

THE AMERICAN PROSPECT

TAP

'Oopsie ... Too Late'

Today on TAP: The several cases in which Trump is defying court orders are coming to a head. We will soon learn whether the rule of law still applies in America—or whether we are too late.



BY ROBERT KUTTNER

MARCH 17, 2025



Credit: El Salvador presidential press office via AP

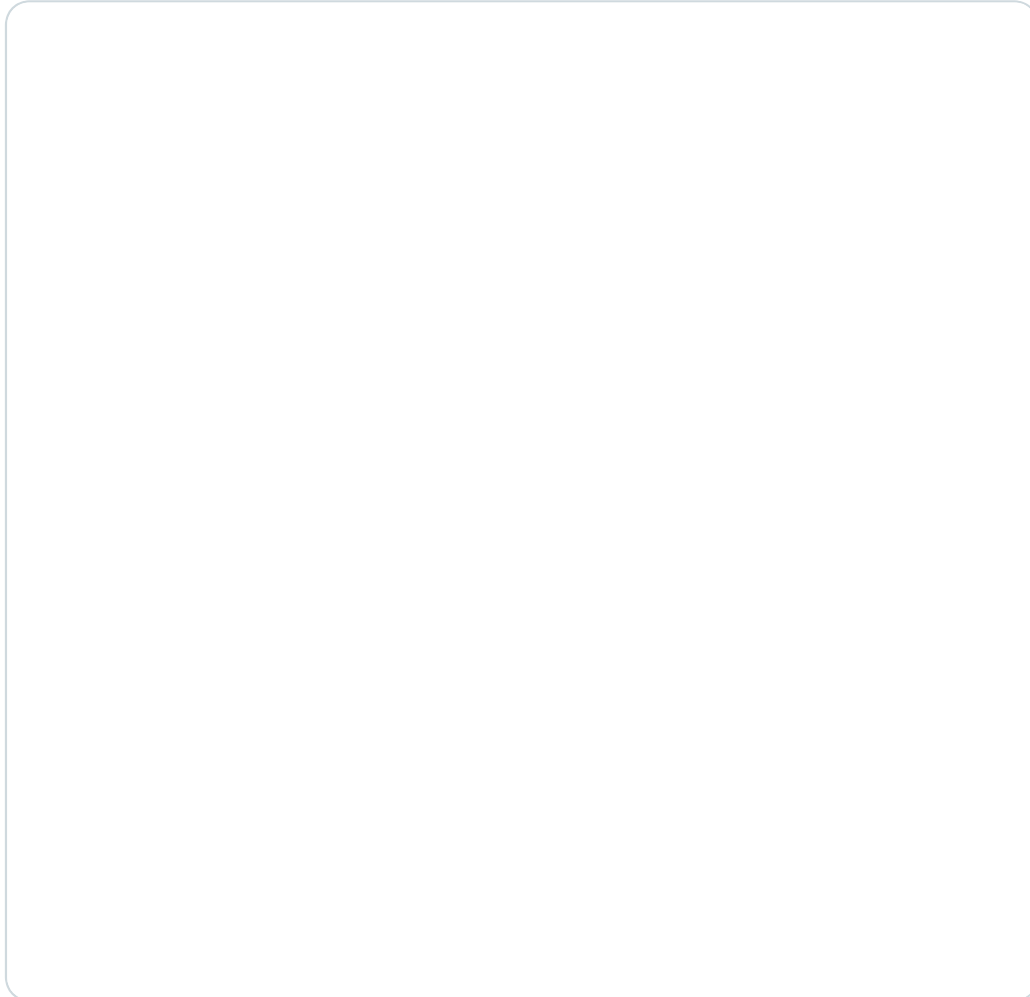
Nayib Bukele  

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Oopsie...

Too late 😂



7:46 AM · Mar 16, 2025



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The defiance of a Saturday night court order directing the Trump administration to not put Venezuelan deportees on a plane to El Salvador is only the latest in a series of administration actions playing cute with the federal courts. Several of these suits are likely to soon be consolidated in a few key cases before the Supreme Court.

In the most recent episode, the administration was deporting more than 200 men it claimed were members of the Tren de Aragua gang and sending them to El Salvador, where President Nayib Bukele had agreed to accept prisoners for a reported fee of \$6 million.

The ACLU and Democracy Forward filed a lawsuit challenging both Trump's use of the 1798 Alien Enemies Act and the factual question of whether all of these men were truly gang members.

More from Robert Kuttner

James E. Boasberg, chief judge of the D.C. Circuit, issued a temporary restraining order stopping the government from deporting five named plaintiffs, one of whom denies being a gang member. The administration appealed.

Ryan Goodman of Just Security put together a timeline of what ensued. At 5:00 p.m., Judge Boasberg asked when the deportations would occur. Boasberg ordered a short break so the government attorney could find out. At 5:45, the flight took off.

Around 6:52, Judge Boasberg ordered that "Any plane containing these folks that is going to take off, or is in the air, needs to be returned to the United States." But at 8:02, the flight landed in El Salvador.

Bukele then posted an article on the judge's order for all planes to return, adding the comment "Oopsie ... Too late," with a smirking emoji. Secretary of State Marco Rubio reposted it. Today, White House border czar Tom Homan exhibited just how much respect he has for the judiciary by saying, "I don't care what the judges think."

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Few of the other cases of open defiance of court orders have been this flagrant or mocking. But the administration clearly believes itself to be above the law. The cases, all of which will come before the high court, fall into a few categories.

There are stand-alone cases, such as the order on Venezuelan deportations, where the issue is both whether Trump is abusing his authority under a narrowly drawn law, as well as the

facts of the case. Another key stand-alone case will be the administration's claim that it has the right to ignore the clear principle of birthright citizenship, as added to the Constitution by the 14th Amendment. That has already reached the Court, with Trump's legal team arguing that nationwide injunctions must be curtailed as an improper constraint on executive authority. (Would that this were true in the Biden era, when corporations and right-wing attorneys general secured dozens of nationwide injunctions on policies intended to protect the public or lower their costs.)

A whole other category of cases boils down to whether Trump is violating the Impoundment Control Act of 1974, which explicitly prohibits the executive branch from failing to spend funds duly appropriated by Congress. Dozens of court orders have ordered the administration to release impounded funds, and more will follow.

Mostly, the administration is ignoring these orders, or slow-walking selective compliance. In the meantime, programs such as those funded by USAID are being not just delayed but destroyed. **A related class of cases challenges DOGE's authority** to either order cuts or to gain access to confidential data.

The administration has also abused its executive power by explicitly interfering with university policies on academic freedom and pedagogy, citing invented tests of what constitutes antisemitism. Its weapon is denial of federal funds, in some cases rescinding contracts already in force. Several of these cases are also in court.

We got a preview of how the Supreme Court might rule on impoundment when the high court, by a 5-4 vote, basically **upheld a lower-court order compelling the administration to disburse some \$2 billion in foreign-aid funds**. The March 5 order denied the administration's request to overrule a February 25 order by District Court Judge Amir Ali, directing the government to release the funds. The Court then delayed the impact of its order and requested Judge Ali to provide more detail.

The key justice in this decision was the Court's newest conservative, Amy Coney Barrett, who voted with Chief Justice John Roberts and the court's three liberals. Justice Barrett is not quite a Trumpian conservative. She is an active Catholic, but not a far-right JD Vance-type Catholic. Here Christian commitment is lived.

Justice Barrett and her husband have seven children, two of whom were adopted from Haiti; and her youngest biological child has Down syndrome. She seems to genuinely possess something that Trump utterly lacks: compassion. And she must be aware that one of the