

IN THE
Supreme Court of the United States

KRISTI NOEM, SECRETARY OF HOMELAND SECURITY, ET AL.,

Applicants,

v.

KILMAR ARMANDO ABREGO GARCIA, ET AL.,

Respondents.

***AMICI CURIAE* BRIEF OF PROFESSORS ERWIN CHEMERINSKY, MARTHA MINOW,
AND LAURENCE TRIBE IN SUPPORT OF PLAINTIFFS-APPELLEES' OPPOSITION
TO APPLICATION TO VACATE THE INJUNCTION ISSUED BY THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF MARYLAND AND REQUEST FOR AN
IMMEDIATE ADMINISTRATIVE STAY**

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STATEMENT OF *AMICI CURIAE*

Amici respectfully submit this brief pursuant to Supreme Court Rule 37.4. *Amicus* Erwin Chemerinsky is the Dean of the University of California, Berkeley, School of Law, where he also serves as the Jesse H. Choper Distinguished Professor of Law. *Amicus* Martha Minow is the 300th Anniversary University Professor at Harvard University. She has taught at Harvard Law School since 1981 and served as dean for eight years. *Amicus* Laurence Tribe is the Carl M. Loeb University Professor of Constitutional Law Emeritus at Harvard University, and has taught at Harvard Law School since 1968. *Amici* are world-renowned scholars of constitutional law who collectively have authored scores of journal articles and books addressing constitutional issues including separation of powers, the limits of Executive Branch power, and the role of the Judicial Branch.

Amici have an interest in this case because, as scholars who have dedicated their careers to constitutional law, they have a special interest in ensuring that the balance of powers between the Executive, Legislative, and Judicial branches accords with the requirements and purposes of the Constitution. In this case, the Executive Branch is effectively asserting absolute, unreviewable authority to remove an individual from the United States, even where the removal was in conceded violation of a court order. If the Court were to adopt the Solicitor General's position here, it would dramatically expand the Executive Branch's power at the expense of fundamental individual liberties, and diminish both the Legislative Branch's and the Judicial Branch's power in unprecedented and dangerous ways.

ARGUMENT

At bottom, the Solicitor General’s argument is that, once the Executive Branch has removed an individual from the United States and arranged for that individual to be held in a foreign prison, an Article III court is constitutionally disempowered from ordering that the individual be returned to the United States—regardless of whether the Executive Branch’s removal of the individual (i) lacked any statutory basis, (ii) failed to afford the individual any due process, and (iii) flouted a court order, issued pursuant to a congressional statute, barring the removal.

The Solicitor General repeatedly seeks to characterize the question presented as whether the district court had constitutional authority to direct the Executive Branch to facilitate the return of an “alien.” See Applicants’ Br., at 14-17. But the Solicitor General’s argument that the district court unconstitutionally “seize[d] control” of the Executive Branch’s exclusive authority “over foreign relations,” id. at 3, does not logically depend upon Mr. Abrego Garcia’s non-citizen status. Instead, the logical upshot of the Solicitor General’s argument is that, if the removed individual is in the “custody of a foreign sovereign”—including custody that the Executive Branch unlawfully had arranged—an Article III court is not permitted to direct the Executive Branch to do *anything* to secure the individual’s return. If the Solicitor General’s argument were correct, the Executive Branch would possess a shuddering degree of power—power that the President could wield in extreme and extraordinary ways, including against American citizens that the President simply

disfavors. None of this Court's precedents, nor any principle that can be derived from any of this Court's precedents, supports the Solicitor General's argument or the breathtaking scope of exclusive Article II authority that the Solicitor General posits.

There is no question—and could be no question—that the federal courts have jurisdiction over the U.S. officials who removed an individual from the United States and arranged for that individual to be held in a foreign prison, and who have continuing authority and power to correct their mistakes in such removal and rendition. To ensure the balance of powers that the Constitution envisions and that is necessary to protect individual liberty, it is vital that the Court expressly reject the argument that the Solicitor General is making here.

CONCLUSION

For the reasons stated above, we urge the Court to deny the Solicitor General's application.

April 7, 2025