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CLOSING ARGUMENT

# Trump Is Targeting International Students Over Pro-Palestinian Protests. But Is It Legal?

*After the administration revoked 300 students' visas, the courts will have to decide if the Constitution protects the free speech of noncitizens.*



Boston University police officers conferred while students protested outside the Office of the Dean of Students on April 3, demanding that the university pledge to protect students from deportation by the federal government, regardless of their immigration status. JESSICA RINALDI/THE BOSTON GLOBE, VIA GETTY IMAGES

By JAMILES LARTEY

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In a significant escalation of its crackdown on campus activism, the Trump administration claims to have revoked more than 300 student visas, primarily targeting international students involved in pro-Palestinian protests. “Every time I find one of these lunatics, I take away their visas,” Secretary of State Marco Rubio said last week.

The administration has accused the students, without offering evidence or due process, of either supporting terrorism or engaging in antisemitic conduct while participating in protests. These accusations have been levied against students who’ve had their visas revoked, like Rümeyşa Öztürk, a doctoral student at Tufts University, and for Mahmoud Khalil, a green card holder and permanent U.S. resident who was arrested on a different provision of the law.

A few of the students who have been targeted have agreed to “self-deport,” and leave the country voluntarily in recent days, according to local news reports, while nearly a dozen have been arrested and detained by federal agents, and are now pending deportation procedures.

At the heart of the administration’s efforts lies a critical constitutional question: Are noncitizens entitled to free speech protections once they set foot on U.S. soil?

Legally, the answer is murky, one expert told The Washington Post — at least when it comes to combing through Supreme Court decisions for answers. The court has been clear that First Amendment protections from criminal or civil penalties for speech apply to citizens and noncitizens alike. What’s less settled, however, is how those protections apply in the immigration context, where the executive branch has broad discretion to detain or deport.

“The Supreme Court has upheld, back during the Red Scare era, deportations of noncitizens for their involvement with Communist Party politics. But there are other Supreme Court cases where they do uphold noncitizens’ free speech rights,” Tyler Coward, lead counsel for government affairs at the Foundation for Individual Rights and Expression, told the Post.

One such case was the court’s 1945 decision in Bridges v. Wixon, which came after the government tried to deport Australian-born labor leader Harry Bridges on the grounds that he was “affiliated” with the Communist Party. The court held that deportation based solely on an individual’s political associations or beliefs violated the First Amendment.

But just seven years after Bridges, in *Harisiades v. Shaughnessy*, the court deferred broadly to federal immigration discretion on questions of national security, and permitted the deportation of legal residents over past membership in the Communist Party.

These decisions date to a period of heightened fear over communist infiltration — commonly referred to as the “Red Scare” or “McCarthyism” — when thousands were investigated, fired, blacklisted or targeted for deportation, and they figure to feature prominently in the legal battles ahead. This week, attorneys for Khalil — the first high-profile noncitizen student to be detained under this effort — described the moment as “the McCarthy era all over again.”

Some view the current moment as even more extreme. “You did not see the government rounding up students and faculty for engaging in political protest” back then, Ramya Krishnan of the Knight First Amendment Institute told The Guardian. “I really think this is unprecedented.”

Many of the students have wound up on lists compiled by private, pro-Israel surveillance groups like Betar and Canary Mission, which have tasked themselves with identifying people accused of stoking “hatred of the U.S.A., Israel and Jews on North American college campuses.” Betar said it submitted names of protesters to the government, but Immigration and Customs Enforcement denies relying on the group’s list for targeting students.

Rubio has invoked the authority to penalize noncitizens for speech under two separate provisions of the 1952 Immigration and Nationality Act. One gives his office wide latitude to revoke visas for national security reasons, and to do so with virtually no explanation or oversight. Once revoked, they are deemed “out of status,” which can lead to removal proceedings under general provisions of immigration law. Deportees can challenge the revocations or their detention on First Amendment and due process grounds, but historically, courts have been deferential to the executive branch on these questions.

Rubio’s authority to initiate deportations for green card holders like Khalil is more contested. Rubio has claimed the authority under a section of the law that allows the U.S. to remove noncitizens whose presence it deems threatening to its foreign policy. As we examined briefly in a previous edition of this newsletter, some legal experts believe this provision has already been struck down in federal court for being overly broad.

According to Greg Chen and Amy Grenier with the American Immigration Lawyers Association, if a person is being targeted for speech, the use of this provision also requires Rubio to submit a letter to Congress stating the “facially reasonable and bona fide reasons” that he has determined a student to be a security threat.

Chen and Grenier also note that in 1990, Congress added a “safe harbor” provision to that law that explicitly prevents removal “because of the alien’s past, current, or expected beliefs, statements, or

associations, if such beliefs, statements, or associations would be lawful within the United States.” To get around this restriction, Rubio would need to determine that the person’s presence would “compromise a compelling United States foreign policy interest.”

Similar arguments were made in an [amicus brief submitted last week](#) in Khalil’s case, with [more than 150 immigration law scholars arguing](#) that Rubio’s invocation of the law is both unprecedented and procedurally flawed. It’s worth noting that the administration changed its rationale for seeking Khalil’s deportation in a filing last month, [accusing him of immigration fraud](#) for failing to disclose his previous employment on his green card application.

On April 1, a federal judge denied the Trump administration’s [request to move Khalil’s lawsuit from New Jersey to Louisiana](#), where Khalil was moved shortly after his arrest. The government [cited logistical concerns for the transfer](#), including a bedbug outbreak in New Jersey, but many immigrant rights advocates believe the relocation was intended to have Khalil’s case heard in the Western District of Louisiana, and potentially the [5th Circuit Court of Appeals](#), one of the most conservative federal courts in the country.

No matter how the legal challenges play out, civil liberties groups and student organizers say the administration’s efforts are having a [chilling effect on campus speech](#), with many concerned students trying to keep “a low profile to avoid the attention of the Trump administration,” CNN reported.

[Accounts from the facility where Khalil is held](#) detail prolonged isolation, limited access to legal counsel, [paltry meals](#) and inadequate medical care. “I wake to cold mornings and spend long days bearing witness to the quiet injustices underway against a great many people precluded from the protections of the law,” Khalil wrote in a statement last month. His next hearing is scheduled for Tuesday, April 8. [lul](#)

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I’m the primary author of our weekly “Closing Argument” newsletter, and I write about criminal justice topics in the news.

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