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## US edges closer to constitutional crisis over wrongly deported man



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**Washington:** The US is edging closer to a constitutional crisis over a man wrongly deported to a notorious Salvadorian prison, with the Trump administration resisting a Supreme Court order to “facilitate” the man’s return to the United States.

Both Trump and El Salvador President Nayib Bukele – who has called himself “the world’s coolest dictator” – dug in against the court order during Bukele’s official visit to the White House on Monday (Tuesday AEST).



US President Donald Trump meets El Salvador President Nayib Bukele in the Oval Office on Monday (Tuesday AEST). AP

Kilmar Abrego Garcia, an undocumented Salvadorian national living in Maryland, was removed last month on one of three deportation flights that are the subject of an ongoing, high-profile court challenge to the Trump administration's [use of the 1798 Alien Enemies Act to deport alleged gang members](#).

Garcia was technically not deported under that law. The government alleges he is a member of the gang MS-13, now designated a foreign terrorist organisation, although he has not been convicted of any such crimes. He was given protected immigration status in 2019 and lawyers for the government admitted he was deported after an “administrative error”.

In a 9-0 unanimous decision last week, the US’s highest court said the administration must “facilitate” Garcia’s return. But there is now a legal stoush over what exactly that means.

The administration argues the matter is one of foreign relations: Garcia is locked up on foreign soil, under the control of the El Salvadorian government. In legal filings, the Department of Justice says all that the court’s order requires it to do is remove any domestic obstacles to the man’s return.



Jennifer Vasquez Sura, the wife of Kilmar Abrego Garcia, speaks to the media during a press conference earlier in April. AP

“That’s up to El Salvador if they want to return him, that’s not up to us,” Attorney-General Pam Bondi said in the Oval Office during Bukele’s visit. “If they wanted to return him, we would facilitate it, meaning provide a plane.”

Bukele said it was “preposterous” to suggest he should send the man back to the US and described him without evidence as a terrorist. “I don’t have the power to return him to the United States,” he said while sitting beside the US president. “How can I smuggle a terrorist into the United States?”

Trump suggested the mainstream media was lobbying for Garcia to be returned. “They’d love to have a criminal released into our country ... these are sick people,” he said, gesturing to the reporters present.

Casting the dispute as one of foreign policy, not domestic law, Secretary of State Marco Rubio said Garcia was illegally present in the US and no court could compel his return.

“The foreign policy of the United States is conducted by the president of the United States, not by a court,” he said. “No court in the United States has the right to conduct the foreign policy of the United States. It’s that simple, end of story.”

Legal scholars and political opponents are now debating whether the US is at the start, or on the edge of, a constitutional crisis.

Former US attorney Harry Litman said it was “preposterous” for Bukele to claim he could not return Garcia given the US paid \$US6 million (\$9.4 million) for El Salvador to lock up alleged gang members in the first place.

“All we have to do is lift our finger and say, ‘return Abrego Garcia, please,’” Litman told CNN. “It is way, way beyond the pale and just contempt for the Constitution and the rule of law.”



Kilmar Abrego Garcia. AP



El Salvador President Nayib Bukele said it was preposterous to suggest he could return the man to the United States. AP

Former speaker of the house Nancy Pelosi, a veteran Democratic lawmaker from California, accused Trump of sitting in silence while Bukele “smeared” Abrego Garcia as a terrorist.

The Supreme Court had ordered his return, she said in a post on X, but instead “the Trump administration is defying the law, disappearing people and yielding to a fellow tyrant at the expense of the victim’s family”.

Speaking at the Cleveland Club of Ohio on Monday while the Oval Office meeting was underway, Democratic congressman Ro Khanna of California said if the administration defied the order it would be a constitutional crisis and a “red line”. Republicans and Democrats alike needed to speak up about it, he said.

Meanwhile, Trump told reporters he would like to deport American citizens to El Salvador but was not sure that it would be legal.

“We also have homegrown criminals that push people into subways, that hit elderly ladies on the back of the head with a baseball bat when they’re not looking, that are absolute monsters,” he said.

“I’d like to include them in the group of people to get them out of the country, but you’ll have to be looking at the laws on that.”

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