



## Would it be legal for Trump to send U.S. citizens to El Salvador's jails?

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By  
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Inmates sit in a cell at El Salvador's Counter-Terrorism Confinement Centre (CECOT) mega-prison, where hundreds of gang members are incarcerated, in Tecoluca in January. The Trump administration says it is considering El Salvador's offer to accept U.S. prisoners — including some U.S. citizens — in its jails.

*Marvin Reinos/AFP via Getty Images*

The U.S. is "just profoundly grateful," Secretary of State Marco Rubio said, for El Salvador President Nayib Bukele's offer to incarcerate criminals being held in American prisons — including U.S. citizens and legal residents — in his country's jails.

Rubio called the offer "an extraordinary gesture never before extended by any country." But the prospect that the U.S. might consider deporting its own citizens to serve prison time in another nation's jails quickly drew a backlash from people saying such a plan would be illegal.

It's unclear how seriously the Trump administration might pursue such an idea, but President Trump said on Tuesday that he would welcome it — if it were legal.



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"I'm just saying if we had the legal right to do it, I would do it in a heartbeat," President Trump said when asked about El Salvador's offer on Tuesday. "I don't know if we do or not, we're looking at that right now." Experts, however, are adamant it is unconstitutional.

### What did El Salvador offer?

On a brief trip to El Salvador on Monday, [Rubio told journalists](#) that Bukele agreed to accept any criminal who is in the U.S. illegally to put in his country's jails, as well as offered to accept "dangerous American criminals in custody in our country, including those of U.S. citizenship and legal residents."

"No country has ever made an offer of friendship such as this," Rubio said.

Asked about the idea on Tuesday, the secretary stressed that no plan is in motion to deport U.S. citizens to El Salvador's prisons.

"That's an offer President Bukele made," Rubio said. "Obviously we'll have to study it on our end. There are obviously legalities involved. We have a Constitution, we have all sorts of things."

Rubio said the offer is a chance "to outsource, at a fraction of the cost, at least some of the most dangerous and violent criminals that we have in the United States."

"But obviously the administration will have to make a decision," he added.

Following up, a journalist asked what kind of human rights protections prisoners might have if they are deported to El Salvador.

Rubio reiterated that at this stage, the proposal is simply an offer made by Bukele.

"We'll have to study it and see how something like that could even be applied," he added.

### **What does the ACLU say?**

"You may not deport a U.S. citizen, period," ACLU attorney Lee Gelernt, deputy director of the group's Immigrants' Rights Project, told NPR. "The courts have not allowed that, and they would not allow it."

In extradition cases, the U.S. sends citizens to another country to face criminal charges. But, Gelernt said, "it would be blatantly unconstitutional to deport a U.S. citizen" to a foreign country under other circumstances.

As for the idea of the U.S. deporting non-citizens to a country they're not from, Gelernt said it's possible, but complicated, under arrangements such as a [safe third country agreement](#).

"Congress has put in very careful safeguards for when a non-citizen can be sent back to a country other than their own," he said. "There has to be an agreement with this third country, and there has to be a clear sense that the person is not going to be in danger in that country, and they have to be able to challenge being sent to another country."

The move also can't expose the deported person to persecution or torture.

"We would have grave concerns if non-citizens are being sent to El Salvador" to serve prison time, Gelernt said, adding that he doubts El Salvador could meet the criteria. As for the prospect of U.S. citizens being sent there to serve prison sentences ordered by U.S. courts, he called it "a non-starter."

### **What's next?**

In the Oval Office, Trump said that while a main focus has been on dealing with non-

citizens whose home nations refuse to accept repatriation flights, he would welcome the chance to deport America's hardened criminals, giving several examples of heinous crimes.

"If we could get them out of our country, we have other countries that would take them," Trump told reporters. "It's no different than a prison system except it would be a lot less expensive and it would be a great deterrent."

"We've had other countries come to us saying, 'We would love to do that, we would love to take your criminals,' " Trump said. Asked later to name some of those countries, he replied, "Numerous. Many."

"The migrants are rough, but we have some bad ones too," Trump said. "I'd like to get them out. It would be all subject to the laws of our land, and we're looking at that to see if we can do it."

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