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Supreme Court Affirms Lawlessness of the Removal of Kilmar Abrego Garcia

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April 18, 2025

***Kristi Noem, Secretary, Department of Homeland Security, et al. v. Kilmar Armando Abrego Garcia, et al.*, 601 U.S. ____ (2025) (Roberts, C.J., remanding for clarification of the District Court order)**

Response by Cori Alonso-Yoder & Tania N. Valdez

GEO. WASH. L. REV. ON THE DOCKET (Emergency Docket 2024-25)

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Supreme Court Affirms Lawlessness of the Removal of Kilmar Abrego Garcia

The constitutional crisis has arrived, unsurprisingly with someone particularly vulnerable to exploitation and abuse caught in the crosshairs: a non-U.S. citizen, working-class father of three small children. Kilmar Abrego Garcia fled El Salvador as a teenager and sought refuge in the United States. He gained legal permission to remain in the United States and established a life here. But in March of 2025, Mr. Abrego Garcia would find himself unlawfully deported and detained in a Salvadoran prison with the very gang members he had fled.

From the time Mr. Abrego Garcia was twelve years old, local gang members tracked and monitored him and various members of his family, alternately threatening to kill, kidnap, or sexually assault the teen and his siblings.¹ Mr. Abrego Garcia fled to the United States from El Salvador in 2011, the same year he turned 16 years old.² Following his immigration court trial, an immigration judge determined that his “life or freedom *would be threatened*” in El Salvador and granted him a form of relief known as “withholding of removal.”³ Withholding of removal is a form of relief from deportation that has existed under U.S. law since 1980 and

recognizes this country's legal obligation to not deport people to countries where they are "more likely than not" to face persecution.⁴ The government can only strip noncitizens of withholding of removal by beginning new proceedings before an immigration judge and proving that very specific grounds for termination of relief exist.⁵

On March 12, 2025, Mr. Abrego Garcia was driving with his five-year-old child with disabilities when Department of Homeland Security (DHS) officials arrested him outside of a Baltimore IKEA. Agents gave Mr. Abrego Garcia's wife, Jennifer Sura Hernandez, ten minutes to pick up the couple's son before turning the child over to Child Protective Services. In a jailhouse call to his wife, Mr. Abrego Garcia explained that officials were asking him questions about the Salvadoran gang MS-13. Three days after being wrested from his son, DHS officials removed Mr. Abrego Garcia to the Center for Terrorism and Confinement (CECOT) in El Salvador—the country to which an immigration judge ruled he should not be returned.⁶ His wife learned of his removal when she recognized his image among photos in the media of men being forced into prone positions by Salvadoran prison guards.⁷ She took swift legal action to bring her husband back home. The U.S. District Court for the District of Maryland ruled in his favor, ordering officials to return Mr. Abrego Garcia to his family, and the Fourth Circuit Court of Appeals affirmed.⁸ The U.S. Government asked the Supreme Court of the United States to vacate the lower court's ruling.

On April 10, 2025, the Supreme Court issued its ruling on the Government's request.⁹ In a unanimous decision authored by Chief Justice John Roberts, the Court affirmed the lawlessness of Mr. Abrego Garcia's removal to a Salvadoran prison, observing that even "[t]he United States acknowledges that Abrego Garcia was subject to a withholding order forbidding his removal to El Salvador, and that the removal to El Salvador was therefore illegal."¹⁰ The Court largely affirmed the underlying District Court order, maintaining its effect while also suggesting that Judge Paula Xinis's directive that the Government "facilitate and effectuate the return of [Abrego Garcia] to the United States by no later than 11:59 PM on Monday, April 7, 2025"¹¹ should be clarified.¹² Specifically, the Court explained that the District Court should exercise "due regard for the deference owed to the Executive Branch in the conduct of foreign affairs."¹³ The Court also instructed the Government defendants to "share what it can concerning the steps it has taken and the prospect of further steps."¹⁴

Presumably this last instruction relates to what efforts the Government has mustered to return Mr. Abrego Garcia from his illegal confinement. But the Court's vagueness here hints at its own solicitude for executive authority and preciousness toward not impeding on the presidency. The Court's decision last term extending broad immunity to the American President for potentially criminal acts committed while in office¹⁵ and Congress's acquiescence to the Trump Administration¹⁶ have effectively left the people of the United States responsible for their own defense against the government. The landscape is particularly

bleak for the hundreds of noncitizens facing summary expulsion from the United States without the minimum judicial process required by law. In litigation unfolding from the same events that led to Mr. Abrego Garcia's illegal removal, the Supreme Court issued an unsigned decision relying primarily on procedural considerations to side with the Government over a group of Venezuelan nationals challenging their removal to El Salvador.¹⁷

These realities—particularly the Court's direct role in emboldening the executive branch—make the Chief Justice's decision in *Abrego Garcia* reminiscent of his recent mild warning that “defiance of judgments lawfully entered by courts” represents a threat to the judiciary.¹⁸

And in fact, the extent to which there will be defiance is currently unfolding. Despite a sworn declaration from a DHS official admitting that Mr. Abrego Garcia's removal was an “administrative error” and an “oversight,”¹⁹ plus the Supreme Court ordering the administration to “facilitate and effectuate” his return,²⁰ the Government is completely abdicating its responsibility. On April 15, 2025, another DHS official filed a sworn declaration with the U.S. District Court for the District of Maryland stating that “DHS does not have authority to forcibly extract an alien from the domestic custody of a foreign sovereign nation.”²¹ The official also included blatant lies regarding the underlying removal proceedings and an insultingly preposterous claim that DHS will facilitate his entry to the United States “*if he presents at a port of entry.*”²²

All of this legal stalling on the part of the Government has the potential to distract from a chilling consequence of the Trump administration's actions in this case. As observed by Justice Sotomayor in a statement concurrently filed with the Court's unanimous decision in *Abrego Garcia*, the Government's position means that “it could deport and incarcerate any person, including U.S. citizens, without legal consequence, so long as it does so before a court can intervene.”²³ Indeed, in a bit of authoritarian political theater, President Trump hosted Salvadoran President Nayib Bukele in an Oval Office meeting where both men affirmed their intention not to return Mr. Abrego Garcia to his family.²⁴ Indeed, Trump turned Justice Sotomayor's warning into a veiled threat, commenting to President Bukele: “Homegrown criminals next.”²⁵

As the federal court system serves as a bulwark between the lawless immigration agenda of this administration and the people of the United States, the courts' effectiveness without the remainder of government leaves room for doubt. At the time of this writing, the district court in the related *J.G.G.* litigation has issued an order finding probable cause that federal government officials committed criminal contempt in continuing deportation flights to El Salvador in violation of the court's order.²⁶ Similar actions could result in the *Abrego Garcia* case.

The active question moving forward is: What happens when the Supreme Court issues an order and the executive branch (supported by its lawyers) refuses to comply?

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[2] *Id.*

[3] See Immigration and Nationality Act § 241(b)(3), 8 U.S.C. § 1231(b)(3) (emphasis added).

[4] INS v. Stevic, 467 U.S. 407, 424 (1984).

[5] 8 C.F.R. § 1208.24(e) (2024).

[6] Noem v. Abrego Garcia, No. 24A949, 2025 WL 1077101 (U.S. Apr. 10, 2025).

[7] Affidavit of Jennifer Stefania Vasquez Sura at 7, Abrego Garcia v. Noem, No. 8:25-CV-00951 (D. Md. Mar. 24, 2025), ECF No. 1, available at <https://www.courtlistener.com/docket/69777799/1/2/abrego-garcia-v-noem/>.

[8] *Abrego Garcia v. Noem*, No. 8:25-cv-00951, 2025 WL 1024654 (D. Md. Apr. 4, 2025), *stay denied*, No. 25-1345, 2025 WL 1021113 (4th Cir. Apr. 7, 2025).

[9] *Abrego Garcia*, 2025 WL 1077101, at *1.

[10] *Id.*

[11] *Abrego Garcia*, 2025 WL 1077101 (D. Md. Apr. 4, 2025).

[12] *Abrego Garcia*, 2025 WL 1077101, at *1.

[13] *Id.*

[14] *Id.*

[15] *See Trump v. United States*, 603 U.S. 593 (2024).

[16] *See* Scott R. Anderson & Kathryn Dunn Tenpas, *Do Eroding Presidential Norms Undermine Constitutional Principles?*, BROOKINGS INST. (Mar. 13, 2025), <https://www.brookings.edu/articles/do-eroding-presidential-norms-undermine-constitutional-principles/> (Congress “is tacitly participating in what the Trump administration is doing. . . . [The budget negotiation process has] points of leverage that a Congress that wanted to rein in the executive branch really could use But they’re not interested in doing that.”).

[17] *See Trump v. J.G.G.*, No. 24A931, 2025 WL 1024097 (U.S. Apr. 7, 2025).

[18] JOHN G. ROBERTS, JR., 2024 YEAR END REPORT ON THE FEDERAL JUDICIARY 7 (2024), <https://www.supremecourt.gov/publicinfo/year-end/2024year-endreport.pdf>.

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[22] *Id.* (emphasis added).

[23] *Abrego Garcia*, 2025 WL 1077101, at *2 (Sotomayor, J., respecting the Court’s disposition).

[24] See Franco Ordoñez & Danielle Kurtzleben, *El Salvador’s Bukele Says ‘Preposterous’ to Suggest He Return Abrego Garcia to U.S.*, NPR (Apr. 14, 2025, 3:58 PM), <https://www.npr.org/2025/04/14/nx-s1-5364502/trump-bukele-el-salvador-deportation>.

[25] Michelle Stoddart, *‘Homegrowns Are Next’: Trump Doubles Down on Sending American ‘Criminals’ to Foreign Prisons*, ABC NEWS (Apr. 14, 2025, 6:04 PM), <https://abcnews.go.com/Politics/homegrowns-trump-doubles-sending-convicted-us-citizens-foreign/story?id=120802863>.

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