

THE FOUR KINDS OF FUCK-UPS KRISTI NOEM COMMITTED ON MARCH 15

The case of Kilmar Abrego Garcia has justifiably gotten a lot of attention. [docket]

Yesterday, the government confessed it sent him, on the third deportation flight on March 15, to El Salvador, in spite of a 2019 order prohibiting his deportation to El Salvador based on real fears of persecution, including gang targeting.

Here's how Acting Field Office Director Enforcement and Removal Operations in Harlington, TX, Robert Cerna, described Abrego Garcia's deportation in a declaration submitted to support the government's claim that it fucked up but it can't be forced to do anything about it.

5. On March 15, 2025, President Trump announced the Proclamation Invocation of the Alien Enemies Act Regarding the Invasion of The United States by Tren De Aragua.

6. On March 15, 2025, two planes carrying aliens being removed under the Alien Enemies Act ("AEA") and one carrying aliens with Title 8 removal orders departed the United States for El Salvador. Abrego-Garcia, a native and citizen of El Salvador, was on the third flight and thus had his removal order to El Salvador executed. This removal was an error.

[snip]

12. The operation that led to Abrego-Garcia's removal to El Salvador was designed to only include individuals with no impediments to removal.

Generally, individuals were not placed on the manifest until they were cleared for removal.

13. ICE was aware of this grant of withholding of removal at the time AbregoGarcia's removal from the United States. Reference was made to this status on internal forms.

14. Abrego-Garcia was not on the initial manifest of the Title 8 flight to be removed to El Salvador. Rather, he was an alternate. As others were removed from the flight for various reasons, he moved up the list and was assigned to the flight. The manifest did not indicate that Abrego-Garcia should not be removed.

15. Through administrative error, Abrego-Garcia was removed from the United States to El Salvador. This was an oversight, and the removal was carried out in good faith based on the existence of a final order of removal and Abrego-Garcia's purported membership in MS-13. [bold]

One thing complicates this case: In 2019, an immigration judge took the hearsay word of an informant sufficiently seriously to detain Abrego Garcia based on a claim that he had ties to MS-13; the decision was upheld on appeal. But, as noted, Abrego Garcia *also* got a ruling that he legitimately feared deportation because he had *refused to join* Barrio 18 after they extorted his family and shut down their business. After that (and after his marriage to his US-citizen spouse) he was released from custody in 2019, during the first Trump term.

Here's how Abrego Garcia himself described things.

Plaintiff Kilmar Armando Abrego Garcia ("Mr. Abrego Garcia") won an order from an immigration judge ("IJ") prohibiting

his removal to El Salvador, after he established it was more likely than not that he would be persecuted in that country on account of a statutorily protected ground. The government could have chosen to appeal that order, but did not. The government could have chosen to remove Mr. Abrego Garcia to any other country on earth, but did not. The government could later have filed a motion to reopen proceedings against Mr. Abrego Garcia and seek to set aside the order of protection, but did not. Instead, the government put Mr. Abrego Garcia on a plane to El Salvador, seemingly without any pretense of a legal basis whatsoever. Once in El Salvador, that country's government immediately placed Mr. Abrego Garcia into a torture center—one that the U.S. government is reportedly paying the government of El Salvador to operate. This grotesque display of power without law is abhorrent to our entire system of justice, and must not be allowed to stand.

The government, however, says the onus was on Abrego Garcia and his spouse to challenge his detention with a habeas petition, but they cannot here because he is no longer in US custody.

Because Plaintiffs seek Abrego Garcia's release from allegedly unlawful detention on the grounds that it was effected illegally, they make a core habeas claim, and they must therefore bring it exclusively in habeas.

But there is no jurisdiction in habeas. Plaintiffs admit—as they must—that the United States does not have custody over Abrego Garcia. They acknowledge that there may be “difficult questions of redressability” in this case, reflecting their recognition that Defendants do not

have “the power to produce” Abrego Garcia from CECOT in El Salvador.

This adopts an argument DOJ made in the *main* El Salvador deportation case before the DC Circuit, one Justin Walker took as credible.

But it exposes the legal gimmick Trump is creating. He’s trying to deport people before they avail themselves of what Trump claims is their recourse, habeas, but once they’ve been deported, they can no longer avail themselves of a habeas petition because they’re no longer in US custody.

The government also argues that they’re helpless to convince Nayib Bukele to send Abrego Garcia back.

Despite their allegations of continued payment for Abrego Garcia’s detention, Plaintiffs do not argue that the United States can exercise its will over a foreign sovereign. The most they ask for is a court order that the United States entreat—or even cajole—a close ally in its fight against transnational cartels.

[snip]

There is no showing that any payment made to El Salvador is yet to occur; no showing that El Salvador is likely to release CECOT detainees but for any such payment; no showing that El Salvador is even inclined to consider a request to release a detainee at the United States’ request.

This case is particularly interesting given questions raised weeks ago about Bukele’s *own ties* to MS-13.

Some say Bukele is trying to hide his government’s own involvement with the gangs.

More than two dozen high-ranking

Salvadoran gang leaders have been charged with terrorism and other crimes in a Justice Department investigation that has lasted years. Several of them are jailed in the United States. One of the indictments details how senior members of Bukele's government held secret negotiations with gang leaders after his 2019 election. The gang members wanted financial benefits, control of territory and better jail conditions, the court documents say. In exchange, they agreed to tamp down homicides in public areas and to pressure neighborhoods under their control to support Bukele's party in midterm elections, according to the 2022 indictment.

Bukele's government went so far as to free a top MS-13 leader, Elmer Canales Rivera, or "Crook," from a Salvadoran prison, according to the documents – even though the U.S. government had asked for his extradition. (He was later captured in Mexico and sent to the U.S.)

Last weekend, the Trump administration sent back one of the MS-13 leaders named in the indictments, César Humberto López Larios, alias "Greñas," along with the 238 Venezuelans and nearly two dozen other Salvadorans allegedly tied to gangs.

Some Salvadoran analysts believe Bukele wants the gang leaders back so they won't testify about his government's involvement with them – and potentially put him in legal trouble.

"If these returns [of Salvadoran gang members] continue, it takes away the possibility that the U.S. judicial system will open a case against Bukele for negotiations and agreements with terrorist groups," said Juan Martínez d'Aubuisson, an anthropologist who has

studied the gangs.

That is, it so happens that Abrego Garcia got “accidentally” sent back to El Salvador based on a ruling that he might have ties to MS-13, even though a judge found he demonstrated a real fear of Barrio 18, the kind of complexities of organized crime that implicates Bukele himself.

Abrego Garcia wasn’t on the manifest, but then he was.

And note, above, Cerna’s inexplicable invocation of the Alien Enemies Act – the legal basis, he notes, for the deportation of those on the *other two planes* sent to El Salvador that day, but not, purportedly, the one Abrego Garcia was sent on. *He* was sent on a plane full of people with final removal orders, allegedly. So why raise the AEA, which is not at issue in this case?

That kind of seeming non sequitur is often a tell, that the current story – the story about the third plane – is not what we’re being told.

Abrego Garcia’s case is more complex than some are making out.

But his story needs to be put in context with all the other stories of that day.

Thus far, we know that Kristi Noem demonstrated the incompetence of her DHS in a number of ways on March 15.

She sent women on flights even though Bukele would only accept men.

She sent a Nicaraguan even though Bukele refused to accept other Central Americans.

She sent a slew of men, including a gay makeup artist and a professional soccer player, based primarily on their tattoos. (ACLU liberated one of the checklists showing the centrality of tattoos to determinations of Tren de Aragua membership.)

And she sent Abrego Garcia to El Salvador in defiance of a ruling that she couldn’t do that.

Everything we've learned about the flights on March 15 show how utterly incompetent Kristi Noem's DHS is.

DOJ is trying to hide Noem's incompetence via a range of legal ploys. Or, in the case of Abrego Garcia, they're just disclaiming any responsibility to reverse her failures.

But as we discuss the Trump's Administration's assault on due process, it bears notice that they're trying to eliminate due process even as Noem proves, over and over, that she's utterly incompetent to do *even what she claims* she's trying to do competently.

Update: Corrected gang that extorted Abrego Garcia's family.