Insights: Alerts

Anthropic's Motion for Stay Regarding FASCSA Designation Denied by D.C. Circuit

April 9, 2026

Written by **Gautam Y. Reddy, Gunjan R. Talati** and **Jennifer L. Andrews**

On April 8, a three-member panel of the D.C. Circuit denied Anthropic's emergency motion for a stay regarding the Department of War's designation of Anthropic as a supply chain risk under FASCSA (41 U.S.C. § 4713). However, the Court granted Anthropic's request for expedited consideration, setting an aggressive briefing schedule and scheduling oral argument for May 19, 2026. There is now tension between this ruling and the Northern District of California's grant of a preliminary injunction, which concerned 10 USC § 3252 and the directives by President Trump and Secretary Hegseth.

What Did the Court Find?

The Court briefly walked through the four-factor test to determine whether a stay is warranted: likelihood of success on the merits, irreparable harm to the movant, harm to the government, and the public interest (with factors three and four merged because the government is the respondent). Note that this order is much shorter and more cursory than the N.D. Cal. order, though the N.D. Cal. court had the benefit of hearing argument from the parties prior to issuing its ruling. First, the court declined to address Anthropic's likelihood of success on the merits, stating only that there are novel and difficult questions at play here. Second, the Court found that Anthropic will suffer some degree of harm, but that harm is primarily financial. In support, the Court pointed to public statements from Anthropic that attempted to assuage the public by stating that the vast majority of its customers would be unaffected by DoW's designation. Finally, the Court found that DoW had a significant interest in no longer using Anthropic. This diverges sharply from the N.D. Cal. order, where the Court found that granting injunctive relief would not force DoW to continue using Anthropic. The Court's finding also contradicted amicus briefs from retired senior military officers and former senior national security government officials supporting Anthropic's position.

What is the Practical Effect of this Ruling?

This ruling does not impact the N.D. Cal preliminary injunction, which went into effect on April 2 and allows for the continued use of Anthropic for commercial work and for government work for the 17 agencies listed in that order (see our previous legal alert for more details on the scope of that injunction). Secretary Hegseth's statement that “Effective immediately, no contractor, supplier, or partner that does business with the United States military may conduct any commercial activity with Anthropic” has been walked back by the government during oral argument in the N.D. Cal case and has no legal effect. Therefore, entities can currently conduct commercial activity with Anthropic and still do business with the United States military.

That said, for DoW-specific work on covered systems, the FASCSA designation remains in effect and the use of Anthropic remains barred for those specific contracts only. As previously mentioned, oral argument is scheduled for May 19, 2026. A merits decision from the D.C. Circuit could follow within weeks of argument given the expedited schedule. That decision will substantially clarify whether the FASCSA designation survives legal challenge and will either reinforce or undermine the N.D. Cal. injunction's continued vitality. We continue to recommend not making any permanent decisions on the usage of Anthropic within our organizations, and instead continue to monitor and audit Anthropic usage, particularly any Anthropic usage in military contracts or subcontracts.

Related People

Gautam Y. Reddy

t 404.815.6029

greddy@ktslaw.com

Gunjan R. Talati

t 404.815.6503

gtalati@ktslaw.com

Jennifer L. Andrews

t 404.685.6755

jeandrews@ktslaw.com