

Imani Gandy

Hello, fellow law nerds. Welcome to another episode of Boom! Lawyered, a Rewire News Group podcast hosted by the legal journalism team that had an amazing time at their live show in Washington, DC. So much fun. So much fun. I'm Rewire News Group's Editor-at-Large, Imani Gandy.

Jessica Pieklo

And I'm Jess Pieklo, Rewire News Group's Executive Editor. Rewire News Group is the one and only home for expert repro journalism that inspires you to get on the horn with Congress and let them know we don't disappear people in this country. And the Boom! Lawyered podcast is part of that mission. So a big thanks to our subscribers and a welcome to our new listeners. And Imani said it, we are back from a phenomenal trip to D.C. with our friends at Feminist Buzzkills. So a big thanks to the Black Cat and to everybody who came out.

What a ride that was. Speaking of rides.

Imani Gandy

What a segue.

Jessica Pieklo

Today we are talking about a case that combines every ingredient of this administration's worst instincts, authoritarianism, cruelty, and a complete disregard for due process.

Imani Gandy

We're talking about Kilmar Abrego Garcia, a man the United States government illegally deported, admitted they illegally deported, and yet still refuses to bring back. And by refuses, I mean actively defying a federal court directive. And by illegally deported, I mean kidnapped and trafficked. But it's not just about Abrego Garcia. It's about what his case represents—a Trump administration plan to build a prison pipeline outside the reach of United States law.

Jessica Pieklo

And let me just say this from the jump. We are not being dramatic here at all. Trump has actually said the quiet part out loud. He literally told Salvadorian President Nayib Bukele this week that quote, homegrown criminals are next and laughed about needing five more prisons to hold them.

Imani Gandy

He said he wants to put quote, bad nasty people. And that's my Trump impression. You know, we're gonna take these, we're gonna take these, we're gonna take these bad nasty people and we're gonna put them in a foreign prison. It's gonna be great. It's gonna be the

most beautiful prison you've ever seen. But what counts as bad and nasty, you might be asking. Well, I have an idea. Queer people, trans people, black people, immigrants, leftists, Democrats, right?

Jessica Pieklo

That's like half Baldwin, half Trump.

Jessica Pieklo

Oh my god.

Jessica Pieklo

Yeah. Mm hmm. Probably. Yep. Likely. Definitely. I mean, obviously.

Imani Gandy

Whoever tried to stop him from claiming on his official presidential medical records that he's 6'3 and 227 pounds when we all know the man probably borrowed Ron DeSantis's shoe lifts? Like, come on, 6'3, 227? That would make him a UFC fighter. It's ridiculous, but I digress.

Jessica Pieklo

You know now that we are going to get some portrait in the Oval Office of Trump as a UFC fighter, like from the top barrack down onto the Constitution.

Imani Gandy

Oh god.

Jessica Pieklo

But let's back up. Kilmar Abrego Garcia has lived in Maryland for 14 years. He's married to a US citizen. He has a child with autism. He was granted withholding of removal status by an immigration judge back in 2019 because he'd face serious danger if deported to El Salvador. He would likely be killed by gang members. And that's a key legal point here, this withholding of removal. It's a special, or a specific protection under immigration law. The government can't deport someone to a country where they're likely to be persecuted or harmed.

Imani Gandy

Exactly. I mean, if you look at the facts of this case, his entire family was being harassed by gangs because they wanted him to join their gang. So they sent him to the United States and then the family moved to Guatemala and continued to be harassed by this gang in El Salvador. So it's a serious situation. So under this rule, he's not supposed to be deported to El Salvador. So guess what the administration did in March? Snatched him up off the street and renditioned him.

Jessica Pieklo

Mm-hmm.

Imani Gandy

And not just to any country, but to a maximum security prison in El Salvador, a terrorism confinement center is what it's called, known for being one of the worst, if not the worst prison on the planet. This prison has documented human rights abuses. It's terrifying. I don't know if you've seen the pictures or that nasty little bit of uh viral TikTok nonsense that Kristi Noem did in her cute little hat with her eyelashes and her lipstick. Like it's...

Jessica Pieklo

Yeah.

Imani Gandy

horrifying. And as you said, the fact that they deported him to El Salvador violates the specific protection under US law that says this man cannot be deported to El Salvador. Right? That's the withhold withholding of removal status that you just mentioned. Now, all of this happened on March 15th and he's still there a month later. Even though the Trump administration admitted that they made an administrative error, they knew couldn't deport him to El Salvador. But guess what, Jess? Now we actually know why Abrego Garcia is still languishing in this concentration camp.

Jessica Pieklo

And that's because Trump wants him there. Trump wants a place where the United States can send people, including US citizens, and then pretend they can't do anything about it. Like this, oops, whoops, sorry, they're under foreign custody now. Nothing we can do. I'm just a shruggly guy, right? Like.

Imani Gandy

I'm just a shruggly guy.

Jessica Pieklo

It's bananas. They're literally arguing that if they outsource imprisonment to another country, they're above the law, right? Like just send them in a plane, shoot them in the head, dump them in the ocean, nothing to be done about it, right? Like it's that lawlessness. And it's not like the Trump couldn't have deported this guy legally if he wanted to. He could have. The Trump administration could have used—

Imani Gandy

It is. It's really bad.

Jessica Pieklo

—a procedural mechanism under governing regulations to reopen the immigration judge's prior order and terminate its withholding protection. And that's according to the Fourth Circuit, whose ruling in this case on April 7th was basically like, what the fuck are you all

doing? But the government didn't avail themselves of this procedural mechanism, again, because they didn't want to.

Imani Gandy

So, Abrego Garcia is just sitting in a gulag. And here's the kicker. The Supreme Court said on April 10th that the deportation was illegal, that federal courts have a right to review these deportations, and that the government had to, quote, facilitate and effectuate his return. So, the administration should have *been* brought him back already, right? Case closed.

Jessica Pieklo

Right? Especially because it wasn't just like a Supreme Court justice said this. All nine of them said it.

Imani Gandy

Nine zip. Even Thomas and Alito. Come on, man.

Jessica Pieklo

Come on, I mean even Alito!

Imani Gandy

Even Alito.

Jessica Pieklo

But no, not case closed actually, because instead of correcting the error, because again, they can, it would be easy to do so. The government is now refusing to say what they're doing to fix it. And the Supreme Court's ruling is mealy-mouthed when it comes to the specifics of this case. It's a lot of like, process and procedure should be respected and involved, passive voicing by the court.

Imani Gandy

Right, right. Yeah, let's dig into that ruling a little bit. You know, right? It came down on April 10th. The Supreme Court didn't even go all in, right? They didn't go as far as they could or should have. They didn't say, you assholes better bring him back right now or else. But they did say, this shit is illegal and you have to quote, facilitate bringing him back. Then they kicked the case back to the district court in Maryland.

Jessica Pieklo

Yeah.

Jessica Pieklo

Mm-hmm.

Jessica Pieklo

And that court said, functionally, okay, assholes, what's the plan? That's legalese.

Imani Gandy

That's legalese, okay assholes.

Jessica Pieklo

And the response from the Trump regime was, you know, we're not prepared to share that information at this time.

Imani Gandy

legal double speak for, we're just gonna keep breaking the law and hope no one notices. And if they do notice tough shit, who's gonna check me boo?

Jessica Pieklo

I guarantee you nobody from the Department of Justice currently speaks like that.

Imani Gandy

Yeah, no, that's because they don't watch Housewives.

Imani Gandy

But they actually stood up in federal court and basically said, nah, bitch, in response to the district court's request for information about what they were doing—concrete steps they were taking to facilitate and effectuate Abrego Garcia's return. So, what is the government's argument for why they don't have to bring this man back, Jess?

Jessica Pieklo

Well, basically, the administration is arguing that they don't have to bring him back because foreign policy is the president's turf. Courts can't tell the executive what to do, Imani, didn't you know that?

Imani Gandy

But that's not how this works, right? Like, that's not how any of this works. Sure, know, courts can't tell the government what to do, but they sure as shit can tell them what they can't do. And what they can't do is just deport people illegally to a foreign country and be like, eh, nothing we can do about it, right? The government can't just say, sorry, we can't do anything. He's under the jurisdiction of a foreign sovereign.

First of all, when has Trump ever ceded power to govern to another country? Come on. Absurd. Second of all, Abrego Garcia is only there because we sent him there. Right? He's not been charged with the crime in El Salvador. He's not being held pursuant to the laws of El Salvador. He is a detainee of the United States government who is being housed temporarily for some reason in El Salvador.

Jessica Pieklo

I mean, come on.

Imani Gandy

And El Salvador's ministry of foreign affairs has said that El Salvador will quote, house these individuals for one year pending the United States decision on their long-term disposition. So it's not true that we can't get him back. It's not true that he's under the jurisdiction of a foreign sovereign. We are actually paying El Salvador millions of dollars to hold these migrants in detention.

Jessica Pieklo

The Trump administration is literally the guy in the hot dog suit meme right now.

Imani Gandy

Right. We're all looking for the guy who did this. Or like the Spider-Man meme, you know?

Jessica Pieklo

Oh man, I mean, and there's more because there's always more. As the Fourth Circuit pointed out in its ruling, the US has returned wrongfully removed migrants as a matter of course before. So that means it can do it. It has its routine. That's what as a matter of course means. It's not a big deal. Just pick up the fucking phone. Like, what are we doing here?

Imani Gandy

Mm-hmm.

Jessica Pieklo

Asking for a Abrego Garcia's return is not some diplomatic Hail Mary outside the bounds of normal relations, right? It's a phone call.

Imani Gandy

And instead of picking up the phone, they're leaving this man in a foreign prison, away from his wife, away from his kid, away from his community, and saying, bro, can't help you.

Jessica Pieklo

And let's talk about one of the reasons they don't want to bring him back. If they do, they'll have to face the facts in a courtroom. They'll have to provide proof for their claims that he's affiliated with MS-13.

Imani Gandy

Oh, for fuck's sake. This part is ridiculous. The evidence that the government is using to prove quote unquote that he's in MS-13, a confidential informant, and the fact that Garcia wore a Chicago Bulls hat and a hoodie. Seriously, that's it. Come the fuck on.

Jessica Pieklo

Mmm.

Jessica Pieklo

I mean, it's insulting, it's racist, it's the so-called evidence that has gotten people disappeared or killed in countries with no rule of law, which is exactly what's happening here.

Imani Gandy

And even if, even if the gang thing were true, and let me be, let me be clear, that's my Barack Obama voice, let me be clear, there is no evidence of it, right? There's no credible evidence that the gang crap is, that the gang crap is even true. It still wouldn't justify what the government did. They have, they have legal options. Bring him back, litigate—

Jessica Pieklo

Yes. oh

Yeah.

Jessica Pieklo

Thank you!

Imani Gandy

—follow the damn law, right? Like I am certainly not a fan of deporting people at all or of Trump's immigration policies at all, even when they are based on immigration law. But this shit is just wildly illegal, right? If Trump wanted to, he could bring Abrego Garcia back and then probably deport him legally, right? Immigration judges aren't known for taking the sides of immigrants and—

Jessica Pieklo

Right.

Jessica Pieklo

Mm-hmm.

Imani Gandy

—Trump's nonsense that, oh, he's an MS-13, he's very MS-13 gang member, it's beautiful, very dirty, nasty, beautiful gang. Right? Those claims might pass muster.

Jessica Pieklo

Instead, they're opting for the shadowy extrajudicial strategy. And let's be very clear, that's what it is, extrajudicial outside the reach of the courts. And that's the main reason they don't want to bring him back. It's not just that they'll have to provide evidence that Abrego Garcia is in a gang. They're using this as a test case to justify disappearing people with zero due process. They're using him as a human loophole. Ugh.

And if they can normalize outsourcing imprisonment, they're not just sidestepping the law, they're obliterating it. mean, look, you and I are old enough to remember Gitmo. They're trying to create Gitmo 2.0.

Imani Gandy

Except this time, it's not even on US controlled land like Guantanamo Bay, right? It is a foreign prison, one of the worst on the planet, run by another country, and Trump is bragging about it.

Jessica Pieklo

Right.

Jessica Pieklo

I mean, he sure is right, right in the Oval Office in front of press and cameras. Trump says home grown are next and JD Vance, Marco Rubio and Pam Bondi are just yukking it up.

Imani Gandy

Look, let's not pretend this isn't political. JD Vance, White House press secretary, Karoline Leavitt, and noted turd gremlin, Stephen Miller have been out here banging the quote gang member drum to justify their cruelty towards our Abrego Garcia. And Miller keeps spinning lies about what the Supreme Court actually said. He's trying desperately to spin it as a win for Trump. He's claiming that the court rejected the power of federal courts to even intervene in this case or cases like it. That is 100 % not true. The Supreme Court said, of course federal courts can review these cases. Abrego Garcia's deportation was illegal. You have to facilitate his return, right?

Jessica Pieklo

Mm-hmm.

Imani Gandy

The district court asked the government to show its work on what it was doing to get this man back. And the government gave the district court a middle finger wrapped in legalese. So the question is, where does that leave us?

Jessica Pieklo

Right.

Jessica Pieklo

Mm-hmm.

Jessica Pieklo

I mean, as you suggested earlier, we are not just talking about an immigration case, right? We are talking about a test of whether the government believes it has to follow the law at all, even when it's caught red-handed breaking that law, right? Trump is flagrantly violating



court orders all across the country because he thinks he's above the law. And frankly, John Roberts has done nothing to disabuse him of that notion.

The law is not self-executing. The law is words on paper. Someone has to enforce it.

Imani Gandy

So what can we do, right? Because let's be real, if they can do this to Abrego Garcia, they can do it to anyone.

Jessica Pieklo

Yeah, they can and they'll try. First, courts have to keep stepping in, right? Judges like Paula Xinis in Maryland are holding the line saying, no, bring him back and building a record for contempt. And that is frustrating because it is slow, tedious work, but that is what's going on. And we need Congress, even this right wing shit show of a Congress to start asking hard questions about the secret agreement with El Salvador because truly what the fuck.

Imani Gandy

Yeah, truly what the fuck, but will they start asking questions? Probably not, right? This Congress is two-ply soft like Cottonelle. They are. That's a shout out to all my Letterkenny fans out there. And here's the bigger question. What can federal courts do to stop this?

Jessica Pieklo

I mean, that's what everybody's really looking at, right? Like Steve Vladeck has written that the federal court should prohibit Trump from deporting anyone until everyone has their day in court, right? A blanket habeas and not just hearing before an immigration judge where you're not guaranteed a lawyer, but an actual federal court hearing. Like, yes, that is a good start. No more yoking people up in one state, shipping them off to Louisiana and then out of the country before family members even know where they are. That's how things should be going.

Imani Gandy

Right. And it would also mean no more using the Alien Enemies Act of 1790-whatever the fuck to deport people Trump claims are Venezuelan gang members. Everyone gets their day in court to challenge their removal and Trump has to prove the people he's deporting are actually in a gang and not just wearing a Chicago Bulls hoodie like Abrego Garcia was. And notably, you know, last week—

Jessica Pieklo

Right.

Jessica Pieklo

Right.

Imani Gandy

A US judge in Colorado granted district-wide, uh statewide class habeas temporary restraining order to prohibit Trump from just summarily removing immigrants under the Alien Enemies Act, right? Because the ACLU in that particular case, and just to be clear, the Alien Enemies Act case is separate from the Abrego Garcia case, but they both deal with the same thing, which is yoking up people, renditioning them, and sending them to some black site somewhere, right?

Jessica Pieklo  
Mm-hmm.

Jessica Pieklo  
Yeah.

Imani Gandy  
ACLU attorneys have been warning that despite the Supreme Court ruling in the Alien Enemies Act case, the administration wouldn't even commit to providing immigrants with 24 hour's notice, right? Like, what are we doing here, people?

Another question that is on everyone's mind, this is the big one. What happens if the Trump administration just continues to refuse to follow court orders?

Jessica Pieklo  
Uh huh.

Jessica Pieklo  
I mean, you would think that the people who cosplay as originalists and this whole founding of the country based on the king's refusal to provide rights in process would get mad. They're not. Functionally, nothing that matters until they do, right? Like Steve Vladeck, who we've mentioned before, a law professor at Georgetown has pointed out that the court could start imposing monetary sanctions against Kristi Noem as Secretary of Homeland Security, for example.

Imani Gandy  
Right.

Jessica Pieklo  
Or that the court could start referring people to their state bars. They could jail officials. But what happens when inevitably Kristi Noem and Homeland Security refuse to pay or when bar associations are too afraid of Trump to discipline DOJ lawyers or when Pam Bondi's brother is elected to run the DC bar to prevent exactly this kind of thing? The honest answer is that these fuckers need to be thrown in jail.

But the same problem arises. Who in the federal government is going to do that? The US Marshals, the FBI? I mean, Trump has stacked these agencies with loyalists. Kash Patel is gonna direct folks to start what? Imprisoning Kristi Noem? I don't think so, unless...

Imani Gandy

Right. Ooh, unless what?

Jessica Pieklo

Okay, stick with me for a second. Former Maryland Governor Martin O'Malley was on Maddow this week saying that state attorneys general need to start stepping in. They need to start arresting ICE officials who are kidnapping and trafficking people. Look, I do not like cops generally. We have established that, but if it's cops arresting other cops, I'm listening. Sign me up.

Imani Gandy

You know what? I'm all for that. I am not sure that that would ever happen because ACAB, right? All Cops are Bastards. But at this point, right, exactly. But at this point, it's all hands on deck. So if I have to root for cops in this very limited circumstance, then I'm going to do that. Because remember, this isn't just about immigrants. If Trump gets away with this, then we are all at risk. And let me tell you, as a Black woman,

Jessica Pieklo

No, I mean, like I remember the George Floyd summer.

Jessica Pieklo

Mm-hmm.

Imani Gandy

—who is surely on some list of dissidents somewhere, I'm concerned.

Jessica Pieklo

I mean, and you should be. I mean, Imani is right, ACAB always, but if what we need are state law enforcement officers to step in, then they absolutely should. And I mean, look, I know this is the world we live in, but do it, do it.

Another big question people are asking is what happens when this case makes its way back to the Supreme Court and the Trump administration has done fuck-all to comply with its obligation to facilitate Abrego Garcia's return. Then what?

Imani Gandy

Well, the answer to that question is pretty grim, Jess. Pretty fucking grim. Ultimately, if the Trump administration decides it's going to be fully lawless and just start disappearing people, there's not a whole lot that courts can do, right? We are really on the precipice of a

direct confrontation between the Supreme Court and the Trump administration. And considering...

Jessica Pieklo  
That's usually my line.

Jessica Pieklo  
Mm-hmm.

Imani Gandy  
...that this is a man who was on TV basically asking the president of El Salvador to build more prisons so he can ship American citizens to El Salvador. I don't think this is a man who's going to be constrained by something so quaint as the rule of law.

Jessica Pieklo  
Especially not a man who admires the likes of President Andrew Jackson, who was also not constrained by the rule of law and faced little to no consequences as a result of the Trail of Tears. So I don't want to end it on that note, though.

Imani Gandy  
Ugh.

Imani Gandy  
I mean, listen, what you should be doing, seriously, start harassing your state attorney general, right? Like we've all seen the movies where it's like, there's a crime and like the state troopers show up and then the Federal Bureau of Investigation shows up and they're all like, you know, Juris My Diction and everyone starts fighting over like who has jurisdiction. It's not like the state LEO and federal LEO like each other. So it's possible that maybe, you know,

Jessica Pieklo  
Mm-hmm.

Jessica Pieklo  
No.

Jessica Pieklo  
Right.

Imani Gandy  
... law enforcement in states might be like, hey man, it might be fun to arrest some ICE agents. I don't know, let's try it though.

Jessica Pieklo

Let's try it. It's something new. And you know what? Keep talking and showing up at town halls with your elected officials. I saw folks given Chuck Grassley, the run around in Iowa. And by the way, those were not youngins doing that. And they understand the stakes here and what's going on. So yeah, it's bad, it stays bad if we just say, it. So we're not doing that. That's what we're not doing.

Imani Gandy  
Yes!

Imani Gandy  
No, they were all white folks and they were pissed.

Imani Gandy  
Yeah, no, we're not doing that. If you would like to talk to either of us about how to not just sit around and say, fuck it, but to get angry, get out on the streets, hold up a sign. Do you know, I live in a tiny town in Colorado and I went out last Saturday and there were like 14 white people just standing on the corner on Main Street. Literally on Main Street, holding signs. Everyone was driving by honking horns. It actually made me feel good because it's like... I live in a pretty white town. So seeing white folks out protesting this

Jessica Pieklo  
God bless.

Imani Gandy  
makes me feel good. So go be one of those people. Just get out there, make yourselves heard. You can find us on Blue Sky. I'm Angry Black Lady on Blue Sky. Jess is Hegemommy on Blue Sky. H-E-G-E-M-O-M-M-Y. You should follow Rewire News Group on all of the things on Blue Sky, on Instagram, on TikTok. Again, always a shout out to beigebabyjesus, who's crushing it daily. And I don't know, just...

Try to take care of yourselves and try and find some joy because these are really shitty times and we cannot let this administration grind us down into dust. And on that note, what are we gonna do Jess?

Jessica Pieklo  
We're gonna see you on the tubes, folks.

Imani Gandy  
We'll see you on the tubes folks.