

KRISTI NOEM INVOKES STATE SECRETS TO COVER-UP HER INABILITY TO ID WOMEN AS WOMEN

One of the transphobic right wing's most annoying taunts is that Democrats can't decide whether women are women. It is central to the long-running campaign to demonize trans people to claim that birth sex, which transphobes claim is a person's true and immutable sex, is always immediately apparent.

Yet yesterday, Kristi Noem invoked State Secrets to cover-up the fact that she – and the agencies she runs – were unable to identify women as women. DOJ included Noem's declaration as part of package invoking State Secrets in the Alien Enemies Act lawsuit yesterday.

- State Secrets notice
- Pam Bondi Declaration
- Marco Rubio Declaration
- Kristi Noem Declaration

The declarations, in general, are ridiculous given filings submitted by ACLU earlier yesterday.

- Notice regarding information request
- Declaration of SZFR (woman sent and then returned from El Salvador)
- Declaration of EEPB (Nicaraguan man sent and then returned from El Salvador)

Both Rubio and Noem's declarations include

language claiming that official acknowledgement of details of the deportation flights – the kinds of details Judge James Boasberg might use to hold them in contempt – is different than, “assumptions, speculation, public investigation, or informal statements.” This, mentioning “informal” reports or statements five times, is from Noem’s declaration:

Disclosure of the information sought in the Court’s Minute Order would cause significant harm to the United States’ national security even assuming some of that information has already entered public sources as a result of assumptions, speculation, public investigation, or **informal** statements. It is both true and well known that official acknowledgement of a fact may be damaging to national interests in a way that **informal** suggestions or speculation about that information is not. If the government were to confirm or deny the information sought by this Court’s Minute Order, there would arise a danger that enemies of our national security would be able to stitch together an understanding of the means and methods used to thwart their unlawful and sometimes violent conduct.

[snip]

There is a difference between official acknowledgement and **informal** reports: Official disclosures or acknowledgements threaten the United States’ national security interests in a way that **informal** reports or statements do not, because **informal** statements leave an important element of doubt that provides an essential layer of protection and confidentiality. That protection would be lost if the United States were forced to confirm or deny the accuracy of unofficial disclosures or speculation.

[my emphasis]

But the plaintiffs' declaration notes that after Nayib Bukele posted a propaganda video showing three planes that had brought detainees to El Salvador, *with tail numbers visible*, both Trump and Rubio effectively ratified by reposting the video.

In addition, public information shows that two planes were still in the air when the Court issued both its oral and written Orders. Most significantly, based on information publicized by U.S. government officials and publicly available flight data, at least two flights took off during the hearing on March 15—one at 5:26pm EDT and the other at 5:45pm EDT—and landed well after this Court's written Order had been filed. See Pls. Resp. to Defs. Notice (ECF No. 21); see also Joyce Sohyun Lee and Kevin Schaul, Deportation Flights Landed after Judge Said Planes Should Turn Around, Wash. Post (Mar. 16, 2025).² And the video released by President Bukele that shows Plaintiff class members being hauled off the planes in El Salvador includes each plane's tail number.³ That video was then reposted by both President Trump⁴ and Secretary of State Rubio.⁵

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<https://www.washingtonpost.com/immigration/2025/03/16/deportation-flights-trump-elsalvador> [<https://perma.cc/Q6NH-ATY8>]

3

<https://x.com/nayibbukele/status/1901245427216978290> [<https://perma.cc/BM73-547H>].

4

<https://truthsocial.com/@realDonaldTrump/posts/114173862724361939> [<https://perma.cc/67LY-FREW>].

5

<https://x.com/SecRubio/status/1901252043>

The Xitter post from Rubio, using his official Secretary of State Xitter account, specifically says, "Thank you for your assistance and friendship, President Bukele" in response to his claim that 238 members of Tren de Aragua "arrived in our country" effectively ratifying that those planes were the ones used, and that the number Bukele used was the one given to him.

 **Secretary Marco Rubio**  
@SecRubio

 ...

Thank you for your assistance and friendship, President Bukele.

 **Nayib Bukele**   @nayibbukele · Mar 16

Today, the first 238 members of the Venezuelan criminal organization, Tren de Aragua, arrived in our country. They were immediately transferred to CECOT, the Terrorism Confinement Center, for a period of one year (renewable).

The United States will pay a very low fee for them,
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12:39 PM · Mar 16, 2025 · 3.8M Views

Perhaps the government is prepping a claim that these are "informal" statements. But Donald Trump has fired people by tweet, over and over, and nominated a good number of cabinet members by tweet, including Noem herself.

 **Donald J. Trump**  
@realDonaldTrump

I am pleased to announce that the Governor and former Congresswoman from South Dakota, Kristi Noem, will be appointed to serve as the Secretary of the Department of Homeland Security (DHS). Kristi has been very strong on Border Security. She was the first Governor to send National Guard Soldiers to help Texas fight the Biden Border Crisis, and they were sent a total of eight times. She will work closely with "Border Czar" Tom Homan to secure the Border, and will guarantee that our American Homeland is secure from our adversaries...

Trump's tweets have official effect. To claim Trump's tweet didn't ratify Bukele's post is nonsense.

Rubio and Noem's focus on the danger of official confirmation is about refusing to provide Boasberg details showing that DHS had not done adequate vetting of the detainees to sustain the claim they really were members of Tren de Aragua. Again, this is from Noem's declaration:

In addition to flight operations, the number of TdA members on a given removal flight is also information that, if disclosed, would expose ICE's means and methods, thus threatening significant harm to the national security of the United States. Revealing and/or confirming the number of TdA members involved would reveal key details about how the United States conducts these sorts of operations and would allow other aliens (members of TdA and otherwise) to draw inferences about how the Government prioritizes and uses its resources in immigration enforcement and counterterrorism operations.

[snip]

When the United [sic] seeks to remove individuals to a foreign country, the United States must negotiate the details of that removal with the foreign country. This requires nonpublic, sensitive, and high stakes negotiation with the foreign State, particularly where, as here, the aliens being removed have been deemed enemy aliens and members of a foreign terrorist organization. Those negotiations cover sensitive issues, including representations regarding the bases on which the individuals are being removed from the United States, which can impact the foreign State's willingness to accept the removed aliens and the procedures it will employ in doing so.

[snip]

Similarly, if sensitive information covered by a compelled disclosure – for example, the number and nature of aliens removed to the foreign State – were to come to light – the receiving foreign State's government could face internal or international pressure making that foreign State and other foreign States less likely to work cooperatively in the future with the United States on matters affecting its national security.

Moreover, if a disclosure were to in any way undercut or, in the eyes of a foreign State (fairly or not) cast doubt on representations made by the United States during sensitive negotiations, that could likewise make that foreign State and other foreign States less likely to work cooperatively with the United States on matters affecting its national security.

Noem is not entirely making shit up (nor is she lying, elsewhere in her declaration, that confirmation that the flights landed in Honduras could cause problems).

Bukele said he was given 238 members of TdA. It was key to his propaganda campaign. If Boasberg now finds that's false, it might well embarrass Bukele (though he's pretty immune from embarrassment).

The problem for Noem and Rubio, is ACLU already presented two sworn declarations asserting that the Trump Administration's public representations were false. EEPB, for example, described being told that El Salvador would not accept him, a Nicaraguan, because it would cause "conflict."

I overheard a Salvadoran official tell an ICE officer that the Salvadoran government would not detain someone from another Central American country because

of the conflict it would cause. I also heard him say that they would not receive the females because the prison was not for females and females were not mentioned in the agreement. I then saw the ICE officer call someone, and after the call, I overheard him saying we had to be sent back.

They included a guy whose accent undoubtedly makes it clear he's not Venezuelan, but claimed he was a Venezuelan anyway.

More alarming still, Venezuelan woman SZFR – who, like other women on one of the planes, had not yet been formally deported and so by definition should only have been on one of the planes alleged to carry TdA members – described guards on the plane acknowledging that they knew an order prohibited the departure of the plane. She also described that guards were trying to force the male detainees on the plane to sign forms admitting they were TdA members.

10. When we got on the plane there were already over 50 men on the plane. I could see other migrants walking to the plane but we took off before any additional people boarded.

11. Within a couple of minutes of take off **I heard two US government officials talking and they said “there is an order saying we can't take off but we already have.”**

12. I asked where we were going and we were told that we were going to Venezuela.

13. Several other people on the plane told me **they were in immigration proceedings and awaiting court hearings in immigration court.**

14. We were not allowed to open our window shades.

15. We landed somewhere for refueling.

We were there for many hours. We were arm and leg shackled the whole time.

16. We took off again and landed fairly quickly. I was then told we were in El Salvador.

17. While on the plane the government officials were asking the men to sign a document and they didn't want to. The government officials were pushing them to sign the documents and threatening them. **I heard them discussing the documents and they were about the men admitting they were members of TdA.**

18. After we landed but were still on the plane a woman opened the shade. An officer rushed to shut the shade and pushed her down by her shoulders to try and stop her from looking out. The person that pushed her down had HOU-02 on his sleeve.

19. I saw out the window for a minute and I saw men in military uniforms and another plane. I saw men being led off the plane. Since I've been back in the U.S. I have seen news coverage and the plane I saw looks like the one I've seen on TV with migrants from the U.S. being delivered to El Salvador.

20. All the men got off the plane. The remaining women asked what happens to us? **I was told that the President of El Salvador would not accept women.** I was also told that we were going back to detention in the U.S. [my emphasis]

But the most important part with respect to Noem's sworn statement that she can't reveal details about who was on the plane is that the agreement with Bukele said he would not accept women.

And yet Kristi Noem's DHS sent women – around nine of them – anyway.

There's a lot that Noem is trying to cover up with her State Secrets declaration, starting with how incompetent her DHS is.

But one of the key details she's trying to cover up is that a committed transphobe like Noem couldn't even properly identify the sex of the detainees she was sending to El Salvador.