July 15, 2025

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Re: Request for Review into Abduction of Kilmar Armando Abrego Garcia

Dear Attorney General Brown and District Attorney Jackson,

We respectfully urge your offices to open a criminal investigation into the unlawful kidnapping of Kilmar Armando Abrego Garcia, a Maryland resident, by federal immigration officers in Beltsville, Maryland. Without due process or legal authority, ICE officials arrested, detained, and then forcibly transferred Mr. Abrego Garcia to El Salvador—in defiance of a court order prohibiting his removal to that country, where he faces credible threats to his life. These acts, which public evidence indicates are part of a criminal conspiracy directed and condoned by senior officials in the Trump administration with full knowledge of their unlawful nature, warrant prompt investigation by your offices.

Background

Kilmar Armando Abrego Garcia is a 29-year-old Salvadoran national who has lived in Maryland since fleeing gang violence in El Salvador in 2011, when he was approximately 16 years old. He has deep ties in his Beltsville, Maryland community. He is married to a U.S. citizen and is raising three children, including their five-year-old disabled son. Prior to his abduction, he was employed full-time as a sheet metal apprentice pursuing a journeyman license, under a valid work permit issued by the Department of Homeland Security. Complaint at 2–3, 6, 10, *Abrego Garcia v. Noem*, No. 8:25-cv-00951-PX (D. Md. Apr. 6, 2025), https://bit.ly/42TZIjP.

Since 2019, Mr. Abrego Garcia has held a withholding of removal status under 8 U.S.C. § 1232(b)(3)(A), after the immigration judge agreed that he would likely be persecuted by gangs in El Salvador if he were forced to return. He has fully complied with all requirements of this status, including his recent January 2, 2025 annual check-in. See *id.* at 8–10. The 2019 order, which prohibits DHS from removing Mr. Abrego Garcia to El Salvador, remains in effect.[1]

On March 12, 2025, ICE pulled Mr. Abrego Garcia over while he was driving his five-year-old son, and despite having "no warrant for his arrest and no lawful basis to take him into custody," told him his "status had changed," handcuffed him, and threatened to hand his son over to Child Protective Services if his wife didn't arrive within ten minutes. *Abrego Garcia v. Noem*, No. 8:25-cv-951, 2025 WL 1014261, at *3 (D. Md. Apr. 6, 2025) [hereinafter *Apr. 6 Order*]; *see also* Compl. at 11. Over the next three days, ICE transferred Mr. Abrego Garcia through multiple detention centers, including in Louisiana and Texas. *Apr. 6 Order*, at *3. Mr. Abrego Garcia's wife alerted detention officials to his protected status, but was ignored. *See* Compl. at 11–12. During the few calls he was allowed with his wife, he told her that ICE assured him that he would see a judge soon. *See id.* He never did. And ICE never attempted to rescind his order of withholding of removal. *See id.* at 13.

On March 15, 2025, "without any notice, legal process, or hearing," the United States forcibly transported Mr. Abrego Garcia to CECOT in El Salvador, "a notorious supermax prison known for widespread human right violations," in blatant defiance of a binding federal court order prohibiting his removal to El Salvador. *See Apr. 6 Order,* at *3. He was stripped, shackled, had his head shaved, and marched into a prison that holds nearly 40,000 other prisoners in "some of the most inhumane and squalid conditions known in any carceral system." *Id.* He was repeatedly beaten, tortured (including by being forced to kneel overnight with other migrants deported from the United States, and being subject to beatings by guards if they fell over in exhaustion), deprived of sleep and food, forced to soil himself after being denied access to a bathroom, subject to overcrowding, denied access to his attorneys, and deprived of basic human rights. First Amended and Supplemental Complaint at 21-23, *Abrego Garcia v. Noem*, No. 8:25-cv-00951-PX (D. Md. July 2 2025), http://bit.ly/44whSsu. The prison also houses members of "the very gang whose years' long persecution of Abrego Garcia resulted in his withholding from removal…." *Apr. 6 Order,* at *11.

Mr. Abrego Garcia was one of more than 100 people transported out of this country in a mass removal by the Trump administration and imprisoned in CECOT. *See id.* at *3. The United Sates is paying millions of taxpayer dollars to El Salvador to illegally imprison these individuals, many of whom were awaiting protective hearings in the United States. This scheme—including the ongoing imprisonment of

[1] To overcome the order, DHS would have to show, by a preponderance of the evidence, that grounds for termination exist. *See* 8 C.F.R. §§ 208.16–.18 & .24(e).

Mr. Abrego Garcia—has been approved by top officials in the Trump administration. Secretary of State Marco Rubio publicly praised the scheme. *See id.* DHS Secretary Kristi Noem personally toured CECOT during Mr. Abrego Garcia's illegal imprisonment and declared that transferring U.S. detainees to CECOT was "one of the tools in our [the United States'] toolkit."[2]

Three courts, including the U.S. Supreme Court, have ruled that Federal officials illegally took Mr. Abrego Garcia from the country and ordered the Trump administration to facilitate his return. *See* Order Granting Pls.'s Mot. for TRO, *Noem v. Abrego Garcia*, 145 S. Ct. 1017, 1018 (Apr. 10, 2025) [hereinafter *Sup. Ct. Order*]. A DOJ lawyer admitted that Mr. Abrego Garcia's deportation was an "administrative error," *id.*—a euphemism for what was, in truth, an illegal and life-threatening act of state violence. That lawyer was fired. In April, Trump admitted that he could call the Salvadoran president to secure Mr. Abrego Garcia's release, but his administration did "nothing" to comply.[3]

It took them until June, after Mr. Abrego Garcia had been imprisoned in El Salvador over 80 days, to finally return him to the United States. He was then promptly imprisoned in Tennessee, far from his home state of Maryland, on charges "that the Government only developed while it was under threat of sanctions." Pls.'s Opp'n to Req. for Stay at 1, *Abrego Garcia v. Noem*, No. 8:25-cv-00951-PX (D. Md. June 8, 2025), https://bit.ly/4kUSiUA. As Mr. Abrego Garcia's attorneys explain, his Tennessee imprisonment is merely the government's "latest act of contempt" and in violation of "the Supreme Court's directive to 'ensure that his case is handled as it would have been had he not been improperly sent to El Salvador.'" *Id.* (quoting *Sup. Ct. Order* at 1018). The magistrate judge in that case recently rejected the government's motion to keep Mr. Abrego Garcia in prison pending his trial, in a ruling that highlighted the lack of plausible evidence to support his continued detention. *See* Memorandum Opinion at 22-25, 26-28, *United States v. Abrego Garcia*, No. 3:25-cr-115-1 (M.D. Tenn. June 22, 2025), https://bit.ly/4nORDGT (for example, noting that the government is relying on the testimony of a "two-time, previously-deported felon, and acknowledged ringleader of a human smuggling operation, who has now obtained for himself an early release from federal prison and delay of a sixth deportation by providing information to the government"). But the same court has delayed his release because it is the only way to prevent the Trump administration from again deporting him. Order, *United States v. Abrego Garcia,* No. 3:25-cr-115-1 (M.D. Tenn. June 30, 2025), http://bit.ly/4lH7aGN. In other words, Mr. Abrego Garcia is being forced to suffer ongoing imprisonment

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[2] U.S. Dep't of Homeland Sec., *Inside the Action: Secretary Noem's Visit to El Salvador*, DHS, https://www.dhs.gov/medialibrary/assets/video/59109 (last visited Apr. 14, 2025); U.S. Dep't of Homeland Sec., *How It's Going*, DHS, https://www.dhs.gov/medialibrary/assets/video/59108 (last visited Apr. 14, 2025).

[3] Fritz Farrow, *Trump Says 'I Could' Get Abrego Garcia Back from El Salvador*, ABC NEWS (Apr. 29, 2025), https://bit.ly/3ESyUbG; Alan Feuer, *'Nothing Has Been Done': Judge Rebukes U.S. Effort to Return Wrongly Deported Man*, N.Y. TIMES (Apr. 15, 2025), https://bit.ly/3Y3KZBe.

because it is the only way to protect him from the Trump's repeated attempts to wrest him from his family and community and remove him to a foreign country where he has no ties, no access to an attorney, and where he may face dangerous or hostile living conditions.

Basis for Criminal Investigation

The conduct of senior Trump officials and ICE agents in seizing and disappearing Mr. Abrego Garcia across state lines demands criminal investigation under Maryland law.

Under Maryland criminal law, a person commits the felony of kidnapping if they, "by force or fraud, carry or cause a person to be carried in or outside the State with the intent to have the person carried or concealed in or outside the state," and upon conviction is subject to up to 30 years' imprisonment. Md. Crim. Law Code Ann. § 3–502. Kidnapping presupposes that the transporting out of the state is unlawful. *See Collier v. Vaccaro*, 51 F.2d 17, 19–20 (4th Cir. 1931).

A police officer can commit this crime if he transports an arrested person without lawful authority. *See id.*; *People v. Alvarez*, 201 Cal. Rptr. 3d 468, 480 (Ct. App. 2016). Even a lawful arrest can "transmute into a kidnapping" if circumstances change so that the arrest is "no longer for lawful law enforcement objectives." *Id.* In *Alvarez*, the court found that a police officer's lawful arrest and detention was not eligible for a defense against a kidnapping charge "at the point at which" the officer forced the arrestee to perform oral sex, and was thus "acting under" his own interests rather than lawful authority. *Id.* at 481. Likewise, in *Collier*, the court found that an officer who carried out a lawful arrest could still be guilty of kidnapping for forcibly carrying the arrestee out of the country: "To arrest a man for crime is one thing; to carry him out of his country and away from the protection of the laws of his domicile is another and very different thing." 51 F.2d at 19. As the court emphasized, forcing a kidnap victim across state lines is an even more serious offense than an unlawful arrest. *See id.*

Conspiracy to commit kidnapping is also illegal, subject to fines and/or imprisonment up to 30 years (the same maximum penalty as the kidnapping offense itself). Md. Crim. Law Code Ann. § 1-202; *see also Townes v. State*, 548 A.2d 832, 834 (1988) ("In Maryland, the crime [of conspiracy] is complete when the unlawful agreement is reached, and no overt act… need be shown.").

Maryland law also has common law criminal offenses for false imprisonment, gross negligence, willful and wanton misconduct, intentional infliction of emotional distress, or other crimes. And a hate crime—a crime committed against any person because of their "race, color…. [or] national origin," Md. Crim. Law Code Ann. § 10-

304, is both a separate criminal offense and the basis for a sentence enhancement. *See Lipp v. State*, 227 A.3d 818, 820, 828 (Md. Spec. App. 2020).

Here, the facts provide a basis for inquiring into whether President Donald Trump,[4] senior Trump officials—including Secretary of Homeland Security Kristi Noem—and ICE agents conspired to and did kidnap Mr. Abrego Garcia. ICE agents arrested Mr. Abrego Garcia without legal basis and transported him out of Maryland and ultimately and secretly to El Salvador, while denying him access to any due process. The United States also paid to fund his imprisonment in a foreign prison known for its abusive, illegal conditions.

As explained in *Alvarez*, even a potentially lawful arrest—which Mr. Abrego Garcia's was not—may become a kidnapping if there comes a point at which officers "no longer" act for "lawful law enforcement objects" but instead are pursuing their own interests. *See Alvarez*, 201 Cal. Rptr. at 481. This is particularly true where, as here, the victim is still being denied his freedom. *See State v. Stouffer*, 721 A.2d 207, 215 (Md. 1998) (explaining that kidnapping is a crime that lasts until a person's liberty is restored (citing *State v. Gomez,* 225 Conn. 347, 622 A.2d 1014, 1016 (Conn.1993)). Given the government's pattern of admitted—and likely willful—"errors" throughout his ordeal, and its ongoing refusal to rectify those life-endangering legal violations, a criminal investigation is warranted.

Immunity Does Not Preclude Prosecution

The immunity available to federal officials under the Supremacy Clause of the U.S. Constitution is not available in all circumstances and does not preclude criminal investigation here.

The Supremacy Clause "is designed to ensure that states do not 'retard, impede, burden, or in any manner control' the execution of federal law." *New York v. Tanella*, 374 F.3d 141, 147 (2d Cir. 2004) (quoting *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 436 (1819)). It does not, however, wholly shield federal officers from appropriate state criminal proceedings. The Supreme Court set out the appropriate standard for assessing the availability of Supremacy Clause immunity in *Cunningham v. Neagle*: a state may not exercise criminal jurisdiction over a federal agent provided that "he was authorized to [act] by the law of the United States," and that "in doing that act, he did no more than what was necessary and proper for him to do." 135 U.S. 1, 75 (1890); *see also Tanella*, 374 F.3d at 147; *Kentucky v. Long*, 837 F.2d 727, 744 (6th Cir. 1988) ("Under *Neagle*, a state court has no jurisdiction if (1) the federal agent was performing an act which he was authorized to do by the law of the United States and (2) in performing that authorized act, the

[4] While the US Supreme Court in *Trump v. United States*, 603 U.S. 593 (2024), held that presidents are entitled to at least presumptive immunity for official acts, conspiring to commit kidnapping cannot be defined as an official act.

federal agent did no more than what was necessary and proper for him to do."). To satisfy the second prong, two conditions must be satisfied: (1) the federal officer must "subjectively [believe] that the actions were authorized"; and (2) that belief must be "objectively reasonable under the circumstances." *Battle v. State*, 252 Md. App. 280, 258 A.3d 1009, 1021 (2021) (citing *Long,* 837 F.2d at 744).

Supremacy Clause immunity therefore does not protect federal officers who act outside the law or beyond what is subjectively and objectively necessary and proper. When they do either, they may be held criminally liable in state court for violating state laws. *See, e.g.*, *Battle*, 252 Md. App. at 280 (rejecting Supremacy Clause immunity for a DHS officer who was prosecuted for assaulting a civilian outside the scope of his duties and beyond what was necessary and proper).

If a criminal investigation finds even one of the following—that federal officials lacked legal authority, did not believe their actions were authorized, or could not have reasonably believed so—then state prosecution may proceed. Here, the facts already publicly known strongly support all three conclusions. Senior officials violated U.S. law to orchestrate Mr. Abrego Garcia's removal, then engaged in conduct that they likely did not believe was lawful and that no reasonable official could believe was lawful.

1. U.S. officials lacked legal authority for their actions against Mr. Abrego Garcia.

Federal courts, in reviewing Mr. Abrego Garcia's ongoing habeas petition, have found that Mr. Abrego Garcia's treatment has been "wholly lawless." *Apr. 6 Order*, at *4. The district court determined that "there were no legal grounds whatsoever for his arrest, detention, or removal," and that his deportation violated a standing withholding order under U.S.C. § 1231(b)(3)(A). *Id.* at *4, *9. The Fourth Circuit, in denying the government's attempt to stay the district court ruling, bluntly held that "[t]he United States Government has no legal authority to snatch a person who is lawfully present in the United States off the street and remove him from the country without due process. The Government's contention otherwise, and its argument that the federal courts are powerless to intervene, are unconscionable." *Abrego Garcia v. Noem*, No. 25-1345, 2025 WL 1021113, at *1 (4th Cir. Apr. 7, 2025); *see also id.* (Wilkinson, J., concurring) (pointing out that by removing Abrego Garcia to El Salvador, "the government . . . took the only action which was expressly prohibited"). And in ordering the United States to facilitate Mr. Abrego Garcia's return to the United States, the Supreme Court noted that the U.S. government has even acknowledged "that the removal to El Salvador was . . . illegal." Sup. Ct. Order at 1018; *see also id.* at 2–3 (Sotomayor, J., statement) ("[T]he Government has cited no basis in law for Abrego Garcia's . . . removal to El Salvador, or his confinement in a Salvadoran prison. Nor could it.").

Yet for nearly two months after the Supreme Court's order, Mr. Abrego Garcia remained in a Salvadoran prison, his imprisonment paid for by U.S. taxpayers. Judge J. Harvie Wilkinson III, writing on behalf of a unanimous three-judge panel of the Fourth Circuit, decried the government's repeated failures to act lawfully or to facilitate Mr. Abrego Garcia's return:

> '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.

Abrego Garcia v. Noem, Case No. 25-1404, 2025 WL 1135112, at *2 (4th Cir. Apr. 17, 2025).

These unlawful acts—executed in defiance of court orders, and outside the bounds of U.S. government officials' authority—raise serious criminal questions. On this basis alone, Supremacy Clause immunity does not shield the officials involved.

2. U.S. officials likely knew, and should have known, their actions were not necessary or proper.

The actions of the ICE agents who abducted Mr. Abrego Garcia and the senior officials who ordered his abduction and removal to El Salvador to be imprisoned there were not necessary or proper. Even if they subjectively believed that the actions were authorized —which they likely did not—their belief was not "objectively reasonable under the circumstances." *Battle v. State*, 252 Md. App. 280, 258 A.3d 1009, 1021 (2021) (citing *Long,* 837 F.2d at 744).

The government's flagrant and systemic disregard for the law and due process was not an accident. ICE knew about the withholding order, *see* Declaration of Robert L. Cerna at 3, *Abrego-Garcia v. Noem*, No. 25-cv-951-PX (D. Md. Mar. 28, 2025), ECF No. 11 Ex. C. which made deportation to El Salvador plainly illegal.[5]

[5] In February 2025, the Secretary of State designated MS-13 as a foreign terrorist organization and "sought to remove identified MS-13 members as expeditiously as possible…." App. to Vacate the D. Ct. Injunction at 6–7, *Noem v. Abrego Garcia*, 145 S. Ct. 1017 (Apr. 10, 2025), https://bit.ly/42WJKW3. However, neither that designation nor the government's unsubstantiated allegation that Mr. Abrego Garcia is in MS-13 change Mr. Abrego Garcia's legal status. The government could have availed itself of procedural mechanisms to reopen the order and ask the court

ICE then bypassed every procedural safeguard: it failed to notify Mr. Abrego Garcia or his attorney of any pending action, arrested him without warning or legal basis, concealed his location from counsel, and rushed his deportation without a hearing—even though it had assured him of receiving one. Most significantly, on the day Mr. Abrego Garcia was taken out of the country, a federal judge barred the removal of Venezuelan migrants to the same prison before they could vindicate their due process rights. That judge has since found probable cause to hold the Trump Administration in criminal contempt for willfully disregarding that order. *J.G.G., et al, v. Trump*, No. 25-cv-00766-JEB, 2025 WL1119481, at *1 (D.D.C. Apr. 16, 2025).

These are not the actions of confused officers. They are the calculated moves of officials determined to evade legal oversight. Furthermore, even if some ICE agents did not understand the law, their superiors—who ordered, approved, and defended this operation—clearly did. Their continuous defiance of court orders to return Mr. Abrego Garcia and rectify their "error" only confirms that these officials understand that they were and are acting without legal authority.

The court's rationale in *Battle* is relevant here. There, the appeals court of Maryland upheld the conviction of a plainclothes DHS agent who assaulted a man outside a gas station, rejecting his claim of Supremacy Clause immunity because Battle "did not commit a mere error in judgment or misapprehend the scope of his legal duty." 252 Md. App. at 310. Though the scale of the alleged offenses against Mr. Abrego Garcia is larger and implicates more powerful federal officials, the analysis is the same: federal officials have no immunity for state criminal acts that do not satisfy the *Neagle* test.

This is particularly true now. The federal judges overseeing Mr. Abrego Garcia's habeas case have correctly identified the risks that arise when a government can, without consequence, disappear people from American prisons, pay to keep them in foreign prisons, and disclaim responsibility for their wellbeing or return. As Judge Wilkinson, writing for a unanimous Fourth Circuit panel, warned:

> 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?

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to terminate its withholding protection. It did not. *See Abrego Garcia* 2025 WL 1021113, at *3. To this day, the withholding order remains in place. Notably, the sole basis for the allegation is a 2019 field sheet alleging that he wore a Chicago Bulls hat and hoodie and that a confidential informant—citing no evidence—claimed he was part of MS-13 in New York, where Mr. Abrego Garcia has never lived. *See* Compl. at 7–8.

Abrego Garcia, 2025 WL 1135112, at *2; *see also* Sup. Ct. Order at 1019 ("The government's argument [] implies that it could deport and incarcerate any person, including U.S. Citizens, without legal consequence, so long as it does so before a court can intervene."). And in a case related to the secret removals of Venezuelan migrants, Justice Sotomayor warned that "[h]istory is no stranger to such lawless regimes, but this nation's system of laws is designed to prevent, not enable, their rise." Trump v. J. G. G., No. 24A931, 2025 WL 1024097, at *5 (U.S. Apr. 7, 2025) (Sotomayor, J., dissenting).

State governments have a role in this nation's system of laws that must prevent, not enable, the rise of a lawless regime. Maryland need not and should not wait for resolution of Mr. Abrego Garcia's habeas petition or dubious criminal charges.[6] Maryland has the power and duty to enforce its criminal laws, even against federal actors and even against powerful defendants. As the state of New York demonstrated in its prosecution of Donald Trump for falsifying business records to cover up his hush money payments to an adult film star during his 2016 campaign, *see New York v. Trump*, Verdict Sheet, Indictment No. 71543-23 (Sup. Ct. N.Y. Part 59, May 29, 2024), states have the authority and responsibility to protect their residents and enforce their laws, regardless of defendants' wealth, power, or prestige.

[6] There is little to suggest that Mr. Abrego Garcia is being held pursuant to legitimate charges. Although the alleged incident occurred in 2022, no charges were contemplated until the government needed to evade contempt charges for its long-term refusal to return Mr. Abrego Garcia to the United States. The indictment relies on allegations contracted by the relevant police report. And the decision to pursue the indictment led to the abrupt resignation of the Department of Justice's long-term criminal division chief in Nashville. And *See* Katherine Faulders, James Hill, and Alexander Mallin, *Kilmar Abrego Garcia brought back to US,* ABC NEWS (June 6, 2025), https://bit.ly/4mU37Ip; Alan Feuer, *Defense Lawyers for Returned Deportee Ask Judge to Release Him Pretrial,* N.Y. TIMES (June 11, 2025), https://nyti.ms/4l8PXpr. It seems more likely that these charges are, as Mr. Abrego Garcia's attorneys allege, part of the government's "elaborate, all-of-government effort to defy court orders, deny due process, and disparage Abrego Garcia." Pls.'s Opp'n to Req. for Stay at 1, *Abrego Garcia v. Noem*, No. 8:25-cv-00951-PX (D. Md. June 8, 2025), https://bit.ly/4kUSiUA. Moreover, even if there is now a basis for criminal charges, that would not justify past illegal kidnapping. Rather, that the administration appears to have purposely delayed Mr. Abrego Garcia's return until it could file charges is further evidence of the knowing and criminal nature of the conspiracy. *See id.*

Conclusion

We urge your offices to immediately begin a thorough investigation to determine whether charges should be brought against those responsible for Mr. Abrego Garcia's unlawful arrest, removal, and imprisonment in El Salvador.

Sincerely,

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Courtney Hostetler, Legal Director
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