

Appeals Court rules Trump trampling on due process in Abrego Garcia deportation case

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The Trump administration is engaged in the systematic trampling on the rights of due process which are “the foundation of our constitutional order,” a three-judge panel of the Fourth US Circuit Court of Appeals declared Thursday. The appeals panel denied an emergency appeal by the Trump administration against rulings made by District Court Judge Paula Xinis, who is hearing the suit brought by Kilmar Armando Abrego Garcia and his family, against Abrego Garcia’s detention and deportation to a torture-prison in El Salvador.

The ruling, authored by Judge Harvie Wilkinson III, one of the most senior and most conservative of Appeals Court judges, nominated by Republican Ronald Reagan in 1983, is written in extremely blunt language:

It is difficult in some cases to get to the very heart of the matter. But in this case, it is not hard at all. The government is asserting a right to stash away residents of this country in foreign prisons without the semblance of due process that is the foundation of our constitutional order. Further, it claims in essence that because it has rid itself of custody that there is nothing that can be done. This should be shocking not only to judges, but to the intuitive sense of liberty that Americans far removed from courthouses still hold dear.

The opinion addresses the claims by Trump officials that Abrego Garcia is a gang member and a terrorist, responding, “Perhaps, but perhaps not. Regardless, he is still entitled to due process. If the government is confident of its position, it should be assured that position will prevail...”

The opinion excoriates the Department of Justice for word-juggling over a Supreme Court decision last week instructing the Trump administration to “facilitate” Abrego Garcia’s release from custody in El Salvador, while telling Judge Xinis to remove the word “effectuate” from her order:

“Facilitate” is an active verb. The plain and active meaning of the word cannot be diluted by its constriction, as the government would have it, to a narrow term of art.

“Facilitation” does not permit the admittedly erroneous

deportation of an individual to the one country’s prisons that the withholding order forbids and, further, to do so in disregard of a court order that the government not so subtly spurns. “Facilitation” does not sanction the abrogation of habeas corpus through the transfer of custody to foreign detention centers in the manner attempted here. Allowing all this would “facilitate” foreign detention more than it would domestic return. It would reduce the rule of law to lawlessness and tarnish the very values for which Americans of diverse views and persuasions have always stood.

The Appeals Court opinion goes on to identify the most important potential consequence of the precedent set by the mass deportation of Venezuelan and Salvadoran immigrants to the notorious CECOT prison in El Salvador.

If today the Executive claims the right to deport without due process and in disregard of court orders, what assurance will there be tomorrow that it will not deport American citizens and then disclaim responsibility to bring them home? And what assurance shall there be that the Executive will not train its broad discretionary powers upon its political enemies? The threat, even if not the actuality, would always be present...

After dismissing the spectacle of Trump and Bukele meeting at the White House and both claiming they lacked the power to return Abrego Garcia to his family—leaving the imprisoned migrant in limbo—the three-judge panel concludes with a warning that Trump is destabilizing and potentially discrediting the entire US constitutional structure. The executive branch and the judiciary were “grinding irrevocably against one another in a conflict that promises to diminish both. This is a losing proposition all around.”

While the executive branch might prevail in the immediate conflict with the courts, “The Executive will lose much from a public perception of its lawlessness and all of its attendant contagions.”

The full meaning of this declaration should be thought about seriously. After Trump has been in office less than 100 days of his

second term, one of the highest courts in America is warning that his administration's conduct threatens to completely discredit the US government in the eyes of the American people.

Given their role as high-level defenders of corporate America and the capitalist state, such a pronouncement by Appeals Court judges is a further indication of the political crisis within the ruling elite. It is not only impoverished immigrant workers like Abrego Garcia who must fear the police-state methods of Trump and his gang of fascist criminals. American citizens, congressmen, even robed judges could be whisked away by masked federal agents and shipped off to concentration camps located wherever the military-intelligence apparatus finds convenient.

The Appeals Court ruling came less than 24 hours after Federal District Judge James Boasberg, who initially handled the mass deportations to El Salvador, but not the specific case of Abrego Garcia, issued an opinion that there was clear evidence that administration officials were in contempt of court for defying his order to halt the deportation flights on the ground or turn the planes around if they had already taken off.

Boasberg indicated he would continue pressing to identify the official who made the decision to defy the order. Two of the flights had already taken off and did not turn back, according to press accounts, while the third flight was still loading and took off well after Boasberg banned it.

As a practical matter, Boasberg's probe is unlikely to lead to criminal contempt charges even if he succeeds in finding out the name of the official. If it is Secretary of Homeland Security Kristi Noem or one of the officials of DHS, Trump could simply pardon them. If it is Trump himself, he is immunized from criminal prosecution by the Supreme Court's decision last summer in *Trump v. United States*.

In another intervention last week, the Supreme Court ruled that those deported as a result of Trump's invocation of the Alien Enemies Act could only challenge their treatment on an individual basis, by filing for writs of habeas corpus in the state where they were being held before the flights to El Salvador—in this case, Texas. Judge Boasberg thus no longer has jurisdiction over the deportation flights, but he can still impose sanctions on officials who defied his order during the time that it was in effect.

Judge Boasberg set an April 23 hearing for the Trump administration to respond to the potential contempt charges and to supply further information about the decision-making process of the deportation flights. Judge Xinis has set an April 28 hearing for the administration to respond to her demands for information on what actions it is taking to facilitate the return of Abrego Garcia. She also suggested that criminal contempt charges could be brought if the Department of Justice again fails to comply.

More details have emerged on the entirely arbitrary process by which immigrants were grabbed for detention and deportation to El Salvador. According to Documented, an immigrant-focused publication in New York City, 19-year-old Merwil Gutiérrez was in the vicinity when ICE agents seized another man, and they decided to add him despite his lack of any criminal record or even tattoos. He and his father arrived in 2023 from Venezuela, and have an active immigration court case seeking asylum. Neither Merwil or anyone in his family has any ties to El Salvador or to

gangs.

In another case, Venezuelan migrant Neri Jose Alvarado Borges was falsely identified by ICE as a gang member because of an autism awareness tattoo, featuring a rainbow-colored ribbon made of puzzle pieces, along with the name of his autistic brother. Borges had an active asylum claim and was working legally at a local bakery in Ft. Worth, Texas at the time he was detained.

Also, on Thursday afternoon, the Supreme Court announced it would hear arguments on May 15 over Trump's executive order purporting to end birthright citizenship, which has been the policy of the United States government since its establishment in the Fourteenth Amendment in 1868. The unsigned order denied the request by the Trump administration to lift lower court orders blocking the executive action, saying that this would be discussed at the May 15 hearing.

The Department of Justice claimed that the issuance of orders by district courts that applied to government policy nationwide was unconstitutional. However, lawyers for the Republican Party and various ultra-right and fascist groups made frequent use of such district court orders during the Biden administration, using small federal districts where they could be sure of finding a judge willing to strike down Biden's policies on issues like immigration and abortion.

The issue would be one of the most fundamental ever to reach the Supreme Court, with Trump seeking to overturn the landmark 1898 Supreme Court decision that held that the language of the Fourteenth Amendment clearly confers citizenship on all those born within the boundaries of the United States, whatever the citizenship status of their parents, except for those born to foreign diplomats.



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