

POLITICS

An 'Administrative Error' Sends a Maryland Father to a Salvadoran Prison

The Trump administration says it mistakenly deported an immigrant with protected status but that courts are powerless to order his return.

By Nick Miroff



El Salvador Presidency / Handout / Getty

MARCH 31, 2025, 10:14 PM ET

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The Trump administration acknowledged in a court filing Monday that it had grabbed a Maryland father with protected legal status and mistakenly deported him to El Salvador, but said that U.S. courts lack jurisdiction to order his return from the megaprison where he's now locked up.

The case appears to be the first time the Trump administration has admitted to errors when it sent three planeloads of Salvadoran and Venezuelan deportees to El Salvador's grim "Terrorism Confinement Center" on March 15. Attorneys for several Venezuelan deportees have said that the Trump administration falsely labeled their clients as gang members because of their tattoos. Trump officials have disputed those claims.

But in Monday's court filing, attorneys for the government admitted that the Salvadoran man, Kilmar Abrego Garcia, was deported accidentally. "Although ICE was aware of his protection from removal to El Salvador, Abrego Garcia was removed to El Salvador because of an administrative error," the government told the court. Trump lawyers said the court has no ability to bring him back now that Abrego Garcia is in Salvadoran custody.

Simon Sandoval-Moshenberg, Abrego Garcia's attorney, said he's never seen a case in which the government knowingly deported someone who had already received protected legal status from an immigration judge. He is asking the court to order the Trump administration to ask for Abrego Garcia's return and, if necessary, to withhold payment to the Salvadoran government, which says it's charging the United States \$6 million a year to jail U.S. deportees.

Trump administration attorneys told the court to dismiss the request on multiple grounds, including that Trump's "primacy in foreign affairs" outweighs the interests of Abrego Garcia and his family.

"They claim that the court is powerless to order any relief," Sandoval-Moshenberg told me. "If that's true, the immigration laws are meaningless—all of them—because the government can deport whoever they want, wherever they want, whenever they want, and no court can do anything about it once it's done."

Court filings show Abrego Garcia came to the United States at age 16 in 2011 after fleeing gang threats in his native El Salvador. In 2019 he received a form of protected legal status known as “withholding of removal” from a U.S. immigration judge who found he would likely be targeted by gangs if deported back.

Abrego Garcia, who is married to a U.S. citizen and has a 5-year-old disabled child who is also a U.S. citizen, has no criminal record in the United States, according to his attorney. The Trump administration does not claim he has a criminal record, but called him a “danger to the community” and an active member of MS-13, the Salvadoran gang that Trump has declared a Foreign Terrorist Organization.

Sandoval-Moshenberg said those charges are false, and the gang label stems from a 2019 incident when Abrego Garcia and three other men were detained in a Home Depot parking lot by a police detective in Prince George’s County, Maryland. During questioning, one of the men told officers Abrego Garcia was a gang member, but the man offered no proof and police said they didn’t believe him, filings show. Police did not identify him as a gang member.

Abrego Garcia was not charged with a crime, but he was handed over to U.S. Immigration and Customs Enforcement after the arrest to face deportation. In those proceedings, the government claimed that a reliable informant had identified him as a ranking member of MS-13. Abrego Garcia and his family hired an attorney and fought the government’s attempt to deport him. He received “withholding of removal” six months later, a protected status.

It is not a path to permanent U.S. residency, but it means the government won’t deport him back to his home country because he’s more likely than not to face harm there.

Abrego Garcia has had no contact with any law enforcement agency since his release, according to his attorney. He works full time as a union sheetmetal apprentice, has complied with requirements to check in annually with ICE, and cares for his five-year-old son, who has autism and a hearing defect, and is unable to communicate verbally.

On March 12 Abrego Garcia had picked up his son after work from the boy's grandmother's house when ICE officers stopped the car, saying his protected status had changed. Officers waited for Abrego Garcia's wife to come to the scene and take care of the boy, then drove him away in handcuffs. Within two days he had been transferred to an ICE staging facility in Texas, along with other detainees the government was preparing to send to El Salvador. Trump had invoked the Alien Enemies Act of 1798, and the government planned to deport two planeloads of Venezuelans along with a separate group of Salvadorans.

Abrego Garcia's family has had no contact with him since he was sent to the megaprison in El Salvador, known as the CECOT. His wife spotted her husband in news photographs released by Salvadoran President Nayib Bukele on the morning of March 16, after a U.S. District Judge had told the Trump administration to halt the flights.

"Oopsie," Bukele wrote on social media, taunting the judge.

Abrego Garcia's wife recognized her husband's decorative arm tattoo and scars, according to the court filing. The image showed Salvadoran guards in black ski masks frog-marching him into the prison, with his head shoved down toward the floor. The CECOT is the same prison Department of Homeland Security Secretary Kristi Noem visited last week, recording videos for social media while standing in front of a cell packed with silent detainees.

If the government wants to deport someone with protected status, the standard course would be to reopen the case and introduce new evidence arguing for deportation. The deportation of a protected status holder has even stunned some government attorneys I've been in touch with who are tracking the case, who declined to be named because they weren't authorized to speak to the press. "What. The. Fuck," one texted me.

Sandoval-Moshenberg told the court he believes Trump officials deported his client "through extrajudicial means because they believed that going through the immigration judge process took too long, and they feared that they might not win all of their cases."

Officials at ICE and the Department of Homeland Security did not respond to a request for comment. The Monday court filing by the government indicates officials knew Abrego Garcia had legal protections shielding him from deportation to El Salvador.

“ICE was aware of this grant of withholding of removal at the time [of] Abrego Garcia’s removal from the United States. Reference was made to this status on internal forms,” the government told the court in its filing.

Abrego Garcia was not on the initial manifest of the deportation flight, but was listed “as an alternate,” the government attorneys explained. As other detainees were removed from the flight for various reasons, Abrego Garcia “moved up the list.”

The flight manifest “did not indicate that Abrego-Garcia should not be removed,” the attorneys said. “Through administrative error, Abrego-Garcia was removed from the United States to El Salvador. This was an oversight.” But despite this, they told the court that Abrego Garcia’s deportation was carried out “in good faith.”

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