

Client Alert

Special Matters & Government Investigations

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For more information, contact:

Steve Cave
+1 703 245 1017
scave@kslaw.com

Rick Vacura
+1 703 245 1018
rvacura@kslaw.com

Keric Chin
+1 703 245 1011
kchin@kslaw.com

Lauren Horneffer
+1 703 245 1020
lhorneffer@kslaw.com

Mark Villapando
+1 703 245 1023
mvillapando@kslaw.com

Christina Wood
+1 703 245 7156
cewood@kslaw.com

King & Spalding

Northern Virginia
1650 Tysons Boulevard
Suite 400
McLean, Virginia 22102
T. +1 703 245 1000

Full Steam Ahead: Unpacking President Trump's Executive Orders Impacting Federal Contractors

Beginning on January 20, 2025, President Donald J. Trump issued a myriad of executive orders ("EO") and memoranda reflecting policy shifts in numerous areas of government contracting and procurement. These EOs cover a variety of public spending topics, including government oversight, defense and technology, energy, disaster relief, trade, immigration, and the federal workforce. The EOs and presidential directives are mandatory requirements for the Executive Branch and have the force and effect of law if issued consistent with presidential authority, as derived from the Constitution or a statute. Importantly, President Trump's EOs and executive memoranda demonstrate this Administration's attempt to prioritize certain aspects of national security, energy independence and maintaining a manufacturing base while shrinking the size of the federal government. Government contractors and recipients of federal funding may be impacted by these presidential directives. Highlighted below are several EOs, memoranda, and other presidential actions issued by the President and Executive Branch departments since the President took office on January 20, 2025, which are particularly relevant to government contractors and those companies broadly seeking to obtain agreements with appropriated funds from the federal government.ⁱ

Notably, this Administration also revoked many EOs, although these are not the focus of this alert.

Executive Branch directives affecting federal government contracting are occurring at an unprecedented rate, resulting in day-to-day (and at times, hour-by-hour) fluidity. We will continue to monitor current and future presidential directives, revocations of prior orders and actions, memoranda providing guidance for federal agencies, and federal court cases that may impact enforcement.

TRADE

The executive memorandum “America Trade First Policy,” issued on January 20, 2025, seeks to address the country's trade deficit in goods by requiring the Secretaries of Commerce, Treasury, and Homeland Security and the U.S. Trade Representative (“USTR”), to consider and recommend measures to remedy such deficits. Suggested measures include global supplemental tariffs; creating an “External Revenue Service,” to collect tariffs, duties, and other foreign trade-related revenues; identifying countries manipulating currency; and adjusting imports that threaten national security. The EO also tasks the USTR to review the impact of all trade agreements, including the World Trade Organization Government Procurement Agreement (“GPA”) as covered in EO 13788, dated April 18, 2017 (Buy American and Hire American), to ensure that trade agreements are being implemented in favor of domestic workers and manufacturers. The EO also requires the Office of Management and Budget (“OMB”) Director to assess any “distorting impact” caused by foreign government contributions or subsidies for federal procurement programs and to propose measures to combat these distorting impacts.

Many federal government contractors, from small businesses to the largest multinational companies, rely on global supply chains to meet their customers' demands. Contractors invest significant resources to ensure that their suppliers can provide quality products in a timely fashion and that the products comply with applicable domestic preference laws and regulations, including the Buy America Act (“BAA”) and the Trade Agreements Act (“TAA”). There may be significant impact on the country's relationship with other GPA parties which may interfere with a federal contractor's ability to procure eligible products from other countries, in compliance with the TAA. As a result, Contractors should monitor ongoing commitments to trade agreements (like the GPA) and any new tariffs. Contractors will need to continue to assess what impacts withdrawing from any trade agreements may have on their own business. Additionally, contractors will need to evaluate whether newly imposed tariffs will affect availability or impact pricing on components and materials sourced from foreign countries. Unanticipated changes to pricing may be recoverable through, for example, the Contract Disputes Act if tariffs result in higher performance costs.

Contractors should also look out for requests for information or requests for proposals to create feasibility studies on creating an External Revenue Service. We will continue to monitor whether OMB or other government agencies issue subsequent memoranda providing further guidance on their findings regarding foreign government contributions or subsidies to Federal procurement programs.

GOVERNMENT TELEWORK ENDING

President Trump issued the memorandum “Return to Work” on January 20, 2025, directing department and agency heads in the Executive Branch to terminate remote work and require employees to return to work in-person on a full-time basis with exemptions deemed necessary. On January 28, 2025, OMB emailed federal employees outlining four pillars of a reformed workforce, concluding that federal employees may choose to either (1) remain in their position with no guarantee concerning continuity or (2) leave the federal government under a deferred resignation program, which was originally outlined on January 28, 2025. Employees choosing to leave the federal government may resign and retain all pay and benefits until September 30, 2025, but the last day to accept the deferred resignation program is February 6, 2025. Those employees who choose to participate in the deferred resignation program will not be subject to return to office requirements.

Although it is still unclear how this memorandum will impact contractors working with the federal government, contractors should position employees to be ready to adhere to similar requirements. In other words, contractors billing under a government contract may be required to work at an assigned location, which may impact availability of contractor staff and cost or pricing. There are a variety of potential impacts to consider including, for example, potential claims under the Contract Disputes Act and requirements pertaining to identified key personnel, if those individuals

become unavailable due to changes in workplace expectations. We expect implementation of this EO to impact contractors' indirect costs under federal contracts, given that many contractors may have reduced office space with a higher percentage of remote workers.

GRANTS IN THE ENERGY SECTOR

In the EO, "Unleashing American Energy," President Trump outlined a policy to encourage energy exploration and production on federal lands and waters, including on the Outer Continental Shelf, and for the country to be a leading producer and processor of non-fuel minerals, including rare earth minerals. To ensure that these efforts are not stifled, the EO requires the heads of all agencies to consult with the OMB Director and the National Economic Council ("NEC") and review all existing regulations, orders, guidance documents, policies, settlements, consent orders, and other agency actions (collectively, "agency actions"). The agency heads are required to identify agency actions that impose an "undue burden" on the identification, development, or use of domestic energy resources, while paying particular attention to oil, natural gas, coal, hydropower, biofuels, critical mineral, and nuclear energy resources.

The EO rescinds EO 14037 and its stated goal of establishing an automobile market with at least half of all new vehicles being zero-emission vehicles by 2030. Notably, the EO requires all agencies to immediately pause disbursing funds appropriated through the Inflation Reduction Act of 2022, and the Infrastructure Investment and Jobs Act, freezing billions of dollars in funding. Heads of agencies must submit reports to the OMB and NEC that include detailed findings of the agencies' review of its policies and programs for issuing grants, loans, contracts, and other financial disbursements. Specifically named programs that are affected by the funding pause include the National Electric Vehicle Infrastructure Formula Program and the Charging and Fueling Infrastructure Discretionary Grant Program.

The Department of Energy is one of many agencies that disburse billions of dollars in grant money appropriated through the Inflation Reduction Act. For example, the Domestic Manufacturing Conversion Grants program is a cost-sharing grant that promotes the production of more electric vehicles. Notably, the OMB Acting Director recently rescinded OMB memorandum M-25-13, issued on January 27, 2025, which directed a temporary pause of all activities related to the obligation or disbursement of federal financial assistance that may be implicated by Trump's recently executed EOs. On January 28, 2025, the White House clarified that any program not implicated by the President's Executive Orders would not be subject to a pause in federal financial assistance. That same day, Judge Alikhan of the U.S. District Court for the District of Columbia issued an administrative stay pending a hearing on a motion for preliminary injunction barring OMB from implementing policies outlined in the memo. On January 29, 2025, OMB Acting Director, Matthew Vaeth, notified federal agencies through a brief memo that OMB M-25-13 was rescinded ("OMB Memorandum M-25-13 is rescinded. If you have questions about implementing the President's Executive Orders, please contact your agency General Counsel.").

There are foreseeable challenges to agencies that continue to halt the disbursement of funds pursuant to this EO despite the rescinding of OMB memorandum M-25-13. The EO also does not provide any guidance on the definition of "undue burden" that regulations, orders, or policies may impose on the development of domestic energy resources. Given the fluidity of this EO, it is difficult to assess (or guess) what the impact may be on entities and individuals that receive federal grant funding.

DEI PROGRAMS ELIMINATED

On January 20, 2025, President Trump signed EO 14151 "Ending Radical and Wasteful Government DEI Programs and Preference." EO 14151 directs the Office of Personnel Management ("OPM") Director, assisted by others, to coordinate and terminate diversity, equity, inclusion, and accessibility (known as "DEIA" or "DEI") mandates, policies, programs, preferences, and activities in the federal government regardless of name. To implement this directive, the OPM Director, with the assistance of the Attorney General, will review and revise all existing federal employment practices,

union contracts, training policies, or programs. Within 60 days of this Order, all DEI, DEIA, and environmental justice positions will be terminated, including equity-related grants or contracts and all DEI or DEIA performance requirements for contractors or grantees.

Additionally, while OMB M-25-13 has been rescinded, this EO is still active. EO 14151 still requires agencies to terminate DEI, DEIA, and environmental justice grants or contracts, as well as provide the OMB Director with a list of federal contractors and grantees who have provided DEI training or received federal funding to advance DEI, DEIA, or environmental justice programs, services, or activities since January 20, 2021. Government contractors that provide these services, or that provided these services in the past, which relate to DEI, DEIA, or environmental justice, should expect to receive stop work orders and terminations in the coming weeks. Government contractors may need to conduct an internal review to determine which contracts may be impacted, and how to settle any final costs incurred in connection with performance. Indeed, as long as EO 14151 remains in effect, any equity-related grants or contracts are still subject to termination.

Similarly, EO "Ending Illegal Discrimination and Restoring Merit-Based Opportunity" rescinded EO 11246 "Equal Employment Opportunity," which is nearly 60-years old, thereby eliminating contractors' affirmative action program obligations. Federal contractors may comply with EO 11246 for a period of 90 days, from the date of this EO, and then they will no longer be required to prepare and maintain annual affirmative action programs. Of course, EO 11246 is only one element of contractors' affirmative action requirements, which are also found, for example, in the Federal Acquisition Regulation ("FAR"). As a result, it is unclear whether the FAR Council will remove any clauses, including 52.222-26, Equal Opportunity, and what will happen to any pending Office of Federal Contract Compliance Program ("OFCCP") review or audit. Notably, EEO-1 filings are still required for private employers in accordance with Title VII of the Civil Rights Act of 1964.

ARTIFICIAL INTELLIGENCE

On January 23, 2025, President Trump signed EO "Removing Barriers to American Leadership in Artificial Intelligence" outlining its policy to sustain and enhance the United States' global AI dominance to promote national security and economic competitiveness. To achieve this policy, within 180 days of this EO, the Assistant to the President for Science and Technology ("APST"), the Special Advisor for AI and Crypto, and the Assistant to the President for National Security Affairs ("APNSA"), in coordination with others, will submit an action plan to the President. Revocation of EO 14110 (Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence) will be reviewed by the APST, the Special Advisor for AI and Crypto, and the APNSA to identify actions taken under EO 14110 that may not be in line with this EO, and therefore, those inconsistent actions may be suspended, revised, or rescinded.

For government contractors interpreting EO 14110's rescission and replacement with this EO, the difference is largely in policy. EO 14110 focuses on the previous administration's concerns with security, privacy, and diversity. To that end, EO 14110 directed agencies to issue guidance on AI related topics and for the White House AI Council to coordinate with agencies to implement AI policies in accordance with the policies set forth therein. President Trump's latest EO on removing AI barriers takes a different focus; this EO places emphasis on economic competitiveness and speeding up development to enhance national security. While it is unclear how agencies will implement this EO, there may be less regulation and compliance for contractors developing AI without similar security and privacy barriers.

GOVERNMENT HIRING FREEZE

On January 20, 2025, President Trump issued the memorandum, "Hiring Freeze," prohibiting the federal government from filling any position that was vacant as of noon that day or from creating any new positions. The hiring freeze does not impact military personnel and positions involving immigration enforcement, national security, and public safety. The

memorandum specifically noted that it does not abrogate any collective bargaining agreement in effect on the date of the memorandum.

Within 90 days of the date of the memorandum, the Directors of OMB, OPM, and the Administrator of the US DOGE Service (“USDS”) are required to submit a plan to reduce the size of the federal government’s workforce.ⁱⁱ Once that plan is issued, the hiring freeze will expire except for the Internal Revenue Service (“IRS”). The hiring freeze for the IRS will be lifted only after the Secretary of the Treasury, the Director of OMB, and the Administrator of USDS determine that it is in the national interest to lift the freeze.

The memorandum specifically prohibits the use of contractors to fill positions to “circumvent the intent” of the memorandum. To address the current demands of each agency, heads of executive departments and agencies are tasked with determining how to deploy the use of both existing personnel and funds to “improve public services and the delivery of these services,” allowing the agency and department heads to reallocate resources to maintain high priority needs and maintain essential services.

If fully implemented, we expect this memorandum to dramatically impact the way in which the federal government functions because agencies will need to evaluate the tasks expected to be performed by new hires. Agencies will need to redistribute work among existing employees and potentially terminate employees to implement efficiency measures. Reallocating work may delay the award of federal contracts or the resolution of contract claims, among other things. On January 28, 2025, the Department of Defense (“DoD”) issued a press release addressing the impact of President Trump’s EOs. That same day, in response to the recently rescinded OMB memorandum M-25-13, DoD stated that it would temporarily pause the obligation or disbursement of financial assistance but noted that OMB M-25-13 does not include contracts. DoD assured the public that it will not stop awarding new contracts. Nevertheless, we have heard from numerous clients that various procurement and contracting offices have informed contractors that evaluations and contract awards will be impacted by changes in department functionality and personnel.

DEFENSE AND TECHNOLOGY

On January 20, 2025, President Trump signed EO “Securing Our Borders” to address this Administration’s views on the number of immigrants entering the United States. According to this EO, the previous Administration’s “catch-and-release policies,” allowed potential terrorists and members of cartels and gangs into the United States. The EO’s policies include establishing a physical wall supported by adequate personnel and technology; deterring illegal immigrants from entering the country; detaining and removing all immigrants who have violated Federal or State law; and pursuing criminal charges against illegal immigrants that violate, or facilitate violation of, immigration laws. The EO requires the Secretaries of State, Health and Human Services, and Homeland Security, as well as the Attorney General to provide recommendations to the President within 14 days after the date of the EO on the use of any other authority to protect the country from foreign threats and to secure the southern border.

The EO provides a comprehensive plan for how the President will secure the country’s border. Assuming the President will have the resources available to fulfill this EO, government contractors will certainly be required to help execute the plan. This includes construction contractors, security service contractors, and technology and AI contractors. We anticipate that implementation of the EO will require additional capabilities in surveillance, security solutions, and processing collected DNA samples pursuant to the DNA Fingerprint Act of 2005. Additional personnel may also be required to assist with processing illegal immigrants who enter the country and to manage the detention centers, although that is unclear given the President’s more recent announcement that he is exploring the use of Guantanamo

Bay facilities in connection with this EO. We will continue to monitor developments as the identified members of the President's cabinet and Attorney General submit their recommendations.

On January 27, 2025, President Trump signed EO "Iron Dome for America," outlining the Administration's focus on domestic defense. Specifically, the United States will deploy and maintain a next-generation missile defense shield; deter and defend the country against foreign aerial attack; and secure second-strike capabilities. To effectuate these policy goals, the Secretary of Defense will submit an implementation and architectural plan to defend the country against ballistic, hypersonic, advanced cruise missiles, and other next-generation aerial attacks from peer, near-peer, and rogue adversaries. This plan will include, but is not limited to, accelerating the deployment of a hypersonic and ballistic tracking space sensor layer to detect and track missiles in flight; developing capabilities to defeat missiles prior to launch, during the boost phase, and during the final stage of a missile's flight; and developing non-kinetic capabilities (without physical force, such as cyber operations) in defense.

This EO makes it almost certain that federal spending for air and space missile defense systems will significantly increase. While the impact of this EO is uncertain, federal contractors in this field may experience increased contracting opportunities through new programs and/or expansions on existing air defense programs.

DISASTER RELIEF

During Hurricane Helene and other recent disasters, President Trump noted in his EO "Council to Assess the Federal Emergency Management Agency" ("FEMA"), signed on January 24, 2025, that FEMA responders were directed to avoid the homes of Trump supporters. President Trump's EO expressed concern regarding political bias in FEMA. This EO establishes a Council to advise President Trump, through the Assistant to the President for National Security Affairs, the Assistant to the President for Homeland Security, and the OMB Director, on FEMA's ability to impartially address national disasters. To that end, the Council is tasked with recommending changes to FEMA to serve the national interest.

Government contractors in this field should note that the Council will solicit public comments to ensure that the Administration is considering a broad range of expertise. The Council will hold its first public meeting within 90 days of the date of this order—April 24, 2025. The Council will consider the public's comments and submit a report to President Trump within 180 days of the public meeting.

GOVERNMENT OVERSIGHT

In President Trump's memorandum, "Regulatory Freeze Pending Review," issued on January 20, 2025, the President stopped all federal agencies from proposing or issuing any regulatory actions until after the head of a department or agency (or her designee) has the opportunity to review and approve those actions. Any rules that have been sent to the Office of the Federal Register ("OFR") but are not yet published must be withdrawn for review and approval. All executive departments and agencies must also consider postponing the effective date of the rules already published in the Federal Register for 60 days to evaluate those rules to determine if there are any questions of fact, law, and policy, as well as open a comment period for interested parties to identify issues of fact, law, and policy. The OMB Director may exempt any rule that is deemed to address emergency situations or other urgent circumstances.

Recent proposed rules that directly pertain to federal government contractors include the rule to amend the FAR to implement the National Archives and Records Administration's Controlled Unclassified Information Program, and the Preventing Organizational Conflict of Interest in Federal Acquisition Act. It is unlikely that the FAR Council will withdraw

these proposed rules during this freeze. Nevertheless, federal contractors may have to wait longer for the final rules, which may affect their overall strategic plans with their compliance programs.

SECURITY CLEARANCE BACKLOG

On January 20, 2025, President Trump issued the “Memorandum to Resolve the Backlog of Security Clearances for Executive Office of the President,” explaining that the backlog has resulted in individuals who have not received appropriate clearances in a timely manner and thus are ineligible to access the White House complex, infrastructure, and technology to perform their duties. Accordingly, the President ordered White House Counsel to provide the White House Security Office and Acting Chief Security Officer with a list of government personnel that are immediately granted interim Top Secret (“TS”)/Sensitive Compartmented Information (“SCI”) security clearances for a period not to exceed six months. The clearances would allow the employees of the Executive Office to perform their duties. The memorandum states that White House Counsel has the authority to supplement the list of personnel granted security clearances and to revoke interim clearances as necessary. It is unclear if the list of personnel granted security clearances will include government contractors.

CONCLUSION

Through the EOs and memoranda discussed above, President Trump has issued numerous directives to formulate an agenda that directly affects how federal agencies will operate moving forward. We expect that individuals and companies will challenge the legality of these actions, as we have already seen, despite many EOs stating that the included policies and actions are “consistent with applicable law.” Any forthcoming legal challenges and future rescissions of EOs and directives may continue to render all assessments incomplete and fluid. The federal contracting community (including those entities and individuals pursuing and receiving grants) needs to be prepared for fast-paced changes to regulations and regulatory schemes. We expect subsequent EOs and memoranda to be published in the coming days and weeks that will continue to enact President Trump’s agenda, all of which we will continue to monitor.

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¹ This article focuses on the potential impact these EOs may have on entities pursuing or performing federal contracts or subcontracts and/or other agreements funded with appropriated funds (including reimbursable grants and research projects).

² On January 20, 2025, President Trump issued the Executive Order “Establishing and Implementing the President’s ‘Department of Government Efficiency,’” (“DOGE”) a temporary organization used to implement the President’s agenda to modernize federal technology and software to maximize government efficiency and productivity. All agency heads are required to assign four employees, i.e. “DOGE Team members,” that will typically include a DOGE Team Lead, an engineer, a human resources specialist, and an attorney. Each DOGE Team is tasked with coordinating their work with the United States Digital Service and advise the agency head on implementing the President’s agenda.

Special Matters & Government Investigations Partners

Gary Adamson
New York
+1 212 556 2113
gadamson@kslaw.com

Adam Baker
New York
+1 212 556 2376
abaker@kslaw.com

J.C. Boggs
Washington, DC
+1 202 626 2383
jrboggs@kslaw.com

Christopher C. Burris
Atlanta
+1 404 572 4708
cburris@kslaw.com

Craig Carpenito
New York
+1 212 556 2142
ccarpenito@kslaw.com

Steve Cave
Northern Virginia
+1 703 245 1017
scave@kslaw.com

Michael J. Ciatti
Washington, DC
+1 202 661 7828
mciatti@kslaw.com

Daniel R. Coats
Washington, DC
+1 202 626 2642
dcoats@kslaw.com

Patrick M. Collins
Chicago
+1 312 764 6901
pcollins@kslaw.com

Ander M. Crenshaw
Washington, DC
+1 202 626 8996
acrenshaw@kslaw.com

Sumon Dantiki
Washington, DC
+1 202 626 5591
sdantiki@kslaw.com

Dan Donovan
Washington, DC
+1 202 626 7815
ddonovan@kslaw.com

Robert L. Ehrlich, Jr.
Washington, DC
+1 202 626 9710
rehlich@kslaw.com

David Farber
Washington, DC
+1 202 626 2941
dfarber@kslaw.com

Zachary Fardon
Chicago
+1 312 764 6960
zfardon@kslaw.com

Lucas Fields
Washington, DC
+1 202 626 2399
lfields@kslaw.com

Emily Gordy
Washington, DC
+1 202 626 8974
egordy@kslaw.com

Leah B. Grossi
Washington, DC
+1 202 626 5511
lgrossi@kslaw.com

Ehren Halse
San Francisco
+1 415 318 1216
ehalse@kslaw.com

Max Hill, K.C.
London
+44 20 7551 2130
mhill@kslaw.com

Amy Schuller Hitchcock
Sacramento/San Francisco
+1 916 321 4819
ahitchcock@kslaw.com

John A. Horn
Atlanta
+1 404 572 2816
jhorn@kslaw.com

Andrew C. Hruska
New York
+1 212 556 2278
ahruska@kslaw.com

Rob Hur
Washington, DC
+1 202 383 8969
rhur@kslaw.com

Mark A. Jensen
Washington, DC
+1 202 626 5526
mjensen@kslaw.com

Dixie L. Johnson
Washington, DC
+1 202 626 8984
djohnson@kslaw.com

William Johnson
New York
+1 212 556 2125
wjohnson@kslaw.com

Barry Kamar
Miami
+1 305 462 6044
bkamar@kslaw.com

Allison F. Kassir
Washington, DC
+1 202 626 5600
akassir@kslaw.com

M. Alexander (Alec) Koch
Washington, DC
+1 202 626 8982
akoch@kslaw.com

Yelena Kotlarsky
New York
+1 212 556 2207
ykotlarsky@kslaw.com

Steve Kupka
Washington, DC
+1 202 626 5518
skupka@kslaw.com

Jade R. Lambert
Chicago
+1 312 764 6902
jlambert@kslaw.com

Jamie Allyson Lang
Los Angeles
+1 213 443 4325
jlang@kslaw.com

Raphael Larson
Washington, DC
+1 202 626 5440
rlarson@kslaw.com

Carmen Lawrence
New York
+1 212 556 2193
clawrence@kslaw.com

Brandt Leibe
Houston
+1 713 751 3235
bleibe@kslaw.com

Aaron W. Lipson
Atlanta
+1 404 572 2447
alipson@kslaw.com

Daniel E. Lungren
Washington, DC
+1 202 626 9120
dlungren@kslaw.com

William S. McClintock
Washington, DC
+1 202 626 2922
wmcclintock@kslaw.com

Amelia Medina
Atlanta
+1 404 572 2747
amedina@kslaw.com

Kendrick B. Meek
Washington, DC
+212 626 5613
kmeek@kslaw.com

Andrew Michaelson
New York
+212 790 5358
amichaelson@kslaw.com

Jim C. Miller III
Washington, DC
+1 202 626 5580
jmiller@kslaw.com

Patrick Montgomery
Washington, DC
+1 202 626 5444
pmontgomery@kslaw.com

Paul B. Murphy
Atlanta/Washington, DC
+1 404 572 4730
pbmurphy@kslaw.com

Grant W. Nichols
Austin/Washington, DC
+1 512 457 2006
gnichols@kslaw.com

Alicia O'Brien
Washington, DC
+1 202 626 5548
aobrien@kslaw.com

Patrick Otlewski
Chicago
+1 312 764 6908
potlewski@kslaw.com

Michael R. Pauzé
Washington, DC
+1 202 626 3732
mpauze@kslaw.com

Michael A. Plotnick
Washington, DC
+1 202 626 3736
mplotnick@kslaw.com

Olivia Radin
New York
+1 212 556 2138
oradin@kslaw.com

John C. Richter
Washington, DC
+1 202 626 5617
jrichter@kslaw.com

Rod J. Rosenstein
Washington, DC
+1 202 626 9220
rrosenstein@kslaw.com

Daniel C. Sale
Washington, DC
+1 202 626 2900
dsale@kslaw.com

Heather Saul
Atlanta
+1 404 572 2704
hsaul@kslaw.com

Greg Scott
Sacramento/San Francisco
+1 916 321 4818
mscott@kslaw.com

Richard Sharpe
Singapore
+65 6303 6079
rsharpe@kslaw.com

Kyle Sheahen
New York
+1 212 556 2234
ksheahen@kslaw.com

Michael Shepard
San Francisco
+1 415 318 1221
mshepard@kslaw.com

Thomas Spulak
Miami
+1 305 462 6023
tspulak@kslaw.com

Aaron Stephens
London
+44 20 7551 2179
astephens@kslaw.com

Cliff Stricklin
Denver
+1 720 535 2327
cstricklin@kslaw.com

Jean Tamalet
Paris
+33 1 7300 3987
jtamalet@kslaw.com

Courtney D. Trombly
Washington, DC
+1 202 626 2935
ctrombly@kslaw.com

Rick Vacura
Northern Virginia
+1 703 245 1018
rvacura@kslaw.com

Anthony A. Williams
Washington, DC
+1 202 626 3730
awilliams@kslaw.com

David K. Willingham
Los Angeles
+1 213 218 4005
dwillingham@kslaw.com

David Wulfert
Washington, DC
+1 202 626 5570
dwulfert@kslaw.com

Sally Q. Yates
Atlanta/Washington, DC
+1 404 572 2723
syates@kslaw.com

Joseph Zales
New York
+1 212 827 4087
jzales@kslaw.com