

Jess: A note for our listeners: We are aware of the Texas Attorney General press release announcing the arrest of a Houston-area midwife and a co-worker for allegedly providing illegal abortions among other charges. She has been charged IN Waller County with illegal performance of an abortion, which is a second degree felony, and she has also been charged with practicing medicine without a license. We are following the story and awaiting more details so that we can cover it ethically and factually and not rely on statements or framings from Texas law enforcement.

On with the show.

Imani: Hello fellow law nerds! Welcome to another episode of Boom! Lawyered!, a Rewire News Group podcast hosted by the legal journalism team xxyy.

I'm Rewire News Group's Editor at Large Imani Gandy

Jess: I'm Jess Pieklo, Rewire News Group's Executive Editor.

Rewire News Group is the one and only home for expert repro journalism that inspires [TKTK] and the Boom! Lawyered podcast is part of that mission. A big thanks to our subscribers and welcome to our new listeners.

Donald Trump has always had a strained relationship with the law, mostly because he's a cheat and a crook. Before his political career, Trump's business ventures were frequently entangled in legal disputes. The man is known in NYC for being a con man—for entering into contracts for services (construction and the like) and then refusing to pay. His real estate and casino enterprises faced multiple lawsuits alleging fraud, contract breaches, and regulatory violations. His Taj Mahal casino went bankrupt twice—once in the 90s and lest you think this was some youthful indiscretion that caused him to go oopsy on his casino venture, he also filed for bankruptcy again... in 2014. For the same damn casino.

Imani: His relationship with the law didn't improve when he became president. During his first term, Trump faced a lot of legal opposition. You may recall that his first order of business in January 2017 was to issue a travel ban executive order targeting predominantly Muslim countries. People immediately protested. Volunteer lawyers flocked to airports around the country to be of assistance. And that was just the beginning. Trump faced numerous legal challenges to his policies. He attempted to end the DACA program (Deferred Action for Childhood Arrivals); his goal was to deport millions of dreamers. The Supreme Court ruled against him, although notably only because he didn't follow proper procedure. We'll get into this in a bit, but this time around, he doesn't seem to give a shit what courts think when it comes to his obsession with deporting people.

Jess: Don't forget his two impeachments, the first in December 2019 because of abuse of power and obstruction of Congress related to that mess in Ukraine. Then again in January 2021 for inciting the riot. And then while we had a blissful respite from Trump during the Biden administration, the law kept coming for him. Lawyers hauled him into court time and again after he left office. It was lawyers who prosecuted him for election interference, and hoarding classified documents, and sexually assaulting E. Jean Carroll. Lawyers, lawyers, lawyers.

Imani: I suspect he doesn't like lawyers much. Particularly the lawyers who oppose him or help his political enemies. And especially now that there are nearly 120 lawsuits challenging his various policies—whether it's his policies on transgender folks in the military

Jess: —incarceration of trans women in men's prison

Imani: —his attacks on birthright citizenship

Jess: DOGE's attacks on the federal workers and agencies and potential violations of their privacy

Imani:— and on and on. What do all of these topics have in common (besides being steps on the road to authoritarianism?)

Jess: I'm going to go with lawyers.

Imani: Lawyers, Jess. People like you and me.

Jess: Well not exactly like you and me.

Imani: But it used to be us! I mean you didn't work at some Big city Big Law firm per se, but I remember stories of you having to breastfeed Owen in a closet at the firm you worked at. You were a DEI hire somewhere. And me? Just look at me. Clearly a DEI hire. And I did work at Big Law firms. Several of them in fact. Latham & Watkins. Simpson Thacher. Alston & Bird. Brown & Wood which merged with Sidley & Austin Covington & Burling (which is incidentally one of the firms Trump is picking on now.)

Jess: Imani, you're just naming law firms. We get it.

Imani: I think I blacked out for a minute. But back to Trump. He doesn't like lawyers (and doesn't much like the law if it doesn't let him do whatever he wants it to do), but lawyers? Whew. And because he's a child throwing a tantrum, he's not even keeping his ire trained on the specific lawyers who he thinks wronged him. Oh no. He's going after entire law firms.

Jess: Whole ass law firms. Trump recently issued an executive order targeting the law firm Perkins Coie. Perkins Coie is notable for having represented the Clinton campaign in 2016 and for being the original stomping grounds of Marc Elias, who has since left to form his own firm, but who prevailed in several voting rights cases, and proved to be a thorn in Trump's side.

In response to Trump's EO, you can imagine the barn burner of a lawsuit that Perkins Coie filed against the Trump administration after hiring powerhouse law firm Williams & Connolly to represent them.

Imani: The EO is absurd on its face. The order restricts PC lawyers' access to federal buildings. How are you supposed to practice law if you can't get in the building. And as they point out in their lawsuit, how are they supposed to meet with clients if those clients are government contractors. Or meet with clients who do business with government contractors. The Trump EO threatens to end government contracts with anyone who has Perkins Coie as their lawyers.

The EO also strips all Perkins Coie lawyers and staff of security clearances. The EO basically makes it impossible for Perkins Coie to conduct some of its business.

It also makes wild allegations that Perkins Coie is racial discrimination by virtue of its commitment to DEI and honestly, commitment is a strong word if you ask me. The Trump administration's obsession with DEI is truly unhinged. His claims about Perkins discriminating against white lawyers are completely bananas, but that seems to be the tactic he is using to go after these law firms. Just this week, twenty more law firms were targeted.

Jess: Right. Reuters reported earlier this week that EEOC's acting chair, Andrea Lucas, has sent letters to twenty law firms that their DEI policies may be illegal. The letters are ridiculous. They ask for a bunch of information about summer associate programs and what not and the number of Black and brown lawyers that have been hired.

Specifically, any firm that made a commitment to increase the number of Black lawyers are being treated as if they've committed a crime.

Imani: I honestly had to stop reading the letters because I found them so fucking offensive, particularly as a former attorney at Big law. I know how hard it is for Black associates and these firms decided to mentor black associates and that's being painted as nefarious. And it's bitterly ironic to watch Perkins Coie respond to that charge by explaining that it decided to comply with fascism in advance rather than fiercely back DEI. It says, rather meekly, that the firm continues to make public statements advancing the ideals of DEI. But like, what? How does that help anything? But I suppose if any Big Law firm has a commitment to DEI, it's the firm that Intel and Microsoft recognized as their most diverse legal team. But let's get real: I did some digging and the number of Black partners at law firms is about 2.5% for all firms and 1% for firms with less than 100 lawyers. 51% of firms have no Black partners at all. So really this is just ferreting out non-white male lawyers and decreeing them as inherently incompetent.

Jess: Well Perkins Coie isn't taking any of this lying down. In their lawsuit, they argue that the executive order is an act of political retaliation that infringes on Perkins Coie's First Amendment right of association and free speech by penalizing them for representing clients who oppose the administration. They're arguing viewpoint discrimination.

They also allege they've been stripped of their right to due process under the Fifth Amendment. They're arguing that the order singles them out without prior notice or an opportunity to respond, effectively punishing them without legal proceedings.

Imani: My favorite part of the lawsuit, besides the thorough dragging of Donald Trump, is the way they frame his anti-DEI nonsense.

"The Order also fails to provide adequate notice as to what are prohibited "diversity, equity, and inclusion" policies. The Order is unconstitutionally vague because Perkins Coie cannot know whether it can hire, promote, staff or train employees who are racial minorities or unspecified "other categories prohibited by civil rights laws."

Like, we can't even hire Black people anymore?

Imani: Also, it's worth noting that the Trump administration recently issued a similar executive order aimed at another power house law firm, Paul Weiss. Paul Weiss ought to hire Williams and Connolly to rep them too. It could be a whole new cottage industry for Williams and Connolly—representing law firms targeted by Trump.

He also issued an executive order stripping security clearance from lawyers at Covington & Burling.

Jess: Reading the complaint is sort of like 'boo hoo'. Yes PC is losing a ton of money in billing but it's a multimillion dollar firm. They'll be fine. I'm more concerned about big law firms cowering before Trump in an effort to stay off his radar. Meanwhile a lot of people who are being targeted by this administration are the type of people that the pro bono department of big law firms would handle.

Imani: When I worked at Latham, there were a ton of associates that did detainee work at Gitmo. Under this administration, those kinds of law firms might be targeted, have their security clearances revoked which means they wouldn't be able to do that type of work.

Jess: Trump's tactics go beyond targeting law firms. He's waging a broader war on the courts. He's reshaping the DOJ in his image. They're his lawyers now. The Civil Rights Division which formerly was a respected division of the DOJ is now focused on rooting out nonexistent discrimination against white people

Imani: And now he's just straight up ignoring court orders. A couple of judges who ordered the administration to end the freeze on foreign assistance have said that the Trump administration hasn't fully complied with the orders. A federal judge in Rhode Island said Trump had violated his order blocking a federal funding freeze in early February. Later that month another federal judge said that the Trump admin didn't fully comply with his order to end the freeze on foreign assistance.

But it wasn't until this week that the Trump administration really threw up two middle fingers at the federal judiciary. On Saturday, a federal judge blocked Trump's effort to use the Alien Enemies Act of 1798 to deport people he suspected of being in a Venezuelan gang, Tren de Aragua, to detention camps in El Salvador.

The judge also ordered that any deportation flights carrying these suspected gang members pursuant to a WH proclamation be returned to the U.S.

From NBC News:

Chief Judge of the D.C. District Court James E. Boasberg initially issued a temporary restraining order preventing the Trump administration from deporting the five Venezuelans named in the lawsuit for at least 14 days.

Boasberg has now expanded the decision to apply to "all non-citizens in U.S. custody" who are subject to Trump's proclamation.

The Justice Department appealed the decision Saturday night.

The ruling means all Venezuelan citizens 14 years or older who are members of Tren de Aragua, currently in the country and are not naturalized or lawful

permanent residents of the United States are to remain in the United States for 14 days or until further order of the court.

“Any plane containing these folks that is going to take off, or is in the air, needs to be returned to the United States,” the judge said. “Those people need to be returned to the United States.”

Jess: Did you say the Alien Enemies Act of 1798?

Imani: I sure did. It authorized the president to detain, deport, or restrict non-citizens (aliens) from a country with which the U.S. was at war. It was infamously used in World War II to detain Japanese Americans in internment camps.

Jess: Are we at war? I wasn't aware that we are at war?

Imani: We're being invaded by Latin American gang members, Jess. I thought you knew.

Jess: Right right. This is part of Trump's campaign promise to use this law to target gang members and drug dealers and whatnot. Incidentally, this is the same invasion that the Trump administration is saying gives them an out when it comes to birthright citizenship. A lot of conservative legal scholars are trying to argue that of course the birthright citizenship guarantee doesn't apply during times of invasion or war. Remember, James Ho said, No one to my knowledge has ever argued that the children of invading aliens are entitled to birthright citizenship. And I can't imagine what the legal argument for that would be.”

Imani: So the judge ordered Trump not to deport the people and Trump didn't deport them right?

Jess: Nope.

Imani: Of course not. What actually happened is something out of Benny Hill:

Despite Boasberg's order saying “don't deport these people”, the administration proceeded with the deportation of over 200 individuals to El Salvador.

Judge Boasberg explicitly ordered the government to turn around any aircraft that had already departed if it was still in the air

The administration claimed that since the flights were over international waters, the judge's order did not apply.

White House Press Secretary Karoline Leavitt stated that the administration "did not 'refuse to comply' with a court order," arguing that the written order and the administration's actions do not conflict.

And then Tom Homan, Trump's border nazi, is all "Fuck you make me stop." "We're not stopping. I don't care what the judges think—I don't care what the left thinks. We're coming." That's what he said.

Jess: This is an actual nightmare. People keep speculating about when the constitutional crisis is coming. IT IS HERE.

On Monday March 17, Boasberg held another hearing at the district court in DC that was basically like "I know you jamokes didn't just up and ignore my order." And the DOJ's lawyer basically refused to answer any questions in detail about the flights to El Salvador, arguing that Trump has broad authority to remove immigrants from the U.S. with little to no due process under the Alien Enemies act of 1798.

Boasberg told the DOJ lawyer to certifying in writing on Tuesday the 18th that no immigrants were deported after Boasberg's "don't deport these people, you assholes" order went into effect.

Imani: I think what we're going to find out is that yes, people were removed, and Judge Boasberg is daring the DOJ to either lie and say people weren't removed, or to refuse to respond to Boasberg's request, thus making it more likely the government will be held in contempt. Or they'll say "yeah we deported these people, what are you going to do about it?"

In which case we're going to see what Judge Boasberg can actually do about it—which raises the question, so what can he do about it?

Jess: fines. Contempt. Fuck all. {YADDA YADDA} Trump is basically daring Boasberg to toss a bitch in jail.

Imani: I mean, you and I have both practiced law. The shenanigans the Trump administration is pulling with these deportations is bonkers. Judge Boasberg scheduled a hearing and the DOJ actually wrote a letter to the judge saying "you know, we don't think we're going to come. There's no point in this hearing because we're not going to give you any information about the deportation flights."

Jess: That takes balls.

Imani: It gets better! Or worse, depending on your perspective. The DOJ sent a letter to the D. C. Circuit Court of Appeals asking the Court to remove Judge Boasberg from the proceedings.

Jess: And we should be clear that Boasberg hasn't even gotten to the issue of whether or not Trump can deport people under the Alien Enemies Act. He just wants to know whether or not his order was violated. The White House is saying it wasn't. But it's also saying that the oral order wasn't enough and that it had to be written.

It's absurd. WH press secretary Karoline Leavitt tried to claim that verbal orders don't hold the same weight. Bitch, since when? The White House is also arguing that the oral order and the written orders are different because the judge verbally told the DOJ to turn planes around, but the written version did not include instructions to turn back planes. WH officials have also claimed that the order doesn't apply to planes that were already over international waters.

Imani: So now we're getting into maritime law?

Jess: Well Boasberg said, according to the Times reporting, that he still has authority over the officials who make the decisions about the planes even if the planes are no longer within U.S. territories.

Imani: This is ridiculous. What's even more ridiculous is that the U.S. is paying El Salvador 6 million dollars to take these deportees and detain them in the middle of the jungle. And let's just call a spade a spade—these are concentration camps. Tell me how these aren't concentration camps? You said something so chilling to me the other day when we were talking about this script. You said "none of the concentration camps were actually in Germany."

Jess *reax.*

Imani: We are recording this at 9:30 MT on Wednesday. But documents in this case just keep being filed. The latest one filed this morning, I believe basically calls the dispute "a picayune dispute over the micromanagement of immaterial factfinding."

The Judge wanted information about the movements of the plane and how these folks were being sold to El Salvador.

Jess: And the DOJ was like “nah. We’re not providing any information and frankly fuck you for asking. That’s literally the tenor of the document which acts for a stay or pause of Boasberg’s Order that they provide more information, in camera, about deportation flights because, get this, they might invoke the state secrets privilege.

Imani: About airplanes that are flying around in public (the data is available via aviation tracking apps) with the president of El Salvador tweeting “oopsie” when a plane arrived in El Salvador after the judge ordered that it be turned back. And did you know that Marco Rubio retweeted that tweet? That oopsy tweet. We are tossing potentially innocent people into detention camps and Trump officials are cracking jokes and trolling people about it on Twitter. WHAT IS GOING ON.

Jess reacts:

Imani:The long and short of it is, fascism is here. Trump is ignoring court orders and removing people from this country with no due process. He’s attacking private law firms who are now going to be inclined not to represent people challenging some of Trump’s policies because they don’t want the next executive order to target them and cause millions in lost business. This isn’t just maybe possibly a constitutional crisis. It’s a full blown constitutional crisis. It’s the breakdown of democracy itself.