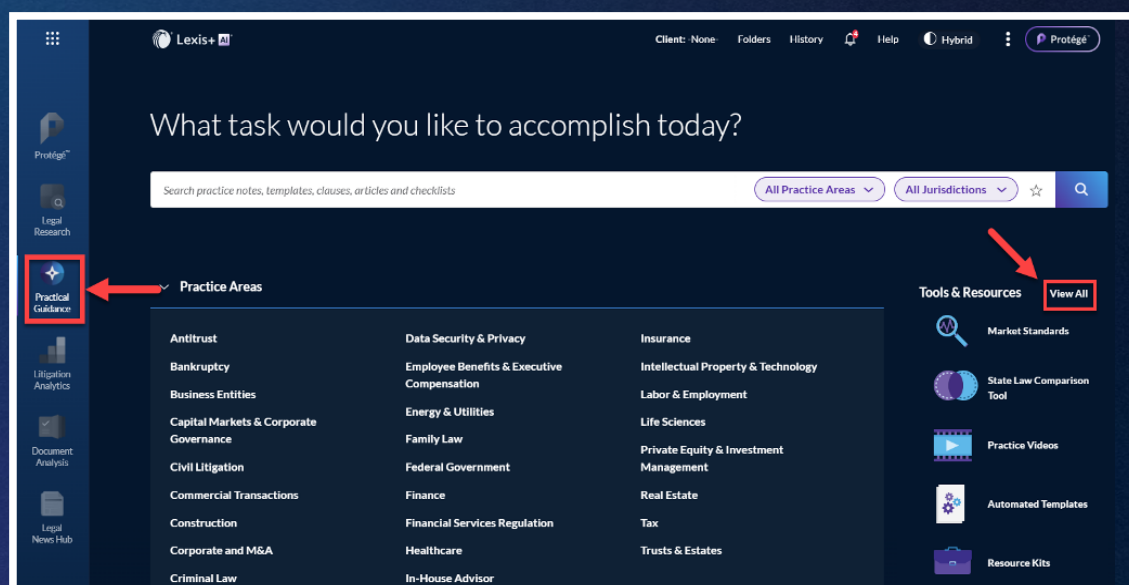
Federal courts and DOJ professionals are navigating an unprecedented surge: 240 active cases challenging Trump administration actions and 186 lawsuits filed since January 2025—a volume dwarfing earlier administrations. From sweeping class actions to emergency motions involving centuries-old deportation laws, the legal landscape is shifting daily.

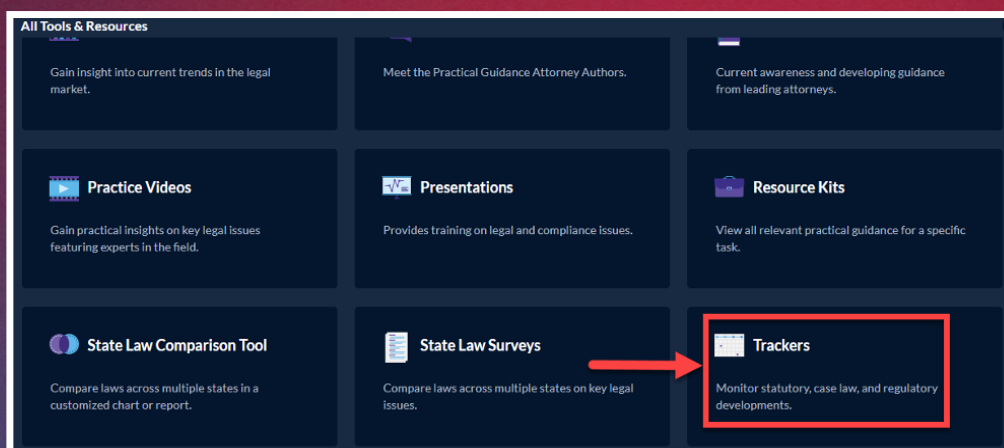
The **Trump Administration Immigration Timeline Tracker** is your lifeline. It delivers real-time alerts, monitors Supreme Court stays, and transforms chaos into clarity—helping you anticipate trends, allocate resources, and turn litigation overload into strategic advantage.

The 60-Second Setup to Turn Litigation Chaos into Clarity:

[Or, for the one-second-shortcut: click on the following link and jump to **step 3: Trump Administration Immigration Timeline Summary Tracker**]

Step 1: in **Practical Guidance**, click **View All**, then scroll to **Trackers**.





Step 2: Filter by **Federal Government** → **Trends & Insights**, then select ***Trump Administration Immigration Timeline Summary Tracker***:

Step 3: You're in—curated immigration updates are now at your fingertips.

The first screenshot shows the 'Trackers' page with a sidebar filter for 'Federal Government' (23 items) highlighted in red. The main list shows 'Trump Administration Immigration Timeline Summary Tracker' as item 12, also highlighted in red.

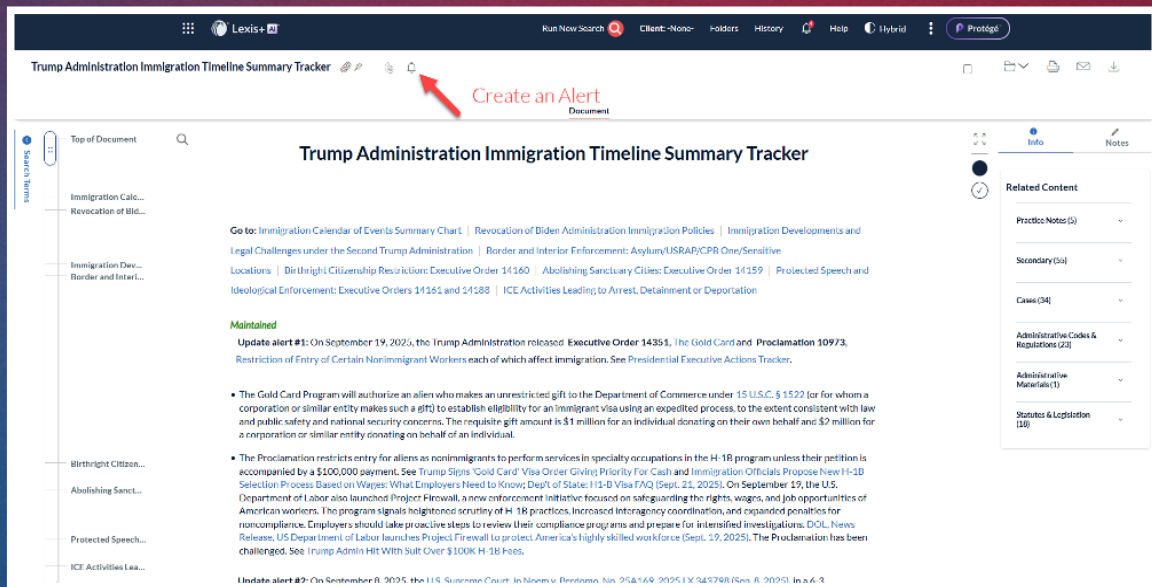
The second screenshot shows the 'Trump Administration Immigration Timeline Summary Tracker' document. It includes a table of 'Information Sharing Lawsuits' and a section on 'ICE Activities Leading to Arrest, Detainment or Deportation'.

Case Name and Court	Date Filed	Summary	Status
President and Polanco v. Homeland Security, U.S. Department of Homeland Security, No. 1:20-cv-01472 (D. Mass.)	5/22/2020	Homeland Security challenges the Department of Homeland Security's (DHS) executive order that requires all non-citizen individuals who are not lawful permanent residents to be held in detention until they are removed from the United States. The court granted summary judgment in favor of the plaintiffs and ordered DHS to release the plaintiffs.	Provisionary injunction granted.
President and Polanco v. Homeland Security, U.S. Department of Homeland Security, No. 1:20-cv-01472 (D. Mass.)	5/22/2020	Homeland Security challenges the executive order that requires all non-citizen individuals who are not lawful permanent residents to be held in detention until they are removed from the United States. The court granted summary judgment in favor of the plaintiffs and ordered DHS to release the plaintiffs.	Ongoing.
Statute v. Trump, No. 2:20-cv-00383 (D. Mass.)	4/14/2020	Plaintiff challenges the executive order that requires all non-citizen individuals who are not lawful permanent residents to be held in detention until they are removed from the United States. The court granted summary judgment in favor of the plaintiffs and ordered DHS to release the plaintiffs.	Order to not remove Plaintiff granted.
Immigration and Customs Enforcement v. Plaintiff, No. 1:20-cv-01472 (D. Mass.)	4/14/2020	Plaintiff challenges the executive order that requires all non-citizen individuals who are not lawful permanent residents to be held in detention until they are removed from the United States. The court granted summary judgment in favor of the plaintiffs and ordered DHS to release the plaintiffs.	Ongoing.

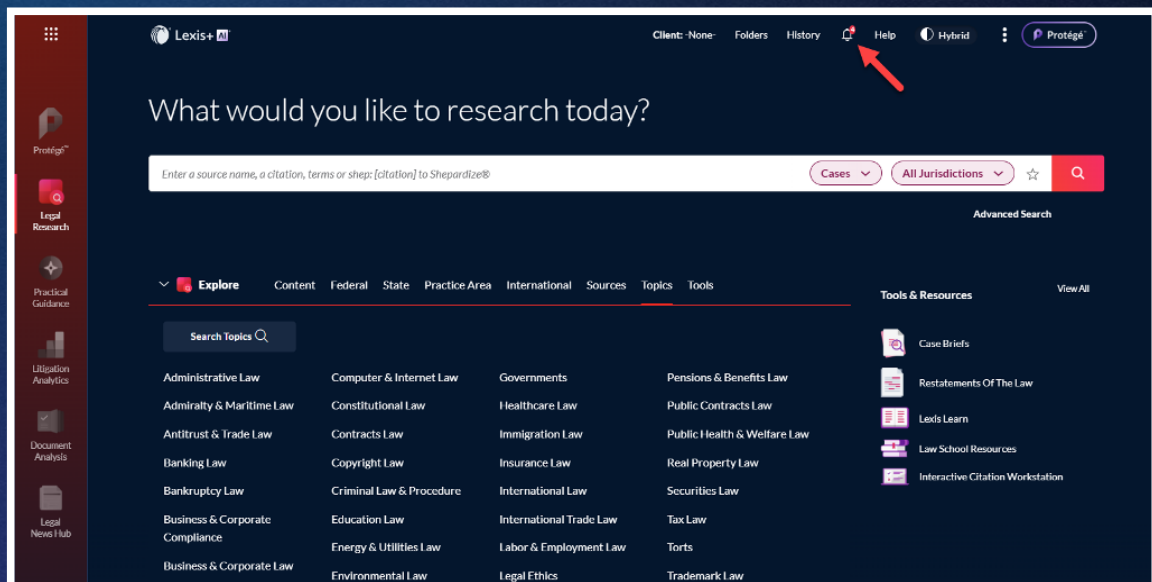
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INJUNCTIONS

Standing to Seek Preliminary Injunction

Moms for Liberty—Wilson Cnty. v. Wilson Cnty. Bd. of Educ.

2025 U.S. App. LEXIS 23232 (6th Cir. Sept. 9, 2025)

The Sixth Circuit held that, because a plaintiff bears the burden of establishing the elements of standing with the manner and degree of evidence required at each successive stage of the litigation, a preliminary injunction—a form of relief that requires the plaintiff to show a likelihood of success on the merits—requires the plaintiff to show a likelihood of establishing standing.

→ **Background.** The plaintiffs in this case were a nongovernmental organization formed to influence public-education policy, plus the chair and secretary of a local chapter of the organization. The plaintiffs sued a county board of education and board members, raising First Amendment challenges to the board's rules governing public comments at the board's public meetings.

The challenged board rules provided three options for a member of the public wishing to address the board: (1) submitting a written request (with descriptive materials), at least 10 working days before a scheduled board meeting, to add an item to the board's meeting agenda; (2) signing up (or making a request to a board member), before the beginning of any board meeting, to speak on an item on the meeting agenda, and (3) being recognized by the chair or another board member for remarks to the board on a non-agenda item if the chair or board member "determines that such is in the public interest." And under any of the three options, the rules also required each speaker to state his or her name and address when speaking to the board. Finally, at the beginning of each board meeting, the chair customarily read aloud from a script stating additional rules, including a statement that the board reserved the right to terminate remarks at any time if the speaker fails to adhere to the guidelines or if the comments become "abusive" to an individual board member, the board as a whole, the director of schools, or any employee of the school system.

The complaint alleged, among other things, that one individual plaintiff (1) had withheld her harshest criticisms of the board, school administrators, and school policies out of fear that the board or one of its members would invoke the abusive-comments restriction to prevent her from speaking; and (2) fearing repercussions for her statements on controversial issues, she had disclosed her school district's zone number, rather than her home address, and therefore worried that board members would invoke the address-disclosure requirement to prevent her from speaking at its meetings. The complaint also alleged that the other individual plaintiff had been asked to stop speaking at a meeting after failing to give her address.

When the plaintiffs moved to preliminarily enjoin the board from enforcing its rules, the board removed all mention of the address-disclosure requirement and abusive-comments restriction from its policies and meeting materials. The district court denied the motion, and the plaintiffs took an interlocutory appeal [see 28 U.S.C. § 1292(a)(1) (authorizing interlocutory appeal of orders denying injunctive relief)].

The Sixth Circuit affirmed the order denying preliminary injunctive relief, concluding that the plaintiffs had failed to establish a likelihood of imminent and irreparable harm from any board rule that they had standing to challenge.

→ **Availability of Preliminary Injunctive Relief.** A preliminary injunction is an extraordinary remedy that is never awarded as of right, and the party seeking a preliminary injunction bears the burden of justifying such relief [see

L.W. ex rel. Williams v. Skrmetti, 83 F.4th 460, 470–471 (6th Cir. 2023); ACLU Fund of Mich. v. Livingston County, 796 F.3d 636, 642 (6th Cir. 2015)]. To qualify, a plaintiff must establish that he or she is likely to succeed on the merits, that he or she is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his or her favor, and that an injunction is in the public interest [see Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008)]. The Sixth Circuit panel in this case noted that when assessing an appeal of a preliminary-injunction decision involving the First Amendment, it reviews the district court's legal rulings de novo (including its First Amendment conclusion), its factual findings for clear error, and its ultimate conclusion as to whether to grant the preliminary injunction for abuse of discretion [see Sisters for Life, Inc. v. Louisville-Jefferson County, 56 F.4th 400, 403 (6th Cir. 2022); O'Toole v. O'Connor, 802 F.3d 783, 788 (6th Cir. 2015)].

➔ **Assessment of Standing at Preliminary-Injunction Stage.** Standing is a jurisdictional requirement, grounded in Article III of the Constitution, that limits the category of litigants empowered to maintain a lawsuit in federal court to seek redress for a legal wrong [see State ex rel. Tenn. Gen. Assembly v. U.S. Dep't of State, 931 F.3d 499, 507 (6th Cir. 2019)]. To establish Article III standing, a plaintiff must demonstrate (1) an injury in fact that is (2) caused by the defendant's conduct and (3) redressable by a favorable court decision [see Susan B. Anthony List v. Driehaus, 573 U.S. 149, 157–158, 134 S. Ct. 2334, 189 L. Ed. 2d 246 (2014)].

A plaintiff bears the burden of establishing the elements of standing with the manner and degree of evidence required at each successive stage of the litigation [see Lujan v. Defs. of Wildlife, 504 U.S. 555, 561, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992)]. Thus, when seeking a preliminary injunction—a form of relief that requires the plaintiff to show a likelihood of success, as noted above—the plaintiff must make a clear showing through evidence that he or she is likely to establish each element of standing [see Murthy v. Missouri, 603 U.S. 43, 58, 144 S. Ct. 1972, 219 L. Ed. 2d 604 (2024)].

The Sixth Circuit panel in this case observed that if, on an appeal of an order on a motion for a preliminary injunction, a party's standing to bring particular claims appears dubious, the court's review of the propriety of the district court's order—at least with regard to those claims—may begin and end with that issue. That is because standing analysis, though not an inquiry into a claim's merits, is still relevant to the question of the plaintiff's likelihood of success on the merits [see Arizona v. Biden, 40 F.4th 375, 383 (6th Cir. 2022)]. In other words, the burden of showing a likelihood of success on the merits necessarily includes a likelihood of the court's reaching the merits, which in turn depends on a likelihood that the plaintiff has standing. Accordingly, a plaintiff who fails to show a substantial likelihood of standing is not entitled to a preliminary injunction [see Waskul v. Washtenaw Cnty. Cmty. Mental Health, 900 F.3d 250, 255–256 n.4 (6th Cir. 2018)].

The court of appeals therefore considered whether the plaintiffs in this case had demonstrated standing to seek a preliminary injunction.

➔ **Injury in Fact.** Turning to the first element of Article III standing—injury in fact—the Sixth Circuit panel explained that in the context of a request for prospective injunctive relief, an alleged injury is constitutionally sufficient only if it is actual or imminent, not conjectural or hypothetical. A threat of enforcement of a challenged statute or rule is sufficiently imminent to constitute an injury in fact if a plaintiff alleges that he or she is subject to such a threat, meaning that (1) the plaintiff intends to engage in a course of conduct arguably affected with a constitutional interest, (2) that conduct is arguably proscribed by the statute or rule, and (3) there is a credible threat of enforcement of the statute or rule against the plaintiff [see Susan B. Anthony List v. Driehaus, 573 U.S. 149, 158–159, 134 S. Ct. 2334, 189 L. Ed. 2d 246 (2014)].

The Sixth Circuit panel quickly concluded that the plaintiffs had not established a sufficiently imminent threat of injury in fact. The plaintiffs intended to continue speaking before the board without tempering their strongest criticisms or disclosing their addresses, and this intended conduct certainly implicated their First Amendment rights, so the first requirement for a finding of imminent injury was met. And that conduct was certainly proscribed by the address-disclosure requirement and could well have been proscribed by the public-interest provision and abusive-comments restriction, thus meeting the second requirement for a finding of imminent injury. However, the court of appeals found that the third requirement—a credible threat of enforcement—required detailed analysis.

The court explained that a credible threat of enforcement may be established at the preliminary-injunction stage through evidence of subjective chill and some combination of factors such as the following: (1) a history of past enforcement against the plaintiffs or others; (2) enforcement warning letters sent to the plaintiffs regarding their specific conduct; (3) an attribute of the challenged statute or rule that makes enforcement easier or more likely, such as a provision allowing any member of the public to initiate an enforcement action; and (4) a defendant's refusal to disavow enforcement of the challenged statute against the particular plaintiff [see *McKay v. Federspiel*, 823 F.3d 862, 869 (6th Cir. 2016); *Fischer v. Thomas*, 52 F.4th 303, 307 (6th Cir. 2022) (per curiam) (*McKay* factors are not an exhaustive "laundry list")]. The relevant question is whether surrounding factual circumstances plausibly suggest a credible fear of enforcement [see *Universal Life Church Monastery Storehouse v. Nabors*, 35 F.4th 1021, 1034 (6th Cir. 2022)].

➔ **No Credible Threat to Enforce Public-Interest Provision.** Regarding the public-interest provision of the board's rules, the court of appeals found that the plaintiffs had not alleged or adduced facts indicating that they ever used or intended to seek recognition to speak at a board meeting without having signed up to do so in advance. Nor was there any allegation or facts indicating that, if the plaintiffs did ask to speak without previously signing up, the board would try to enforce the public-interest provision. The court concluded, therefore, that the plaintiffs had not established a credible threat of enforcement of the public-interest provision.

Without a credible threat of enforcement of the public-interest provision, the court concluded that the plaintiffs had not made a clear showing that they were likely to establish an Article III pre-enforcement injury. And without adequately demonstrating standing, the plaintiffs could not establish a likelihood of success on the merits of their prospective claims challenging the public-interest provision, which meant that preliminary injunctive relief as to that provision could not be granted.

➔ **Credible Threat to Enforce Address-Disclosure and Abusive-Comments Provisions.** The Sixth Circuit panel then turned to the plaintiffs' challenges to the address-disclosure requirement and the abusive-comments restriction. The court found that the plaintiffs had sufficiently alleged and established in the record that there was a credible threat of enforcement of those rules. Specifically, the plaintiffs explicitly alleged that the rules had deterred the individual plaintiffs and other members of their organization from sharing their complete and honest opinions with the board, out of confusion over the rules' scope, out of fear of reprisal by members of the public who might disagree, or out of concern that the board would publicly cut them off. These assertions of subjective chill were accompanied by additional evidence that suggested a credible threat of enforcement. For example, the record established that the board had enforced the address-disclosure requirement against one plaintiff. The record also demonstrated that at the beginning of each public-comment period the board chair routinely read from the script containing both rules and asked each speaker if he or she would like the script to be read again before addressing the board. The script constituted a warning to each would-be speaker that the board was prepared to enforce the

stated rules. Taken together, the court concluded that this evidence suggested the credible threat of enforcement that was required to demonstrate an Article III injury.

The court concluded that the plaintiffs had offered evidence clearly showing a likely causal connection between their prospective injury and the two rules and also that enjoining the rules was substantially likely to remedy that injury. Therefore, the court found that the plaintiffs had sufficiently established standing to seek a preliminary injunction against enforcement of the address-disclosure requirement and the abusive-comments restriction.

➔ **Preliminary Injunction Was Properly Denied on Merits.** Proceeding to the merits of the plaintiffs' motion for a preliminary injunction against the address-disclosure requirement and the abusive-comments restriction, the Sixth Circuit panel held that the district court had not abused its discretion in denying preliminary relief. As noted above, the plaintiffs had to show that they were likely to succeed on the merits, that they were likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tipped in their favor, and that an injunction would be in the public interest [see *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008)].

The court of appeals acknowledged that preliminary injunctions in constitutional cases often turn on the plaintiffs' likelihood of success on the merits. But this general principle does not eliminate the "indispensable" prerequisite of showing a likelihood of immediate and irreparable harm [see *D.T. v. Sumner Cnty. Schs.*, 942 F.3d 324, 326–327 (6th Cir. 2019) ("If the plaintiff isn't facing imminent and irreparable injury, there's no need to grant relief now as opposed to at the end of the lawsuit.")].

The court found it significant that the board had amended the script read by the chair at meetings to remove any reference to either the address-disclosure requirement or the abusive-comments restriction. The defendants also removed all references to both rules from all board policies and materials, and the plaintiffs offered no evidence that defendants would enforce either abrogated rule while the case continued. Based on this record, the district court concluded that the plaintiffs had failed to prove a likelihood of imminent and irreparable harm. (The district court also ruled that the defendants' voluntary cessation of the two rules could affect its analysis on whether to grant preliminary injunctive relief without necessarily mooted the plaintiffs' lawsuit.) On these grounds alone, the court denied the plaintiffs' request for a preliminary injunction. The court of appeals agreed, noting that a court is well within its province to deny a preliminary injunction based solely on the lack of an irreparable injury [see *D.T. v. Sumner Cnty. Schs.*, 942 F.3d 324, 326–327 (6th Cir. 2019)].

In sum, the address-disclosure requirement and abusive-comments restriction were no longer operative, and the plaintiffs offered no evidence indicating that either might be reinstated and applied in the future. The court of appeals therefore concluded that the plaintiffs had failed to establish a likelihood of imminent and irreparable harm from either rule that they had standing to challenge. Thus, the plaintiffs had not sustained their burden of establishing the requirements for preliminary injunctive relief.

➔ **Conclusion and Disposition.** The Sixth Circuit concluded that the plaintiffs had failed to establish standing to seek preliminary relief against the public-interest provision, and that they had failed to establish a likelihood of imminent and irreparable harm from the other two provisions of the board's rules. Accordingly, the Sixth Circuit affirmed the district court's denial of the plaintiffs' motion for a preliminary injunction.

JURISDICTION

Terrorism Risk Insurance Act

Est. of Levin v. Wells Fargo Bank, N.A.

2025 U.S. App. LEXIS 24920 (D.C. Cir. Sep. 26, 2025)

The D.C. Circuit holds that the Terrorism Risk Insurance Act applies to funds seized by the United States that were in transit through an American financial institution, so that the government's forfeiture action does not bar a later in rem proceeding against the same funds.

→ **Background.** In a previous consolidated case [*Est. of Levin v. Wells Fargo Bank, N.A.*, 45 F.4th 416 (D.C. Cir. 2022)], the D.C. Circuit held that terrorism victims may attach blocked assets that were traceable to a terrorist owner, the Iranian government, and were sent through an American financial institution to purchase an oil tanker. The \$9.98 million balance of the purchase price for the tanker (the deposit apparently having transferred without seizure) was blocked pursuant to 50 U.S.C. § 1702 and various executive orders.

The funds were placed in an account holding blocked assets, and the United States filed a forfeiture action in the U.S. District Court for the District of Columbia. Two groups of plaintiffs learned of the pending case and filed writs of attachment with that court. The district court initially had quashed the writs, concluding that once the government had blocked the funds, the Iranian government no longer had an attachable property interest [*Levin v. Islamic Republic of Iran*, 523 F. Supp. 3d 14, 21 (D.D.C. 2021)].

In the first appeal, the D.C. Circuit held that the district court erred in so finding, and that terrorism victims may attach funds blocked by the U.S. Office of Foreign Assets Control, if the funds can be traced to a terrorist owner [*Est. of Levin v. Wells Fargo Bank, N.A.*, 45 F.4th 416, 423 (D.C. Cir. 2022)].

On remand, the district court held that the \$10 million at issue were not “blocked assets” for purposes of the Terrorism Risk Insurance Act of 2002 (TRIA) and thus were not available for attachment, and that the prior exclusive jurisdiction doctrine, which protects the jurisdiction of the first court that holds property from interference by other courts, was not altered by TRIA’s “notwithstanding” clause, which provides that “[n]otwithstanding any other provision of law, . . . in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, . . . the blocked assets of that terrorist party . . . shall be subject to execution or attachment” [Pub. L. No. 97-297, § 201(a), 116 Stat. 2322, 2337 (2002); *Est. of Levin v. Wells Fargo Bank, N.A.*, 2023 U.S. Dist. LEXIS 95746, at *18, *23 (D.D.C. June 1, 2023)].

On the second appeal of the case, the court of appeals addressed the district court’s decision as to the prior exclusive jurisdiction doctrine, the Foreign Sovereign Immunities Act (FSIA), and the Terrorism Risk Insurance Act of 2002 (TRIA).

→ **Prior Exclusive Jurisdiction Doctrine.** <D>The district court held that the government’s civil-forfeiture action independently foreclosed relief because, under the prior exclusive jurisdiction doctrine, the first-filed case barred all subsequent actions against the same property, though all three actions were proceeding in the same court before the same judge. Reversing, the court of appeals held that the prior exclusive jurisdiction doctrine prevents conflicts between courts but does not prevent proceedings in the same court.

→ **Foreign Sovereign Immunities Act.** Property of a foreign state located in the United States is generally immune from attachment, arrest, and execution under Section 1609 of the FSIA, with exceptions. The district court had

held that the FSIA provision that foreign properties are subject to attachment did not apply because the separate civil-forfeiture statute prohibits courts from issuing orders or writs directed to property that has become the subject of a civil forfeiture action [Est. of Levin v. Wells Fargo Bank, N.A., 2023 U.S. Dist. LEXIS 95746, at *23 (D.D.C. June 1, 2023)].

The D.C. Circuit reversed on this basis as well, holding that TRIA § 201(a) explicitly applies “notwithstanding any other provision of law,” and that this means what it says. Congress thus explicitly overrode the President’s national security waiver in passing the Determination to Waive Attachment Provisions Relating to Blocked Property of Terrorist-List States [see 65 Fed. Reg. 66,483 (Oct. 28, 2000)].

➔ **Terrorism Risk Insurance Act.** Finally, under FSIA, 28 U.S.C. § 1610 subjects to execution or attachment the blocked assets of a terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) against which a plaintiff holds a judgment under 28 U.S.C. § 1605(a)(7) or § 1605A. TRIA § 201(a) specifies that such assets can be attached “[n]otwithstanding any other provision of law” and the \$9.98 million represented blocked assets of a terrorist party. The “whole point of section 201 was to eliminate the President’s discretion to prevent victims of state-sponsored terrorism from attaching blocked assets.”

JUSTICIABILITY

Standing; Ripeness

NetChoice, LLC v. Bonta

152 F.4th 1002, 2025 U.S. App. LEXIS 23261 (9th Cir. Sept. 9, 2025)

The Ninth Circuit has rejected an internet trade association's challenge to personalized-feeds provisions and age-verification requirements in California's Protecting Our Kids from Social Media Act, on grounds of lack of associational standing and ripeness.

→ **Background.** California enacted the Protecting Our Kids from Social Media Act to regulate how social media platforms allow minors access to personalized recommendation algorithms. Without parental consent, the Act (1) restricts minors' access to algorithmic feeds through its personalized-feeds provisions, (2) restricts certain platform design features through its default- settings provisions, and (3) mandates that platforms institute yet-unknown age-verification procedures (to be announced before 2027).

The Act requires two default settings. First, under the "like-count" provision, covered web platforms may not show minors how many likes, shares, or other forms of feedback a post has received within a personalized recommendation feed. Second, covered platforms must make minors' accounts private, which means their posts are visible only to friends on the platform. These restrictions can be bypassed with parental consent.

NetChoice, an internet trade association with more than 100 members, including Google, Meta, X, YouTube, Facebook, Instagram, and Pinterest, contended that the Act violates the First Amendment and filed suit and sought a preliminary injunction. NetChoice alleged that the Act unconstitutionally limits its members' ability to speak to minors (via personalized recommendation algorithms), impedes minors' ability to access speech or speak publicly (via accounts not in private mode), and deters adults from accessing its members' speech (by requiring them to first prove they are adults). NetChoice argued that the Act is unconstitutional facially and as applied to its members. It also argued that some of the Act's language is void for vagueness.

The district court preliminarily enjoined California from enforcing the Act's provisions concerning sending notifications to minors and companies annually disclosing the number of minors that use their services. California did not appeal those issues.

The district court found that NetChoice's challenge to the age-verification requirements was not ripe because the requirement would not become effective until 2027, and the state had not yet issued rules describing what methods would satisfy the requirements. As to NetChoice's challenge to the personalized-feeds restrictions, the court found that NetChoice lacked associational standing because the challenges for each member required their own ad hoc factual inquiry. The court did not decide NetChoice's facial challenges to the personalized-feeds provisions because there was not an adequate record to decide the scope of the Act's coverage.

Regarding the Act's other provisions, the district court concluded that the Act's central coverage and its like-count and private-mode default settings passed constitutional muster. Finally, the court concluded that the Act's terms were not void for vagueness. NetChoice appealed.

→ **Associational Standing.** Starting with NetChoice's as-applied challenges to the Act's personalized-feeds provisions, the Ninth Circuit reviewed the district court's conclusion that NetChoice could not pursue this claim on behalf of its members.

Associational standing requires an organization to show (1) that its members would have standing to sue on their own, (2) that the interest it asserts is germane to the organization's purpose, and (3) that neither the claim asserted nor the relief requested requires individualized proof. Because NetChoice was not asserting its own legal rights or interests but was instead seeking to vindicate its members' rights, it was required to establish the threshold requirements for associational standing.

The Ninth Circuit found that the third requirement, which it noted constitutes the "prudential prong of associational standing," was not met. The court found that NetChoice had not provided enough information about its members' algorithms and feeds. NetChoice suggested that six of its member companies were covered by the Act, but it provided declarations discussing the operations of only three of those six. The court explained that whether the platform feeds of those companies were expressive was not dispositive, because it was required to review each member's algorithm and how it functions to determine whether an algorithmic feed is expressive.

To that end, the court noted that First Amendment analysis—whether in as-applied or facial challenges—is fact intensive and would surely vary from platform to platform. It means that the merits of the claim asserted and the relief requested in the third requirement "requires the participation of individual NetChoice members, making associational standing inappropriate."

The court cited a spectrum upon which algorithms may fall, from those like traditional media that promote their own message and thus are considered protected speech, to those that respond solely to how users act online and thus are unlikely expressive. The court emphasized that "[k]nowing where each NetChoice members' algorithm falls on that spectrum reasonably requires some individual platforms' participation."

Thus, the court of appeals found that the district court's decision that it needed more information—including the participation of individual members—to adjudicate NetChoice's claims was not arbitrary, irrational, or contrary to law. The court concluded that the district court had not abused its discretion in finding that NetChoice lacked associational standing on behalf of its members to bring the as-applied challenge to the Act's personalized-feeds provisions.

→ **Ripeness.** To support its as-applied challenge to the Act's age-verification requirements, NetChoice argued that the requirements would chill users' access to speech and would be costly to its members. However, the third-party internet users' interests at large were not enough to challenge this provision as applied to NetChoice's members, and NetChoice could not assert third-party interests separate from its members. Thus, NetChoice was left with its members' pocketbook injury alone as its alleged cognizable injury, which the Ninth Circuit found was neither imminent nor ripe.

→ **Constitutional Ripeness Restricts Courts From Acting Before Actual Case or Controversy Arises.** "Ripeness asks whether the injury has been suffered—or is imminent enough to invoke the judicial power." It "is peculiarly a question of timing." Because the Act does not require NetChoice members to do any age verification before 2027 and no regulations had yet been issued by the state attorney general, the court concluded that they had suffered no ripe injury attributable to the age-verification provision, and none was imminent. "At this point," the court noted, "any pocketbook injury caused by the age-verification provision is purely speculative. And any costs that NetChoice members are incurring now to comply with yet-unknown regulations are self-inflicted."

In so finding, the court explained that while pre-enforcement review is available in some circumstances, such review is ripe "only when the plaintiff intends to act in a way 'proscribed by the statute' and when there is a

‘credible threat’ that the violation will be prosecuted.” In this case, in which there was not yet any indication what conduct will be proscribed under the challenged provision, NetChoice could not show that it intended to engage in conduct prohibited by the Act.

Nor did the court find that the “currently non-existent age-verification requirements . . . impose any injury on NetChoice members” or could do so before 2027. Therefore, any argument that members would have to do something, without any indication of what that might be, was purely “conjectural” or “hypothetical.” Thus, the court concluded that NetChoice’s as-applied challenge to the age-verification requirement was unripe.

→ **Additional Findings.** The Ninth Circuit agreed with the district court that NetChoice’s facial challenge to the personalized-feeds provisions failed for lack of an adequate record and that the private-mode default setting passed constitutional muster both as applied and facially.

However, regarding the like-count default setting, the Ninth Circuit found that the regulation is itself content-based, thus triggering strict scrutiny. To that end, the court concluded that the regulation would likely fail strict scrutiny and that NetChoice showed a likelihood of success on the merits regarding this provision.

→ **Conclusion.** The Ninth Circuit reversed the district court’s denial of an injunction as to the like-count provision and remanded with instructions that the district court modify its injunction to enjoin the provision’s enforcement. In all other respects, the appellate panel affirmed the district court’s denial of a preliminary injunction, including its decisions that NetChoice lacked associational standing for its as-applied challenge to the Act’s personalized-feeds provisions and that its as-applied challenge to the Act’s age-verification requirements was unripe.