



Enforcement of Court Orders Against the Executive Branch

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Months into the second Trump Administration, a number of executive branch policies have been [challenged in court](#), and several federal district courts have enjoined enforcement of some of the challenged policies. As one example, on January 31, 2025, a judge on the U.S. District Court for the District of Rhode Island issued a [temporary restraining order](#) (TRO) barring the Trump Administration from enforcing a federal funding freeze with respect to a number of states that had challenged the freeze. On February 10, 2025, after the states alleged that the government was not complying with the TRO, the court [granted a motion for enforcement](#) of the TRO requiring the government, among other things, to “immediately end any federal funding pause during the pendency of the TRO.”

In another case, a judge on the U.S. District Court for the District of Columbia [granted a TRO](#) on February 13, 2025, prohibiting the State Department from suspending the obligation or disbursement of certain foreign-assistance funds. On [February 20](#) and [February 25](#), 2025, the district court granted [motions for enforcement](#) of the TRO. The court’s February 25 ruling required the government to pay certain funds by 11:59 p.m. the following day. The Trump Administration [sought](#) Supreme Court review. Following a temporary [administrative stay](#), on March 5, 2025, the Court [denied](#) the application to halt or vacate the district court’s decision and directed the district court to clarify the government’s obligations under the TRO in light of the passed deadline.

In a third case, a judge on the U.S. District Court for the District of Columbia [issued a TRO](#) on March 15, 2025, barring the government from transferring certain persons into foreign custody pursuant to the [Alien Enemies Act](#). The government transferred some of the individuals to foreign custody. It also appealed the TRO to the U.S. Court of Appeals for the District of Columbia Circuit and then to the Supreme Court. On April 7, 2025, the Supreme Court [vacated](#) the TRO on procedural grounds, holding that the individuals must challenge their detention by petitioning for a writ of habeas corpus in a Texas federal court because they were held in Texas before being transported out of the country. On April 16, 2025, the district court issued an order [finding probable cause](#) that the government had willfully failed to comply with the March 15 TRO in a manner that constituted criminal contempt.

In February 2025, President Trump [stated his intent to comply with court orders](#) while appealing adverse court decisions. Nonetheless, recent litigation has generated [discussion](#) around [what happens](#) if the [executive](#) branch [defies a court](#) order and whether federal agencies or officials may be [compelled](#) to

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comply with court orders. This Legal Sidebar provides an overview of how court orders are enforced against federal agencies and executive branch officials. It then discusses considerations for Congress related to the enforcement of court orders against the executive branch.

Court Orders Against the Government

A court may issue an order against the federal government when the government is involved in litigation. For instance, when stakeholders sue to challenge the legality of government action, the challengers are the plaintiffs in such cases, and federal agencies or officials are the defendants. Courts usually issue orders based on motions from the parties to litigation, but a court may also issue orders *sua sponte*, or on the court's own motion.

Court orders against the government may take multiple forms depending on the type of case in which they issue, the stage of litigation, and the discretion of the issuing court. Before a court issues an order barring the enforcement of a federal policy, it must consider the *merits* of the challengers' claim—that is, the substantive legal issues presented in the case—but in some cases the court makes only a preliminary assessment of the plaintiffs' **likelihood of success** on the merits, which it may revisit later in litigation.

One key question about any given court order is whether the remedy provided is a form of injunctive or non-injunctive relief. Injunctive and non-injunctive remedies both serve to bar the enforcement of challenged policies, but they **differ in how they do so**. Non-injunctive remedies apply to the *challenged government action*, determining that the action is (or likely is) unlawful. By contrast, injunctive remedies apply to the *government*, requiring an agency or official to take or not take some specific action. An agency or official who fails to comply with an injunction may be held in contempt and sanctioned, while contempt is not available to enforce orders of non-injunctive relief.

Non-injunctive relief in suits against the federal government may include the following:

- *Declaratory judgment*: a formal declaration that a regulation or policy is unlawful.
- *Stay*: an order temporarily pausing the effect of a challenged regulation or policy while litigation remains pending. Courts may issue stays of agency action in litigation under the [Administrative Procedure Act \(APA\)](#) pursuant to [5 U.S.C. § 705](#), which allows a court to “issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.”
- *Vacatur*: an order holding that a challenged regulation or policy is invalid and may not be enforced. Courts may vacate agency actions in APA litigation pursuant to [5 U.S.C. § 706](#), which authorizes courts to “hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”

In civil litigation between private parties, a prominent form of non-injunctive relief is money damages. Money damages are **not generally available** in suits challenging the legality of federal government policies. (The government may be required to pay [attorney's fees](#) and litigation costs even when money damages are not available.)

Injunctive relief may include the following:

- *TRO*: the most preliminary form of injunctive relief, a TRO serves to prevent imminent harm on a short-term basis while the court considers whether to enter a preliminary injunction (PI).
 - *PI*: an injunction designed to preserve the status quo while a case remains pending.
 - *Permanent injunction*: an injunction that issues once the court has decided a case on the merits. Such an injunction applies indefinitely unless the court sets an expiration date, the
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issuing court or another court of competent jurisdiction modifies the injunction, or the injunction is overturned on appeal.

Injunctive relief is generally considered to be a more [drastic remedy](#) than non-injunctive relief. Courts sometimes stay or vacate a government action but decline to grant injunctive relief as a claimed exercise of [judicial restraint](#). In the alternative, a court may [simultaneously](#) stay or vacate a challenged policy and enjoin enforcement. Further, if a court initially enters a stay or vacatur and the government nonetheless tries to enforce the policy, the court may later grant injunctive relief.

Enforcement Through Contempt Proceedings

As noted, injunctions may be enforced through [contempt proceedings](#) that may lead to the imposition of sanctions, while non-injunctive relief such as a stay or vacatur may not. The grants of motions for enforcement discussed above reaffirmed the defendants' obligation to comply with the TROs in those cases but did not constitute contempt findings or carry any sanctions.

There are two forms of contempt proceedings: [civil and criminal](#). Civil contempt is intended to coerce parties into complying with court orders or to compensate those harmed by a party's noncompliance, while criminal contempt is intended to punish noncompliance. The boundaries between civil and criminal contempt may [sometimes be unclear](#).

A party held in civil contempt may be fined or imprisoned pending compliance with a court order. Criminal contempt may also lead to fines or imprisonment. Under [Federal Rule of Criminal Procedure 42](#) (Rule 42), a court may summarily punish "a person who commits criminal contempt in its presence if the judge saw or heard the contemptuous conduct and so certifies." Otherwise, criminal contempt is a federal crime that must be prosecuted and tried. Rule 42 generally requires the court in a criminal contempt case to "request that the contempt be prosecuted by an attorney for the government." If the government declines the request, the court "must appoint another attorney to prosecute the contempt." (Some have raised [separation of powers questions](#) about the attorney appointment provision.) In addition to parties to litigation, [attorneys](#), including attorneys representing the federal government, may be held in contempt or may face [sanctions](#) or professional discipline for filing pleadings that are intended to cause delay or are legally or factually unfounded.

In contempt proceedings against the federal government, fines may target a noncompliant agency as a whole, or individual officials may face personal fines or imprisonment. While those sanctions are possible in theory and have sometimes been ordered by courts, there is some question whether [sovereign immunity](#) limits their availability as a legal matter. As a practical matter, a 2018 [law review article](#) surveyed contempt proceedings in cases against the federal government and concluded that federal courts sometimes hold federal agencies and officials in contempt but rarely impose sanctions of fines or imprisonment, and when sanctions are imposed they are often halted by appellate courts.

When a federal court imposes contempt sanctions, the [U.S. Marshals Service](#) enforces the order, including by arresting persons ordered imprisoned for contempt. The U.S. Marshals Service is an executive branch agency [within the Department of Justice](#). Some [commentators](#) have expressed [concerns](#) that, if the executive branch chose to defy a court order, it might also seek to prevent the U.S. Marshals from enforcing contempt sanctions. The U.S. Marshals are [required by statute](#) to "execute all lawful writs, process, and orders issued under the authority of the United States." The 2018 review of contempt against the federal government [notes](#) that, historically, Presidents have complied with federal court orders and have not directed the U.S. Marshals not to enforce contempt orders. The President's pardon power [applies to criminal contempt](#) but [does not apply to civil contempt sanctions](#).

In theory, the whole process from injunction to contempt to sanctions might proceed exclusively in a district court. In practice, however, it is likely that one or more appellate courts would also be involved. A

court order fining or imprisoning a person held in civil contempt generally [may not be appealed](#) until the court enters a final judgment. However, a district court order granting injunctive relief is usually [immediately appealable](#) to the appropriate federal appellate court, and rulings of the appeals courts related to injunctive relief may immediately be challenged via a [petition for a writ of certiorari](#) to the Supreme Court (though the Court has discretion whether to consider such matters). A conviction for criminal contempt is [immediately appealable](#).

Like the district courts, federal appellate courts have the power to hold in contempt those who violate or undermine their orders. The Supreme Court has [used this authority once](#)—and not against the federal executive branch. The need for courts to enter and enforce contempt orders against the executive branch may be lessened on appeal, because the executive branch may face greater political costs if it defies an order of an appellate court, especially the Supreme Court.

To illustrate how selected litigation over compliance with court orders has proceeded, in the Rhode Island case discussed above, the Trump Administration appealed the district court’s TRO and order granting the motion for enforcement. On February 11, 2025, the U.S. Court of Appeals for the First Circuit [denied a motion for an administrative stay](#) of the orders. On February 14, 2025, the First Circuit granted the government’s motion to [voluntarily dismiss the appeal](#). On March 6, 2025, the district court [entered a PI](#) prohibiting the government from freezing funds due to the states. The government appealed the PI. On April 4, 2025, after the plaintiffs alleged that the government had failed to comply with the PI, the court [granted a motion for enforcement](#) of the PI. As of the date of this Legal Sidebar, the case remains pending.

In the D.C. litigation over foreign-assistance grants, the Trump Administration [appealed](#) the district court’s February 20 grant of the motion for enforcement. The U.S. Court of Appeals for the D.C. Circuit [dismissed the appeal](#), holding that the grant of enforcement of a TRO is not appealable. The government next sought Supreme Court review, filing an [application](#) for the Court to vacate the district court’s order and stay the order pending appeal. On February 26, 2025, shortly before the district court’s deadline for disbursement of funds, Chief Justice John Roberts [stayed](#) the district court’s decision pending further orders of the Supreme Court. On March 5, 2025, the Court [denied the application](#). Given that the original deadline for compliance with the TRO had passed, the Supreme Court majority directed the district court to “clarify what obligations the Government must fulfill to ensure compliance with the temporary restraining order, with due regard for the feasibility of any compliance timelines.” Justice Alito, joined by three other Justices, dissented from the denial. On March 10, 2025, the district court [entered a PI](#) requiring the government to disburse certain funds. The government has appealed the PI.

In the D.C. litigation over transfer of individuals into foreign custody, the district court’s TRO was vacated by the Supreme Court. The district court opinion finding probable cause for criminal contempt [stated](#) that the Supreme Court’s “later determination that the TRO suffered from a legal defect . . . does not excuse the Government’s violation” of the TRO because “it is a foundational legal precept that every judicial order must be obeyed—no matter how erroneous it may be—until a court reverses it” (internal quotes omitted). Having [found](#) “probable cause that Defendants willfully disobeyed a binding judicial decree,” the court articulated several next steps. First, the government has the opportunity to purge the contempt by asserting custody of the individuals who were removed in violation of the TRO to allow them to challenge their removability through habeas proceedings, or through other means that the government might propose. If the government fails to purge the contempt, the court stated it will proceed to identify the individuals responsible for violating the TRO. The court then stated its intent to request that the government prosecute the contempt and, if the government declines to do so, to appoint another attorney pursuant to Rule 42. The government has appealed the opinion finding probable cause, and other motions remain pending before the district court.

Considerations for Congress

When Congress, either chamber, or individual Members of Congress are not parties to litigation, legislators play no direct role in the processes for seeking and enforcing a contempt order described above. (Legislators sometimes seek to bring suit or intervene in pending proceedings, but the constitutional doctrine of [standing](#) may limit the ability of lawmakers to sue the executive branch.)

Nonetheless, if Congress believes that an executive agency or officer is acting unlawfully, it has several tools at its disposal. A [CRS Report](#) outlines in detail Congress's authority to influence and control executive branch agencies. Briefly, options include the following:

- **Investigative oversight:** Congressional [oversight investigations](#) are typically carried out by congressional committees and subcommittees, subject to applicable House and Senate rules. Congress's oversight authority includes the power to hold hearings, issue subpoenas, and depose witnesses.
- **Censure:** Congress may formally express [censure](#) or condemnation via resolution. Censure resolutions and other expressions of disapproval generally have no legal effect but may still influence the actions of agency officials who wish to avoid the political consequences of such measures.
- **Impeachment and removal:** The House may [impeach](#) federal government officials for "high Crimes and Misdemeanors," and the Senate may try impeachments and remove officials who are convicted. Constitutional text and historical practice establish that the impeachment power [applies](#) to the President, Vice President, federal judges, and "all civil Officers of the United States." Non-officer employees of the federal government are probably not subject to impeachment.
- **Funding limitations:** Congress controls the [funding of federal agencies](#) and can withhold funds from an agency if Congress disapproves of the agency's actions. Congress can also enact appropriations riders prohibiting the use of appropriated funds for certain purposes. Many changes related to funding would need to be enacted via legislation, meaning that they would require the support of the President unless Congress were able to override a veto. However, Congress could potentially exercise leverage in this area by declining to enact legislation to appropriate funds.
- **Changes to agency structure or authority:** Congress possesses substantial authority to [structure federal agencies](#) or regulate the [scope of their authority](#). If Congress disapproved of the actions of a federal agency in a certain area, it could potentially restructure the agency to change how the agency makes decisions or provide for additional oversight. Congress could also remove certain matters from an agency's jurisdiction. These changes would need to be made via legislation, meaning they would need the support of the President or a veto-proof supermajority in the House and Senate.

In addition to the powers listed above, which are shared by both chambers of Congress, the Senate may be able to use its [advice and consent](#) power to affect the executive branch. An exercise of this authority might take the form of refusing to confirm new nominees whom Senators believe would not act lawfully. The Senate could also withhold consent to new nominations in response to perceived misconduct by sitting executive branch officials.

While the foregoing assumes that Congress seeks to encourage compliance with court orders, it is also possible that an executive agency might decline to comply with a court order with which the agency disagreed and that Congress might agree with the executive branch's legal interpretation rather than that of the court. When a lower federal court has allegedly made a legal error, the usual remedy is an [appeal](#), and any appeal of an adverse ruling against the executive branch would need to be taken by the affected

agency, not by Congress. If Congress disagreed with a court's interpretation of an agency's statutory authority, obligations, or funding and sought to clarify how the statute should apply, or wanted to change the structure or jurisdiction of an agency to reflect current priorities of the executive branch, it could potentially do so by enacting legislation. Congress could also legislate to [limit the jurisdiction](#) of the federal courts over these disputes.

Beyond the context of specific disputes involving the executive branch, Congress also has the authority to change the laws that apply to contempt of court generally. For example, Congress could amend the [contempt statute](#) to clarify what sanctions are available against the federal government.

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