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Litigators of the Week: Two Big D.C. Circuit Decisions Over Pentagon's Chinese Military Company Designations

By Ross Todd

August 21, 2026

Over the course of four days this past week, the D.C. Circuit issued a pair of rulings mapping a new playbook for challenging a “Chinese military company” designation from the Pentagon.

On Aug. 14, **Derek Shaffer** and his team at **Quinn Emanuel Urquhart & Sullivan.** won a partial reversal for drone maker DJI on administrative law. The panel held that the district court, which relied on the unclassified record, could not uphold the Pentagon›s designation by supplying reasoning that the agency itself had not articulated.

On Aug. 18, **James Tysse** and a team at **Akin Gump Strauss Hauer & Feld** won a reversal for LiDAR maker Hesai, with the same judge sitting on a different panel—Circuit Judge Bradley Garcia, again writing for a unanimous court. There, the court held that the Pentagon violated Hesai’s due-process rights by redesignating it without notice and an opportunity to respond.

Neither company is off the list as the cases proceed on remand. But together, the rulings mark the sharpest judicial scrutiny yet of the Pentagon’s Chinese military company designation process. In *DJI*, the court insisted that the government explain itself. In *Hesai*, it held that the government must also provide affected companies with meaningful process.

Lit Daily: Who were your clients in these appeals and what was at stake for them?

Derek Shaffer: Our clients are SZ DJI Technology Co., Ltd. and its wholly owned subsidiary, Shenzhen Dajiang Baiwang Technology Co., Ltd. DJI is the world’s largest privately owned manufacturer of commercial and recreational drones. Because DJI takes pains to guard against any use of its drones for military purposes anywhere in the world and prizes its relationships in the United States, the listing of it as a “Chinese military company” is extremely concerning. For the reasons we’ve submitted in court, we believe the listing of DJI is fundamentally unfair, misinformed, and violative of U.S. law.

James Tysse: Our clients are Hesai Technology Co., and its U.S. subsidiary, Hesai, Inc. Hesai is a Nasdaq-traded company that develops, manufactures, and sells Light Detection and Ranging (LiDAR) products. Like an airbag, LiDAR is a crucial safety technology that allows cars to navigate complex environments in real time. Hesai is a global leader in automotive LiDAR, and its customers include some of the biggest names in autonomous driving.

In January 2024, without prior warning or opportunity to be heard, the Department of Defense placed Hesai on its “1260H List”—a public roster of companies the Pentagon identifies as “Chinese military companies” operating in the United States under Section 1260H of a defense authorization bill. That government blacklisting immediately put the company’s good name and U.S. business at stake.

What did this designation mean for your client in practical terms? What effect did it have on the company and its business?

Shaffer: Since it received this designation, DJI has been fighting the stigma and reputational injury that result from being labeled a Chinese military company even though DJI does not make and has never made drones for combat purposes and in fact has strict policies preventing combat use of its drones. Despite those facts, its status as a listed company requires DJI to explain to its customers over and over why the listing is wrong; DJI products are used by many state and local first-responder agencies in the U.S., and of course those organizations were troubled by the (incorrect) idea that DJI somehow had an affiliation with the Chinese military.

Consequently, the stigma cost DJI financially: it has lost contracts, recruits, and some of its good name.

Tysse: That label was a significant reputational blow for a Nasdaq-listed company whose core market is civilian automotive safety technology. It jeopardized planned U.S. manufacturing, harmed the company’s stock price, and spooked customers. Beyond reputation, the designation triggered a variety of concrete statutory exclusions, including with respect to government contracting and procurement, funding under the CHIPS Act, and lobbying restrictions.

How did this matter come to you and the firm?

Shaffer: Through my partner **Mark Tung** and others, we’d long represented DJI in intellectual property matters and had developed deep mutual trust and relationships. When DJI’s previous counsel was unable to continue representing it in the district court, our expertise and success litigating against the government made us a natural fit. Thanks to our established relationships with both DJI as well as our friendships with the prior firm, the transition was smooth and we were able to substitute into the district court proceedings without missing a beat.

Tysse: Akin has a market-leading export controls and trade practice that advises companies around the world on compliance with U.S. law. One of my trade partners, **Jingli Jiang**, connected me (in my capacity as co-head of the firm’s administrative and regulatory litigation group) with Hesai shortly after its listing. We won the work on the basis of our experience and legal strategy.

Who was on your team and how did you divide the work?

Shaffer: Our team here consisted of **Sam Williamson**, **Sam Nitze**, **Mark Tung**, **Alex Van Dyke** and **Tracy Gao**. Given the compactness of our team and the complexity of the case, everyone played a huge and indispensable role. Sam Williamson is a distinguished U.S. litigator who is also fluent in Chinese and brings unique insight, particularly when Chinese companies find themselves in U.S. courts; from the start, he was quarterbacking our efforts inside and outside of court. Mark Tung had the prior relationship with DJI and helped them understand all the twists and turns of the litigation. Sam Nitze is a former prosecutor who brought his intellect, savvy and zeal to all of our briefing and arguments, helping us make the case that DJI should be permitted (including based on Sam’s top-secret security clearance) to review classified evidence on which DoD has been relying. As you might expect, our star associates Alex Van Dyke and Tracy Gao were doing crucial work in the trenches. Both Alex and Tracy contributed far above their seniority levels – Alex as a resident expert in administrative and constitutional law, and Tracy as a Chinese-speaker who mastered the entire administrative record.

Tysse: Our excellent team of brief writers and strategists included Supreme Court and appellate partner **Lide Paterno**, Supreme Court & appellate counsel **Margo Rusconi**, Supreme Court and appellate associate **Natalia Heguaburo**, and litigation senior counsel **Caroline Wolverton**. I argued the case before the D.C. Circuit in March 2026.

Derek, how unusual is it to stand before an appellate court and argue about an agency rationale that your client has never seen and that the district court never reviewed?

Shaffer: It's tough to be guessing at the government's rationale, to be sure.Although this was my first time facing this predicament on appeal, I've encountered similar dynamics before in cases where U.S. agencies have relied, at least in part, on classified evidence. It's difficult to contend with, but we have ways. Sometimes the unclassified record gives us clues as to what we're not seeing. Even without that, we can make procedural arguments – including based on due process – about why the government should not be permitted to rely on evidence it is altogether withholding. And U.S. courts, including the Supreme Court, have expressed reluctance about crediting classified evidence that has not been subjected to adversarial testing. So, I knew I could be enlisting procedural arguments amidst the substantive darkness.

What was especially novel about this case is that the district court had effectively upheld DoD's classified rationale without actually laying eyes on it. That feature of the case was something we wanted to emphasize, because we perceived it to be out of step with how judicial review of agencies is meant to work.

During oral argument, Judge Garcia repeatedly pressed you to define what 'contributing to the Chinese defense industrial base' means. Instead of offering your own test, you kept saying the government had to supply one. Was that a conscious strategic decision?

Shaffer: Yes, we thought administrative law favored DJI in this respect, too. This is an APA challenge to an agency's action, so the operative question is whether the agency had been reasonable in construing its statutory mandate and seeking to discharge it. Judicial deference to DoD would be predicated on the notion that DoD should decide, in the first instance, what it means for a company to contribute to the Chinese defense industrial base. To be clear, we believe DJI showed that DJI does not contribute to the Chinese defense industrial base under any reasonable statutory interpretation. But we believed we could win based simply on DoD's failure to make the contrary case based on a coherent, transparent reading of the key statutory terns.

In saying that, I'd be remiss not to note something that may too easily be taken for granted in cases like these two. My partner Sam Williamson has eloquently articulated just how proud we can all be to see U.S. judges giving such careful attention to arguments by companies that are challenging adverse designations by the Department of Defense as Chinese Military Companies. The arguments that won the day for DJI and Hesai may, in some sense, be bread-and-butter arguments that the D.C. Circuit confronts when reviewing administrative decisions – but these aren't run-of-the-mill cases. When I stood before Judge Garcia and the other panel members, I couldn't know how they'd decide the case but I had every confidence that they'd do so with fidelity to the principles and precedents DJI was invoking. Without pretending to know whether courts in China or elsewhere in the world would similarly give a fair shake to U.S. companies challenging the hometown regulator, I can say that I feel extremely fortunate that we can count on our courts to keep calling balls and strikes no matter the parties, the issues, or the stakes, as these cases demonstrate.

James, you spent considerable time during your oral argument laying out how the government's interpretation could sweep in countless other technology companies. How important was that practical concern to your overall strategy?

Tysse: It was central. From the beginning, we framed this not as a case about one company, but about the broader implications of the department's statutory interpretation on other technology companies. At oral argument, I focused on the practical consequences of the competing interpretations—namely, how the government's interpretation would seem to sweep in essentially any technology companies operating in China, even American ones.

That helped illustrate the potential impact of the decision beyond the immediate parties to the case. And it also underscored the importance of the due process issue. As I emphasized at argument, if the statute really is that broad, then the need for more procedure before being labeled a "Chinese military company" becomes even more acute.

One thing that struck me reading the opinion in your case is that you convinced the court that a Section 1260H designation carries both reputational consequences and concrete legal disabilities. How difficult was it to get the court to view those consequences as significant enough to trigger constitutional protections?

Tysse: The government fought this point hard, and for good reason: It wants to preserve its ability to add companies to government blacklists without advance warning. But we were able to draw on key Supreme Court and D.C. Circuit precedent demonstrating that, if a government blacklist is serving a function beyond merely "naming and shaming" a company—i.e., if it also bars a company from consideration of government rights or benefits—the companies must have due process protections *prior to* designation.

What do you think the most important practical lesson from the opinion in your case is for companies that may find themselves facing a Section 1260H designation?

Shaffer: To me, the key lesson is that companies in this position have a meaningful path to judicial review and potentially to redress. And forcing DoD to justify a listing can pay off. By challenging a listing, companies can learn what's behind it and can try to correct misperceptions by DoD, first by engaging with the agency, and then, if necessary, in court.

Tysse: The most important lesson for companies facing a 1260H List designation—and potentially designations on other government lists—is that they have pre-listing rights: the right to adequate notice, the right to a meaningful opportunity to respond to the government's evidence, the right to a fair process, and critically, the right to vindicate all those other rights in a court of law.

As a practical matter, companies that have been listed or are facing listing on government blacklists should consult with an attorney to understand their rights—and, if necessary, assert those rights before the relevant agency or in court.

The court stopped short of vacating the designation in both cases while remanding them for further proceedings. How meaningful is this victory to your client despite that limitation?

Shaffer: While we always want a maximal victory, this one is very meaningful for DJI. Up until now, observers might have credited the listing just on its face. As things stand, however, DJI has established that DoD's listing doesn't withstand scrutiny based on the unclassified record, and any further justification (particularly for the finding of contribution) would be one that DJI hasn't seen and the courts have yet to credit. Based on our understanding of the facts, we are obviously skeptical that the classified record would contain information that justifies the listing. Again, it's tough to overstate the import of the victory and how much it says about U.S. courts and their adherence to the rule of law.

Tysse: The remand-without-vacatur remedy was the most likely outcome given governing D.C. Circuit precedent in an analogous national security context.

That said, this full reversal was still enormously meaningful. Hesai has shown that the government acted unlawfully in adding Hesai to the 1260H List. And the D.C. Circuit has now held, as a matter of constitutional law, that a Section 1260H designation requires constitutional safeguards. That's a permanent constraint on the government going forward.

What changes, if any, do you expect the Pentagon to make to its designation process after these rulings?

Shaffer: Very simply, I hope that the Department of Defense will provide any entities it chooses to list with more thorough reasoning and pre-listing process. It must do so to comply with the court's rulings. Relatedly, I hope the agency will try to minimize any reliance on classified evidence, which can be so problematic when it comes to judicial review and the adversarial process. I would also encourage the department to do some more work to improve its transparency and consistency in explaining why it is designating certain companies as Chinese Military Companies. The more work it does in that regard, the less risk it faces from challenges like these.

Tysse: The D.C. Circuit was quite clear about the process: Before finalizing a Section 1260H designation, the department must (1) notify each company of the impending action, (2) disclose the unclassified materials on which the secretary proposes to rely, and (3) afford the company a meaningful opportunity to respond before the designation becomes final. That's a huge win not only for Hesai, but for every other company facing this designation. And it could have implications for similar government lists, as well.

What will you remember most about this matter?

Shaffer: No matter how fascinating the legal issues may be in any given matter (and the issues here are fascinating), I tend to remember the people and human narratives more so than anything else. We've already talked about the appellate judges, and I want to add just how engaged and thoughtful Judge Friedman was in grappling with these issues, including throughout a long, intense summary-judgment hearing. My stellar colleagues here at QE worked tirelessly and selflessly so that we could collectively develop the best possible arguments by translating facts and record materials from the ground level, in Chinese. Perhaps most importantly, this case would never have happened absent the unflagging commitment and support we received from our client representative at DJI, **Sumeng Chen**. As daunting as it was for a Chinese company to square off against the U.S. Government in U.S. courts, Sumeng believed in the merits of our case and continued to support us, even when many doubted we could prevail. It is Sumeng who caps my memories of this matter; none of it would've happened without him.

Tysse: Definitely the roller coaster. Shortly before our summary judgment hearing, we were briefly elated, and then crushed, when we learned the department had removed Hesai from the 1260H List in response to arguments we made in court—only to re-add the company on new grounds hours later. So, this victory was a gratifying result and a vindication of the client's legal strategy.