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Legal Sidebar

The Department of Justice's First Lawsuit Enforcing a Presidential Order Under Section 721 of the Defense Production Act

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On July 8, 2025, President Trump issued an order prohibiting a 2020 acquisition of Jupiter Systems, LLC (Jupiter), by Suirui International, a subsidiary of Suirui Group Co., Ltd. (Suirui). Suirui is organized under the laws of the People's Republic of China (PRC). Its subsidiary, Suirui International, is based in Hong Kong. Jupiter designs and produces hardware and software that is provided to U.S. government customers and integrated into military and critical infrastructure systems in the United States. In his order, the President found credible evidence that Suirui "might take action that threatens to impair the national security of the United States."

As the President's order recognized, the transaction being prohibited was already complete. Suirui purchased Jupiter more than five years before the President prohibited the acquisition. Section 721 of the Defense Production Act (DPA), however, gives the President authority to initiate reviews of—and ultimately to prohibit—certain foreign investments in the United States regardless of when the transactions at issue closed. Invoking that authority, the President ordered Suirui to divest all interests and rights in Jupiter within 120 days of July 8, 2025.

In February 2026, the Department of Justice (DOJ) sued Suirui and Jupiter, alleging that the ordered divestiture had not yet occurred. When announcing the lawsuit, DOJ stated that it marks the first time the agency has sought judicial enforcement of a presidential order issued under Section 721 of the DPA. Shortly after suing, DOJ asked the court to place Jupiter in a receivership while the litigation proceeds. On May 26, finding that "no remedy short of transferring Suirui's control of Jupiter Systems to a receiver will address the national security risks pending litigation," the U.S. District Court for the District of Columbia granted DOJ's request.

This Sidebar analyzes this first-of-its-kind enforcement action. It begins by describing the President's authority to prohibit transactions under Section 721 of the DPA. It then discusses the proceedings in DOJ's enforcement suit to date. The Sidebar closes with some considerations for Congress.

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Section 721 of the Defense Production Act

Congress enacted Section 721 of the DPA in 1988. The law codified the President's authority to investigate "mergers, acquisitions, and takeovers" that "could result in foreign control of persons engaged in interstate commerce in the United States." Shortly after enactment of Section 721, the President delegated authority to review and investigate transactions under the statute to the Committee on Foreign Investment in the United States (CFIUS). CFIUS is an interagency body chaired by the Secretary of the Treasury. Since the initial delegation, Congress has amended Section 721 of the DPA several times to modify CFIUS's authority, review procedures, and composition.

CFIUS currently has authority to review and investigate (1) mergers, acquisitions, or takeovers "by or with any foreign person that could result in foreign control of any United States business"; (2) certain purchases or leases of United States real estate by foreign persons; and (3) certain noncontrolling investments in U.S. businesses related to critical technologies, critical infrastructure, or sensitive personal data. The President may "suspend or prohibit" any covered transaction that "threatens to impair the national security" if the President finds (1) credible evidence of such a threat; and (2) that no laws—other than Section 721 of the DPA itself and the International Emergency Economic Powers Act—sufficiently protect against the national security risks at issue.

In limited circumstances, the parties to a covered transaction are required to file a declaration providing CFIUS with information about the transaction. In other cases, a party to the transaction can voluntarily initiate CFIUS's review process by filing a written notice or declaration. The President or CFIUS can also unilaterally initiate review of a covered transaction. If transacting parties elect not to file a notice or declaration, their transaction can remain subject to potential unilateral review indefinitely.

As a former Deputy Secretary of the Treasury and other former officials have explained to Congress, this creates an incentive for parties to notify CFIUS of transactions that may raise national security concerns. Declining to file a voluntary notification can leave the transaction "open to executive branch scrutiny permanently." By notifying CFIUS, on the other hand, parties can take advantage of Section 721's safe harbor: For most transactions, the government may not initiate a new review if CFIUS previously stated in writing that it had completed all action with respect to the transaction or the President previously announced that he would not take action under Section 721 with respect to the transaction.

If CFIUS determines that a transaction poses a risk to national security, it has authority to "negotiate, enter into or impose, and enforce any agreement or condition with any party to the covered transaction in order to mitigate" the risk. CFIUS may also refer transactions to the President for potential suspension or prohibition based on a presidential finding that the transaction threatens to impair national security. CFIUS's decision to enter into a mitigation agreement or refer a transaction to the President must be "based on a risk-based analysis," including an "assessment of the threat, vulnerabilities, and consequences to national security related to the transaction." In carrying out these directives, CFIUS has stated that it seeks to address "threats that can accompany foreign investment, while maintaining the United States' strong, open investment environment."

Suirui's Acquisition of Jupiter

Jupiter was founded in 1981. That year, it demonstrated technology that allows a single visual display to show multiple, simultaneous streaming videos in separate windows. Today, Jupiter continues to design and produce hardware and software that allows multiple data feeds to be organized across a panel of visual displays.

In 2017, Foxconn, an electronics company headquartered in Taiwan, purchased Jupiter. In 2020, Suirui acquired Jupiter and its subsidiaries from Foxconn. Suirui did not report its 2020 acquisition of Jupiter to CFIUS.

In 2024, during President Biden's Administration, CFIUS requested that Suirui and Jupiter submit a written notice of the completed transaction, and the parties did so. As discussed, CFIUS has authority to unilaterally initiate review of covered transactions for which the parties did not submit a voluntary notice.

During its review and investigation of the transaction, CFIUS identified national security risks posed by the transaction. CFIUS "evaluated the connections between Suirui, its officials, and the government of the [PRC]." It concluded that an entity listed as a Chinese military company operating in the United States indirectly holds an interest in Suirui and has a right to appoint one of Suirui's directors. Ultimately, CFIUS determined that Suirui's acquisition of Jupiter created national security risks that could not be mitigated without the transaction being abandoned.

On July 8, 2025, President Trump issued an order prohibiting the acquisition. The order requires Suirui to divest all interests and rights in Jupiter within 120 days of July 8, 2025, but permits CFIUS to extend that deadline. Prior to any divestiture, Suirui is required to identify the new purchaser or transferee to CFIUS, and CFIUS has thirty days to object to a purchase or transfer. Among other interim measures, the order requires Suirui and its personnel to immediately cease accessing certain nonpublic information maintained by Jupiter, unless the access is approved by CFIUS.

The Lawsuit Enforcing the President's Order

On February 9, 2026, DOJ sued Suirui and Jupiter. Since its enactment, Section 721 of the DPA has provided that the Attorney General can enforce presidential orders in court. The suit against Suirui and Jupiter, however, is "the first such action ever filed in federal district court," according to DOJ. The case thus provides the first opportunity for a court to weigh in on its role when adjudicating a Section 721 enforcement action.

Among other relief, DOJ is asking the court to declare that Suirui and Jupiter have not complied with the President's order, enjoin Suirui from owning or controlling Jupiter, and issue an order "transferring the equity and assets of Jupiter Systems held by Suirui to a third-party fiduciary pending a transaction." Shortly after filing the lawsuit, DOJ also moved for a preliminary injunction. In the motion, DOJ requests that the court appoint a receiver to manage Jupiter during the course of the litigation. The proposed receiver would "operate [Jupiter] under the direction of" the court and seek the court's approval for "major decisions."

A party seeking a preliminary injunction "must establish that [it] is likely to succeed on the merits, that [it] is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [its] favor, and that an injunction is in the public interest." On the merits, DOJ argues that the President made the findings required by Section 721 of the DPA—that there is credible evidence the Suirui acquisition could threaten to impair the national security, and that other provisions of law do not adequately protect against the national security risk—and those findings are not reviewable by courts. The presidential findings, in DOJ's view, are therefore sufficient to establish likely success in the enforcement action. DOJ also argues that the government will be irreparably harmed absent a receivership because Suirui's continued control of Jupiter exposes the military and critical infrastructure systems that use Jupiter's products to potential compromise. With respect to both the equities and the public interest, DOJ argues that the national security interests at stake outweigh Suirui's interest in delaying compliance with the President's order.

In response to DOJ's motion, Suirui affirms that it is willing to divest Jupiter on reasonable terms. Suirui and Jupiter nonetheless argue that no preliminary injunction should issue. In the companies' view, DOJ is unlikely to succeed in the case because the President's order allegedly violated their due process rights. Suirui and Jupiter contend that CFIUS was required to disclose the unclassified record of evidence on which it and the President relied when concluding Suirui's acquisition should be prohibited. Although CFIUS did provide a summary of its evidence, the companies contend the summary did not satisfy this due process requirement. DOJ cannot establish irreparable harm, the companies argue, because the transaction closed years ago and DOJ has not shown that Suirui took any action that impaired national security in the interim. Finally, Suirui and Jupiter argue that the equities and public interest weigh against the requested injunction because a receivership would harm Jupiter and its operations without vindicating any nonspeculative national security interest.

These arguments raise questions about the court's role in an enforcement action under Section 721 of the DPA. One question is whether the court has jurisdiction to consider the companies' due process defense. In an earlier case, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) held that the Due Process Clause of the Fifth Amendment requires CFIUS to provide certain procedural protections to transacting parties before depriving the parties of property. Suirui and Jupiter's due process defense is based on those protections. DOJ argues, however, that Section 721(e)(2) of the DPA, which requires that challenges to Section 721 actions be brought in the D.C. Circuit, precludes the district court from considering the companies' due process defense. In DOJ's view, Section 721(e)(2) deprives district courts of jurisdiction to decide any challenge to a president's order—including when the challenge is raised as a defense to an enforcement action. Suirui and Jupiter disagree with that reading of Section 721(e)(2). They claim the provision, which does not expressly address defenses to enforcement, applies only to lawsuits filed to affirmatively challenge an action taken under Section 721. The companies also point to a recent statement from the Supreme Court—that "[b]arring defendants in enforcement actions from raising arguments about the legality of agency rules or orders enforced against them raises significant questions under the Due Process Clause"—and contend that DOJ's reading of the statute would result in additional due process concerns.

The parties' arguments also raise questions about the proper remedy in a Section 721 enforcement action. Section 721(d)(3) of the DPA provides that the Attorney General may "seek appropriate relief, including divestment relief" from the court. Here, Suirui claims that it "has been working toward divestiture," but the parties dispute what other relief is appropriate. DOJ contends that Jupiter should be immediately transferred to a receivership because Suirui's "continued control of Jupiter Systems poses the risks to the national security that necessitated the President's Order." DOJ also points out that the order included a divestiture deadline, which CFIUS subsequently extended, but which Suirui did not comply with. Suirui responds that a receivership is extraordinary relief that could harm Jupiter and that DOJ's pending request is itself hampering ongoing efforts to divest. The court is thus faced with two very different claims about what constitutes "appropriate relief" when an acquirer has not completed an ordered divesture on the timeline prescribed by the President and CFIUS under Section 721 of the DPA.

The District Court's Decision to Grant a Preliminary Injunction

On May 26, 2026, the court granted DOJ's motion for a preliminary injunction. The court ruled that DOJ is likely to succeed on the merits of the case. The parties agreed that the President's findings and decision to prohibit the transaction are not subject to judicial review. The parties also agreed that Suirui had not yet divested from Jupiter as the President ordered. The court therefore focused on the companies' due process defense. Here, the court rejected DOJ's argument that Section 721(e)(2) of the DPA precludes the companies from raising the defense. It determined instead that nothing in Section 721 bars parties from raising due process or other constitutional defenses in enforcement proceedings. The court also determined, however, that Suirui and Jupiter received adequate process. The court found that CFIUS's correspondence with the companies during its investigation disclosed the national security concerns at issue and the unclassified evidence CFIUS relied on to analyze the transaction. Suirui and Jupiter then had an opportunity to rebut the concerns and evidence. That process, the court concluded, was sufficient.

The court also found that DOJ established that Suirui's continued control of Jupiter poses imminent national security risks and DOJ therefore satisfied the irreparable harm requirement. The same consideration—national security risks—demonstrated that a preliminary injunction would be in the public interest. The court acknowledged that some equities weighed against DOJ's requested injunction. A receiver may, for example, be disruptive to Jupiter's business. The court found, however, that Suirui was given "extensive opportunities to divest," so the business consequences of a preliminary injunction were in part the result of Suirui's own decisions. The relevant interests, the court concluded, weigh in favor of issuing the preliminary injunction.

As for the specific remedy, the court decided that transferring control of Jupiter from Suirui to a receiver was necessary to address the national security risks DOJ identified while the litigation proceeds. Although judicially compelled receiverships are extraordinary, the court explained, the remedy here was necessitated by DOJ's particular showing in the case, and comes in a context where the President has already ordered and Congress has expressly authorized the even more "drastic" remedy of divestment.

Considerations for Congress

The presidential order underlying DOJ's lawsuit against Suirui and Jupiter and the lawsuit itself are authorized by Section 721 of the DPA. Congress can amend Section 721 of the DPA and has done so before. The 119th Congress, for example, enacted amendments that address CFIUS's authority to identify government facilities in close proximity to which an acquisition of real estate may be subject to CFIUS's jurisdiction. Members have also proposed other amendments in recent Congresses.

Congress could amend Section 721 of the DPA to address issues that have been raised in the dispute between DOJ and Suirui and Jupiter. Congress could, for example, provide additional specific remedies that apply when a divestiture is not completed in the manner prescribed in a presidential order. Congress could also specifically address whether a district court has jurisdiction to hear a due process defense in a Section 721 enforcement action. As mentioned, however, barring defenses to enforcement actions can raise questions about the constitutionality of a statute. The same is true of barring constitutional challenges to government actions generally. Courts therefore have required "the clearest evocation of congressional intent to proscribe judicial review of constitutional claims" when deciding whether a statute deprives the judiciary of jurisdiction over a constitutional challenge.

Congress could also wait for the lawsuit against Suirui and Jupiter to conclude. The case is ongoing and could result in additional judicial interpretations of Section 721 of the DPA. In addition, Congress could leave the applicable authorities unchanged, or conduct oversight of CFIUS's activities.

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