DEMOCRACY2025

NOT ABOVE THE LAW

To: Partners
From: Democracy 2025 & Not Above The Law
Re: Enforcing Court Order Compliance and Candor with the Court
Date: November 5, 2026

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The courts have been an essential bulwark against the Trump-Vance administration's excessive overreach harming people and communities. People, community organizations, and the attorneys representing them have done the courageous work of standing up to efforts to trample our rights. For most of these cases — the vast majority of which are in the district courts — courts have recognized the illegality of the Trump-Vance administration's actions, and applied the law fairly and reasonably to constrain the administration's unlawful actions.

## Escalating Trends

**But an alarming trend has been escalating: the government is not always acting as an honest broker in the court system.** Traditionally, the federal government and attorneys from the U.S. Department of Justice (DOJ), which represents the executive branch and its officials and employees in court, could be relied on by courts, opposing parties, and the public to be trustworthy participants in litigation. This has created a system built on trust — on the expectation that the executive branch will act in good faith to comply with any court orders entered against them, judicially created legal doctrines like the "Presumption of Regularity" (the rebuttable presumption that government agencies have acted in good faith and according to procedural obligations), and assumptions by courts about the extent to which they can rely on representations made by the lawyers before them.

Now these norms are eroding even further than in the first stage of the Trump-Vance administration. While the administration and personnel in the executive branch have complied with court orders in most cases against the government, in some cases, either through negligence or apparent misconduct, the administration has not done so. Some of these trends are described below.

First, we've seen an increasing lack of forthrightness and disregard of formal orders, informal assurances, and obligations of candor to the court.

- For example, in *DC Preservation League v. Department of Interior*, a case challenging the administration's effort to convert the public East Potomac Golf Links in Washington, D.C. into an exclusive golf course, the administration has acted inconsistently with assurances it gave the court. In July 2026, DOJ attorneys repeatedly assured the court and the plaintiffs that the administration would provide notice before moving forward and that, therefore, a preliminary injunction was not necessary. Yet the administration later removed "hundreds of healthy, non-invasive trees" without providing meaningful notice to the plaintiffs or the court. The administration might not have technically violated a court order — but only because the court did not enter an order, instead acting on reliance on the government's assurances.

Second, we've seen a widening gap between what DOJ attorneys communicate to the court and how their government clients (federal agencies and agency officials) act.

- For example, in *Common Cause v. Department of Homeland Security*, a federal district court entered a temporary restraining order and a stay under the Administrative Procedure Act, prohibiting the Trump-Vance administration from airing on television additional political advertisements unlawfully paid for by taxpayer dollars. But the advertisements continued to air. DOJ attorneys explained the noncompliance as a result of delay in delivering and receiving email communication about the order. They did not explain why the advertisements that plaintiffs identified continued to air after notice. The court ordered the government to provide further explanation of the noncompliance, "given the contrary representations made by counsel."

Third, we've seen efforts by the government to skirt the edges of compliance and push boundaries, while avoiding consequences for open noncompliance.

- For example, in recent months, U.S. Immigration and Customs Enforcement (ICE) has repeatedly released individuals from immigration detention when ordered to by courts and then immediately rearrested them. These immediate rearrests, sometimes only minutes after the court-ordered release, appear to reflect minimal, technical compliance while in reality not complying, all while seeking to avoid accountability for that noncompliance.

## Litigants and Courts

Litigants have options for how to increase both candor and compliance in all of the above scenarios. And courts have options to compel compliance.

Litigants can mitigate the risk of Trump-Vance administration officials and counsel not abiding by informal assurances by urging courts to codify as official orders the type of case management practices that historically could be handled informally. When government attorneys are amenable, these could be joint proposals for case management orders.

If informal assurances or formal court orders are violated, litigants can evaluate, among other options, whether to: 1) seek discovery into the administration's actions; 2) file a motion to enforce or compel compliance; 3) urge the court not to apply the presumption of regularity in the matter; and/or 4) pursue, as appropriate, sanctioning the relevant attorneys under the relevant federal procedural rules or through referrals to ethics bodies (such as the DOJ Office of Professional Responsibility or the state bar).

**Resources regarding a court's powers are detailed in the following resources:**

- The Powers of the Court to Compel Compliance (Democracy Forward)
- Confrontation in Court: How to Hold the Trump Administration Accountable for Violating Court Orders (Just Security)

- What Courts Can Do If the Trump Administration Defies Court Orders (The Brennan Center)
- When the Executive Defies the Judiciary: How Federal Courts Can Enforce Their Orders Without the Marshals (Just Security)
- Constitutional Collision Course: Why The Midterms Matter Not Just for Congress but for the Courts (Just Security)

Courts, including judges appointed by presidents of both parties, have used these tools to enforce compliance.

- Courts have moved promptly when notified of noncompliance with concrete evidence. For example, when the White House continued to bar entry to several news outlets, despite an order requiring that entry be granted, the court swiftly ordered the government to explain the noncompliance. Shortly thereafter, the outlets' access was substantially restored. The quick action from both the press and the court led to concrete results.
- Some courts have found it appropriate to hold individual attorneys in contempt. In February 2026, in *Soto Jimenez v. Bondi*, a court in the District of Minnesota held a DOJ attorney in contempt after the government violated the court's order and failed to return identification documents to a man who had been released from immigration detention. The next day, the government returned the documents to the man.

**Additional Resources:**

- The Presumption of Regularity in Trump Administration Litigation (Just Security)
    - This detailed analysis examines the landscape of the administration's lawlessness in terms of its noncompliance, misleading representations, and arbitrary and capricious administrative actions.
- The Trump Administration's Conflict With The Courts, Explained (Protect Democracy)
- The President's Duty to Obey Court Judgments (Constitutional Accountability Center)

**Messaging Guidance:**

As partners are talking with stakeholders, the best practice is to ensure that the public understands this intensifying issue, while at the same time, understands the valuable (even if sometimes imperfect) role that courts are playing in protecting our rights. The below suggested talking points are a good starting point.

- The courts – especially the lower courts – continue to provide a valuable check on the Trump-Vance administration, holding the executive branch to account for actions that violate the Constitution and federal laws.
- Compliance with court orders is not optional, even for the President of the United States. But time and time again, the administration has slow-walked compliance or ignored judicial orders.
- In some instances, the President or his administration have attacked court orders outright on Truth Social and in press statements, yet the government agency complied.

- The Trump-Vance administration's disregard for court orders is unprecedented. But it does not get to pick and choose which laws to follow in pursuing its authoritarian agenda.
- By and large, previous administrations responded to court orders in good faith, even orders with which they disagreed. But the Trump-Vance administration all too often refuses to comply with the law when it is inconvenient for it.
- The Trump-Vance administration's behavior is straight out of the authoritarian playbook, aggrandizing executive power and seeking to ignore the law.
- The Trump-Vance administration is complying with court orders in most cases, but not all. We shouldn't have to wonder whether we can trust the administration to follow court orders.
- Our constitutional system is founded on three branches of government. The judicial branch is an essential check on the administration's misdeeds, but it is time for the legislative branch – Congress – to do its part.

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