



# Why Trump's idea of imprisoning U.S. citizens in El Salvador is likely illegal

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President Donald Trump on Monday reiterated that he'd like to send U.S. citizens who commit violent crimes to prison in El Salvador, telling that country's president, Nayib Bukele, that he'd "have to build five more places" to hold the potential new arrivals.

Trump's administration has already deported immigrants to El Salvador's notorious mega-prison CECOT, known for its harsh conditions. The president has also said his administration is trying to find "legal" ways to ship U.S. citizens there, too.

Trump on Monday insisted these would just be "violent people," implying they would be those already convicted of crimes in the United States, though he's also floated it as a punishment for those who attack Tesla dealerships to protest his administration and its patron, billionaire Elon Musk. But it would likely be a violation of the U.S. Constitution for his administration to send any native-born citizen forcibly into an overseas prison. Indeed, it would likely even violate a provision of a law Trump himself signed during his first term.

Here's a look at the notion of sending U.S. citizens to prison in a foreign country, why it's likely not legal and some possible legal loopholes.

## If it's legal to do to immigrants, why not citizens?

Immigrants can be deported from the United States, while citizens cannot. Deportation is covered by immigration law, which does not apply to U.S. citizens. Part of being a citizen means you cannot be forcibly sent to another country.

Immigrants can be removed, and that's what's been happening in El Salvador. The country is taking both its own citizens that the United States is sending as well as those from Venezuela and potentially other countries that will not take their own citizens back from the U.S. The Venezuelans sent there last month had no opportunity to respond to evidence against them or appear before a judge.

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That's the deal the Trump administration signed with Bukele. The U.S. has sent people to El Salvador, Costa Rica, Panama and elsewhere even when they are not citizens of those countries. But, under international agreements, people cannot be sent to countries where they are likely to be persecuted or tortured.

## Why does the Trump administration want to send people to El Salvador?

Bukele calls himself "the world's coolest dictator" and has cracked down on human rights during his administration. He's also turned El Salvador from one of the world's most violent countries into a fairly safe one. Trump has embraced that example, including during the Oval Office visit Monday.

Sending immigrants from countries like Venezuela to El Salvador sends a message to would-be migrants elsewhere about the risks of trying to make it to — or stay in — the United States.

There's a second benefit to the administration: People sent to El Salvador are outside the jurisdiction of United States courts. Judges, the administration argues, can't order someone sent to El Salvador to be released or shipped back to the U.S. because the U.S. government no longer has control of them.

It's a potential legal loophole that led Supreme Court Justice Sonia Sotomayor to issue a grim warning in her opinion in a 9-0 U.S. Supreme Court finding that the administration could not fly alleged Venezuelan gang members to El Salvador with no court hearing, even after Trump invoked an 18th century law last used during World War II to claim wartime powers.

"The implication of the Government's position is that not only noncitizens but also United States citizens could be taken off the streets, forced onto planes, and confined to foreign prisons with no opportunity for redress," Sotomayor warned. She was writing to dissent from the majority taking the case from the federal judge who had initially barred the administration from any deportations and had ordered planes en route to El Salvador turned around — an order the administration apparently ignored.

A second case highlights the risks of sending people to El Salvador. The administration admits it sent a Maryland man, Kilmar Abrego Garcia, erroneously to El Salvador. A Salvadoran immigrant, Abrego Garcia, who has not been charged with a crime, had an order against deportation but was shipped to CECOT anyway. On Monday Bukele and Trump scoffed at the idea of sending him back, even though the U.S. Supreme Court ordered the administration to "facilitate" his return.

## Wait, so can they send citizens to El Salvador?

Nothing like this has ever been contemplated in U.S. history, but it seems unlikely. There are other legal barriers besides the fact that you cannot deport U.S. citizens. The United States does have extradition treaties with several countries where it will send a citizen accused of a crime in that country to face trial there. That appears to be the only existing way a U.S. citizen can be forcibly removed from the country under current law.

The Constitution also prohibits "cruel and unusual punishment," and one of CECOT's selling points is that conditions there are far harsher than in prisons in the U.S. As noted above, federal courts have no jurisdiction there, and that may deprive people sent there of the constitutional guarantee of due process of law.

"It is illegal to expatriate U.S. citizens for a crime," wrote Lauren-Brooke Eisen of the Brennan Center for Social Justice in New York.

She noted that even if the administration tries to transfer federal prisoners there, arguing they're already incarcerated, it could run afoul of the First Step Act that inmates as close to from their home to use federal than 500 miles

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That's a small, but real, pool of people. Perhaps the most significant thing about it is that it would require loss of citizenship first. In other words, there's still likely no legal way to force a citizen out of the country. But a few could end up in legal jeopardy anyway.

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