The Powers of the Court to Compel Compliance

Since the beginning of the Trump-Vance administration, there have been numerous cases where courts have blocked unlawful actions by the administration. In the majority of these cases, the government has taken appropriate steps to implement the courts' directives. However, in some cases, the Trump administration has tried to dodge the court's meaning while still claiming to comply. This has brought new attention to options to enforce compliance. The judiciary possesses a number of tools to force intransigent litigants to comply with court orders.[1]

Clearer and More Precise Orders

If a party appears to be out of compliance with a court order, or unlikely to comply, a court's first step is usually to issue a more precise, detailed order. This can avoid ambiguity about what constitutes compliance and provide an opportunity for compliance without further escalation. We have begun to see courts issue more precise and more detailed court orders that do not rely on good faith interpretations by the government, and instead spell out the specific steps required for compliance.

Civil and Criminal Contempt Sanctions[2]

If a party to a lawsuit, including the government, does not comply with a court order, the court can hold that party in civil contempt. Civil contempt is within the inherent authority of the courts. Civil contempt is designed to remedy noncompliance and force future compliance; it is not designed to punish past non-compliance. Because these sanctions are civil, they do not require the same procedural safeguards as criminal contempt. Furthermore, civil contempt sanctions can continue indefinitely until the offending party complies.

A court may also impose criminal contempt sanctions, including jail time. Because these sanctions are criminal, they require procedural protections akin to a typical criminal proceeding. *See Bloom v. Illinois*, 391 U.S. 194, 199-201 (1968). A federal court can initiate this process by referring a non-compliant party to the Department of Justice (DOJ) for prosecution. If DOJ does not pursue the case (which seems likely in this era), then the court may appoint an attorney from the private bar to prosecute the criminal contempt charges.[3]

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[1] For a more detailed discussion, see the Brennan Center's primer on the full range of tools available to federal courts: https://www.brennancenter.org/our-work/research-reports/what-courts-can-do-if-trump-administration-defies-court-orders.

[2] For further discussion, *see* Congressional Research Service, *Enforcement of Court Orders Against the Executive Branch* (Mar. 6, 2025), https://www.congress.gov/crs-product/LSB11271.

[3] For a discussion of whether a president can issue a pardon for criminal contempt, *see* Congressional Research Service, *Can the President Pardon Contempt of Court? Probably Yes* (Aug. 10, 2018), https://www.congress.gov/crs-product/LSB10186.

The Court Has Options Even in the Face of a Defiant Executive

Federal courts rely on the U.S. Marshals Service, a part of DOJ, to physically enforce their orders (and also provide courts and judges with security). Courts may use U.S. Marshals to enforce court orders, including contempt, such as taking the non-compliant party into custody. It is unclear whether the Justice Department would attempt to countermand that order, and whose instruction an individual U.S. Marshal would follow. The law, however, is clear: the U.S. Marshal has the obligation to follow the court's instruction over the Attorney General's.

Even in this situation, however, the federal judiciary has options. Under Federal Rule of Civil Procedure 4.1, a federal court arguably has the authority to deputize another official (a "person specially appointed for that purpose") to enforce civil contempt sanctions. While such a scenario could lead to a serious conflict between the judiciary and the executive branch, it demonstrates that federal courts have tools to enforce compliance even under the worst circumstances.

Intermediate Steps and Attorney Discipline

Before finding intransigent executive branch officials in contempt, there are a number of steps that federal courts can take to hold the administration accountable. A court can require DOJ attorneys or other government personnel to provide sworn testimony regarding what happened (including whether non-compliance, and intentional non-compliance, actually occurred). A court can impose a range of sanctions on the attorneys, including Rule 11 of the Federal Rules of Civil Procedure or Rule 46 of the Federal Rules of Appellate Procedure. depending on where the unethical conduct occurred. A court can also refer the attorneys to the relevant state bar for disciplinary proceedings, including disbarment.

The Courts' Power in the Court of Public Opinion

Beyond the judiciary's power to enforce rulings and impose sanctions is its role in shaping the public's view. When a court asserts that the executive is not in compliance with the law, that can have a powerful impact on the public. Through rulings and other tools, courts can demonstrate that the executive's actions are unlawful, which can have a profound political, economic, and cultural effect. The effect of public opinion should not be underestimated.

The Powers of Congress

Congress has the constitutional authority to provide oversight of the executive branch, including over the defiance of court orders, and hold the executive branch accountable through numerous means. Those means include passing laws imposing sanctions or requiring the executive branch to take certain actions, holding hearings, and initiating impeachment proceedings against the President or Senate-confirmed officials. In this moment, Congress has largely abdicated its role to hold the executive branch accountable, and we have seen high-ranking congressional leaders, including the Speaker of the House, attack the judiciary. However, we have also seen bi-partisan concern for the prospect of disregarding court orders.