EXHIBIT AA

Mar 27, 2025 - Politics & Policy

Exclusive: Trump's "pro-Hamas" purge could block foreign students from colleges

Marc Caputo



Illustration: Brendan Lynch / Axios

The Trump administration is discussing plans to try to block certain colleges from having any foreign students if it decides too many are "pro-Hamas," senior Justice and State Department officials tell Axios.

Why it matters: The effort — which could include grand jury subpoenas —marks another escalation of Trump's aggressive crackdown on immigration and antisemitism that civil libertarians say stifles campus speech and has led to several lawsuits.

Zoom in: The idea of prohibiting colleges from enrolling any student visa-holders grew out of Secretary of State Marco Rubio's "Catch and Revoke" program, which now is focusing on students who protested against the war in Gaza.

- A senior State Department official called the demonstrators it's targeting "Hamasniks" — people the government claims have shown support for the terror group.

- More than 300 foreign students have had their student visas revoked in the three weeks "Catch and Revoke" has been in operation, the official said. There are 1.5 million student visa-holders nationwide.

- "Everyone is fair game," the official said.

At the heart of the plan is the Student and Exchange Visitor Program, which certifies schools to accept student visa-holders. Institutions have been decertified in the past if the government determines they have too many student-visa holders who are using the education system as a ruse to live and work in the U.S., officials say.

- Now, the Trump administration is threatening to apply that decertification framework to the post-Oct. 7 demonstrations on college campuses.

- "Every institution that has foreign students ... will go through some sort of review," the official said. "You can have so many bad apples in one place that it leads to decertification of the school ... I don't think we're at that point yet. But it is not an empty threat."

Columbia University and UCLA — both of which had controversial, disruptive pro-Palestinian protests last year — are among the schools mentioned the most often by administration officials.

- Columbia officials couldn't be reached for comment.

- "UCLA is committed to eradicating hate," a spokesperson for that university said, pointing to UCLA's new Initiative to Combat Antisemitism.

What they're saying: Critics accuse the administration of trampling free speech and due process rights, and of unfairly conflating support for Palestinian rights with backing Hamas, the terror group that rules Gaza.

- The Foundation for Individual Rights and Expression (FIRE), a nonpartisan free-speech group, said the concept of decertifying entire universities based on who is "pro-Hamas" is "a worrying escalation."

- "Deemed 'pro-Hamas' by whom? This kind of explicitly viewpoint-driven decision-making is ripe for abuse and risks arbitrary enforcement," FIRE legal director Will Creeley told Axios in a statement.

Zoom out: The administration's zero-tolerance immigration enforcement has provoked a spate of lawsuits, some of which are likely headed to the U.S. Supreme Court.

- That's what the administration wants: to give the high court several opportunities to expand the executive branch's power to deport a noncitizen with little judicial review.

- A judge Tuesday temporarily blocked federal agents from detaining Yunseo Chung, a Columbia student who participated in pro-Palestinian protests. Her lawsuit argues that immigration enforcement can't "be used as a tool to punish noncitizen speakers who express political views disfavored by the current administration."

- The first major case challenging Rubio's right to revoke a green card was brought this month by Mahmoud Khalil, an organizer of the pro-Palestinian protests at Columbia.

The big picture: As the political parties realign, the GOP increasingly appeals to non-college voters and has clashed with academics and higher-education experts on cultural issues, including the Gaza war.

- Student visa holders are a lucrative revenue stream for colleges that can be choked off by the executive branch.

- "That's one of their biggest cash cows, foreign students. That's a meaningful source of revenue for them," a senior Justice Department official said.

- "What you're going to see in the not-too-distant future is the universities that we can show that were not doing anything to stop these demonstrations in support of Hamas — or encouraged enrollment by activists — ... we can stop approving student visas for them, and they can no longer admit foreign students," the official said.

Catch up quick: The Trump administration's assault on colleges and that had significant pro-Palestine, anti-Israel or antisemitic activism spans both coasts.

- Last week, to escape losing $400 million in federal money, Columbia caved to administration demands to combat antisemitism and limit protests.

- On March 5, the DOJ's new antisemitism task force launched a civil rights investigation into the University of California system.

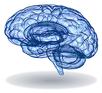
- On March 10, the Education Department sent letters to 60 universities warning them of possible civil rights enforcement actions concerning antisemitism.

- And on March 18, the Justice Department filed a statement of interest siding with Jewish students suing over antisemitic activity during protests at UCLA.

What's next: The DOJ also is monitoring a new federal lawsuit from Columbia students accusing protest organizers of acting as a "propaganda arm" of Hamas.

- Expect more enforcement actions, the DOJ official said.

- "The way that this looks ... is a grand jury subpoena goes to a university, a very broad subpoena," the official said, adding that it would include "any information that they know about students who have actively participated in violent protests."



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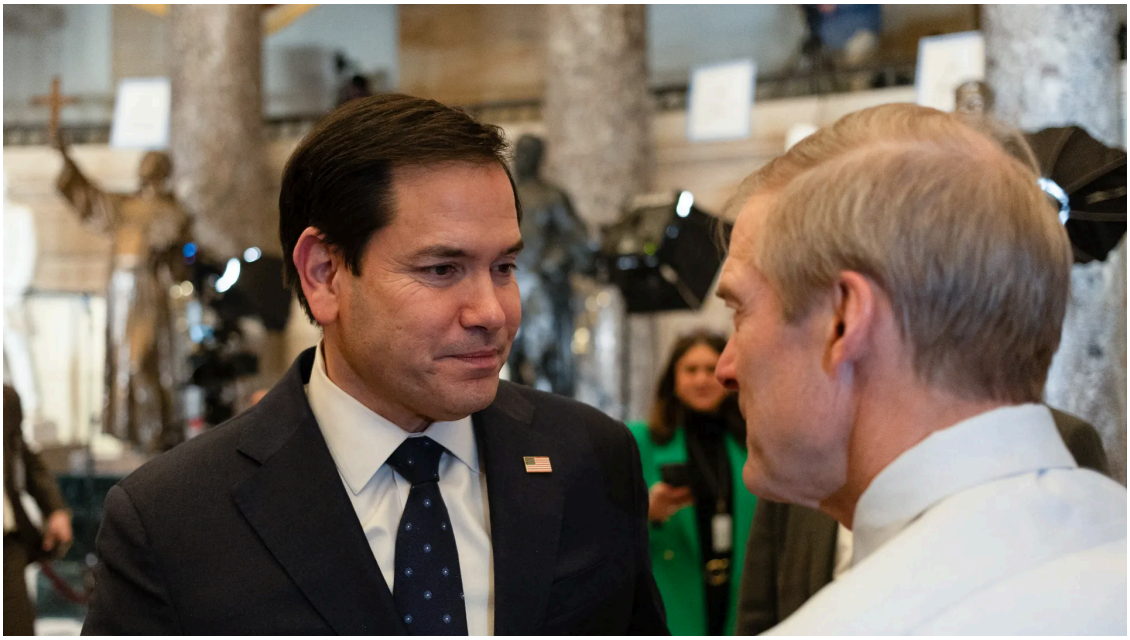
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Marc Caputo
Mar 6, 2025 - Politics & Policy

Scoop: State Dept. to use AI to revoke visas of foreign students who appear "pro-Hamas"



Secretary of State Marco Rubio speaks with Rep. Jim Jordan (R-Ohio) in Statuary Hall before President Trump's address to Congress on Tuesday. Photo: Alex Wroblewski/AFP via Getty Images

Secretary of State Marco Rubio is launching an AI-fueled "Catch and Revoke" effort to cancel the visas of foreign nationals who appear to support Hamas or other designated terror groups, senior State Department officials tell Axios.

Why it matters: The effort — which includes AI-assisted reviews of tens of thousands of student visa holders' social media accounts — marks a dramatic escalation in the U.S. government's policing of foreign nationals' conduct and speech.

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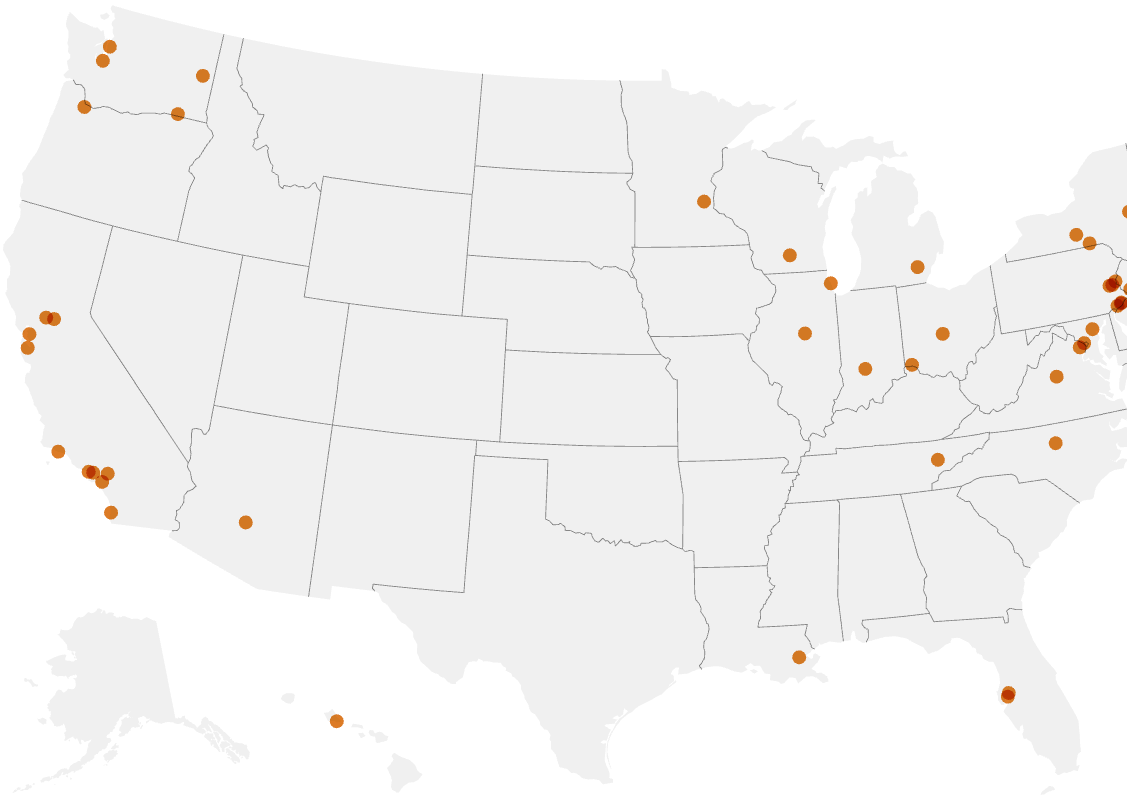


Nadia Lopez, Avery Lotz
Mar 12, 2025 - Axios San Francisco

UC Berkeley, Stanford among colleges targeted for alleged antisemitism

Universities being investigated by the Education Department for alleged antisemitism

As of March 11, 2025



Data: U.S. Department of Education; Chart: Axios Visuals

UC Berkeley and Stanford are among the dozens of higher education institutions being investigated by the Trump administration for allegations of antisemitic harassment and discrimination on campus.

Why it matters: President Trump is threatening to pull federal funding from schools that he alleges are failing to protect Jewish students and allow "illegal protests" on campus.

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Isaac Avilucea, Avery Lotz
Updated Mar 11, 2025 - Axios Philadelphia

Trump is targeting several Philly-area schools for alleged antisemitism



Pro-Palestinian students and faculty of Drexel, Temple and UPenn demonstrate last spring at a UPenn encampment. Photo: Matthew Hatcher / AFP

The Trump administration is threatening dozens of universities, including several in the Philly region, with possible sanctions over allegations of antisemitism on campus.

The big picture: The move comes after President Trump said last week that he'd strip federal funding from colleges that allow "illegal protests."

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POLITICS

Marco Rubio says 300 student visas have been revoked, including detentions at Tufts, Columbia and more

By **Caroline Linton**
Updated on: March 27, 2025 / 6:40 PM EDT / CBS News

Secretary of State Marco Rubio said Thursday that 300 student visas have been revoked, asserting "we have a right" to rescind the visas of students who participate in campus protests, despite questions about due process and First Amendment objections.

"If you apply for a visa to enter the United States and be a student, and you tell us that the reason why you're coming to the United States is not just because

you want to write op-eds, but because you want to participate in movements that are involved in doing things like vandalizing universities, harassing students, taking over buildings, creating a ruckus, we're not going to give you a visa," Rubio said. "If you lie to us and get a visa then enter the United States, and with that visa, participate in that sort of activity, we're going to take away your visa."

Rubio continued that if a student then lost his or her visa, "you're no longer legally in the United States. And we have a right, like every country in the world has a right, to remove you from our country."

Rubio said that at least 300 students had their visas revoked. "We do it every day. Every time I find one of these lunatics, I take away their visa," he said.

It's unclear if these students were notified of the revocations in advance.

Rubio's remarks came in response to a question about Tufts University graduate student Rumeysa Ozturk, a Turkish national who was taken into custody by Immigration and Customs Enforcement in Massachusetts on Tuesday.

A Department of Homeland Security spokesperson said Ozturk had "engaged in activities in support of Hamas," but did not provide details about her alleged activities. Ozturk was one of four university students who was listed as the author of a March 2024 campus newspaper opinion piece urging Tufts to adopt resolutions from the student government to "acknowledge the Palestinian genocide" and "divest from companies with direct or indirect ties to Israel." That article does not mention Hamas.

Ozturk is currently being held at a federal detention facility in Louisiana.

The university said in a statement that she had been returning from a Ramadan iftar dinner when she was detained. Surveillance video showed she was taken into custody by six ICE agents who appear wearing masks and plain clothes and driving unmarked cars.

A University of Alabama doctoral student originally from Iran was also taken into custody on Tuesday, according to the university. A search of an ICE database showed the student, Alireza Doroudi, was in custody. It was unclear as of Thursday why he was being detained or where he was being held.

Both Ozturk and Doroudi were in the U.S. on F-1 visas, which allow international students to enter the country to study full-time at American universities.

Labor unions representing university professors on Wednesday filed a lawsuit claiming the detentions of noncitizen students and faculty is a violation of the First Amendment, as is the threat to remove Columbia University's $400 million in federal funds if the university did not make changes.

The lawsuit cites President Trump's March 4 post on social media that those participating in "illegal protests" would be arrested, saying that "under First Amendment doctrine, the category 'illegal protests' is carefully circumscribed."



Secretary of State Marco Rubio speaks during a press conference in Georgetown, Guyana, on March 27, 2025.
NATHAN HOWARD / AP

"Nevertheless, the post did not say how federal officials would identify 'illegal protests' or 'agitators' for purposes of implementing the President's stated policy, nor did it otherwise provide guidance to faculty, students, or administrators seeking to exercise (or allow others to exercise) First Amendment rights while avoiding the risk of imprisonment, deportation, expulsion, arrest, or loss of "[a]ll" federal funding," the lawsuit claims.

The high-profile detentions of Ozturk and Doroudi followed the detention earlier this month of Mahmoud Khalil, a former Columbia University grad student who had been active in the 2024 campus pro-Palestinian protests. Khalil is a Palestinian born in Syria with a green card, or legal permanent residency, not a student visa. Khalil's attorney, Amy Greer, said at the time of his detention that an ICE agent said they were acting on a State Department order to revoke his student visa, but when they were informed that Khalil was in the U.S. as a permanent resident with a green card, the agent said they were revoking that, too.

After he was taken into custody, the government said it was invoking a rarely used section of U.S. immigration law to justify Khalil's detention and eventual deportation that allows the secretary of state to make noncitizens subject to deportation if he determines their presence and activities threaten the foreign policy interests of the U.S., citing alleged support for Hamas, a U.S.-designated terror group. CBS News has not found evidence that Khalil has said he supports Hamas.

In a court filing earlier this week, the government also alleged that Khalil failed to disclose on his immigration forms his involvement with UNRWA, the United Nations agency for Palestine refugees; the Syria office of the British embassy in Beirut; and a group known as Columbia University Apartheid Divest.

The government also said in the filing that claims by Khalil's attorneys that his detention violated the First Amendment were a "red herring."

Khalil is currently in custody in a federal detention facility in Louisiana.

Rubio said after Khalil was taken into custody that the administration would be revoking the visas and green cards "of Hamas supporters in America so they can be deported."

When asked on "Face the Nation with Margaret Brennan" if Rubio could provide evidence to support a link to terrorism, or whether Khalil was simply espousing a controversial political point of view, Rubio cited news footage, saying "these guys take over entire buildings, they vandalize colleges."

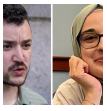
Rubio said Khalil is "going to leave – and so are others."

"We're going to keep doing it," Rubio said about revoking visas.

Kaia Hubbard and Camilo Montoya-Galvez contributed to this report.

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In: U.S. Immigration and Customs Enforcement Marco Rubio

Caroline Linton

Caroline Linton is an associate managing editor on the political team for CBSNews.com. She has previously written for The Daily Beast, Newsweek and amNewYork.

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Secretary of State Marco Rubio and Guyanese President Irfaan Ali at a Joint Press Availability

REMARKS

MARCO RUBIO, SECRETARY OF STATE
STATE HOUSE
GEORGETOWN, GUYANA

MARCH 27, 2025



MODERATOR: Please remain standing. You may be seated. You will be witnessing the signing of the MOU between Guyana and the United States this morning. I now invite [illegible] Foreign Affairs representative, Mrs. Peggy McLennan, to give an overview.

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MS MCLENNAN: Thank you, Marcia. Your Excellency Mr. President, members of cabinet, ladies and gentlemen, today, Minister of Foreign Affairs and International Cooperation Hugh Hilton Todd and Secretary of State Marco Rubio are signing a Memorandum of Understanding between our two countries to deepen security cooperation and address regional challenges, including countering narcotics trafficking and transnational organized crime. Under this mechanism, Guyana and the United States will strengthen information sharing, synthetic drug detection, transnational organized crime investigations and prosecutions, and military-to-military cooperation.

MODERATOR: Thank you very much. We now have the signing between the two nations.

(The Memorandum of Understanding was signed.)

(Applause.)

MODERATOR: Thank you very much, and now I invite his excellency to address us.

PRESIDENT ALI: Good afternoon, all. Secretary Rubio, you are no stranger to Guyana. Secretary Rubio has been and continues to be a strong advocate for Guyana's development, democracy, and peace. He has consistently demonstrated his personal commitment to the national rule of law, democracy, and security.

Guyana and the United States share a long bond of friendship and partnership. Indeed, the best of partnerships are those built on shared values, neutral trust, and a commitment to the rule of law and international order. This is what underpins our bilateral relationship and friendship. The United States is our trusted partner as we continue to build a stable, secure, and democratic society here.

This visit has allowed us to consolidate our bilateral agenda – defining policies and outlining clear intentions in areas of security, trade, energy, investments, infrastructure, democracy, regional peace and stability, human capital deployment, and development. I am very pleased at the reassurance of the U.S. in ensuring the safeguard of our territorial integrity and sovereignty. Our partnership and joint commitment to the safeguard of this region from every disruptive force is key to the maintenance of democracy and adherence to the rule of law.

The threats from Venezuela were specifically discussed. Their blatant violation of the ICJ order and Argyle Declaration were noted. Our joint commitment in enhanced partnership in combating transnational crime – inclusive of narcotrafficking, human trafficking, money laundering, and all forms of smuggling – is reflected in an enhanced MOU signed today.

We have reassured our partner that we'll continue to ensure all international and local labor laws are adhered to in the hiring of regional and international labor. Further, with our expanding healthcare system and critical shortage of human capital, we'll explore areas of collaboration, filling existing gaps.

We were able to identify key infrastructure that are also critical to regional development as possible areas for investment and development. We have committed to working closely together on the deployment of our energy potential, ensuring greater integration, value creation, and regional energy security, food security, and enhanced trade through joint initiatives to remove hurdles and expand existing areas of interest is key for both countries. I am confident that the outcome of this visit has further aligned our policy agendas, shared commitment, and partnership that will see enormous benefits for our two countries and the region.

Let me once again thank Secretary Rubio for his personal commitment and that of the U.S. government to Guyana and this region in general. I thank you.

(Applause.)

SECRETARY RUBIO: Thank you. Thank you, Mr. President. And we have been working together and interacting for some time during my time in the Senate, but I told him I wanted to wait until I was Secretary of State to visit, and so here I am. And I didn't know that was going to happen, but I'm grateful for your – for this visit and for the warm welcome we've received, and it's an exciting time to be here.

I think – and to the people of Guyana, thank you for welcoming us. I hope you fully appreciate and understand this is one of the most exciting places in the world to be right now, because you have the opportunity, at this moment, to transform this country for generations, and we want to be your partner. We want to be your partner in making that possible. We think it's of mutual benefit to see that happen.

I get to visit in this job – already have – a number of countries in the nine weeks. I've only been on the job for nine weeks, so let the record reflect after nine weeks this was one of my first visits here that I've taken abroad. But we get to visit a lot of counties and when you visit you have some countries, unfortunately, are facing tremendous challenges and they're just looking to stabilize. Other countries are looking to improve and make progress. This country has an opportunity to transform. And that's rare in the history of nations, to have an opportunity for transformative change. And what I mean by transformative change is not simply oil and gas fields. And that's very important – natural resources are critical – but that is just the basic ingredient that allows prosperity to happen.

One of the topics that's talked about all over the world today is data centers and the digitization of the economies, artificial intelligence. Do you know what you need in order to do that? You need to have really good scientists, and engineers, and technicians that know how to run it. But the most important thing you need to be a dominant presence in the world in data centers and artificial intelligence is reliable and affordable energy. That's just one example, among many others.

You have an opportunity to expand, in a responsible way, agriculture production, not just for the needs of your population but for the region, and to do it in a way that safeguards the beauty and the natural environment, that's pristine. You have an opportunity to expand in issues of ecotourism. I'm not a big fan of ecotourism – not – I'm not against ecotourism; I'm not an ecotourist. I like staying at hotels. I'll do it; maybe I'll go somewhere. But there are people that love this stuff. They love it. And you have an opportunity to do that in an incredibly responsible way.

I'm just touching on a few things, but – that are opportunities before you. And that shared prosperity for your country that will come as a result of that is transformative. The lives of your children, the lives of your grandchildren, your lives are going to look very different in five to ten years under this leadership and under this vision as it continues, and we just want to be a partner.

Why do we want to be a partner? Let's – just to be frank, why does the United States care about it? Number one, we care about it because we think it creates a level of stability in the region which we share – which we share. Not just stability here, stability for your neighbors, because we believe prosperity can become contagious. Just like instability can become contagious, stability

and prosperity can become contagious. It won't just help you, it will help all of your neighboring partners in the Caribbean Basin and the region writ large, and we think that ultimately makes life in America safer and more prosperous as well. And so we wanted to look for every opportunity possible to partner with you.

But the basic element of any of this, the basic element of progress and transformation and prosperity, is always security. So number one, we want to make sure that some of the tragic regional problems that exist with crime, transnational crime – we have a huge problem in the world right now with organized gangs and narcotraffickers that destabilize societies – we want to make sure that never reaches here. And that's why today's MOU and the work we'll do together will – is designed not to stop it, but to prevent it from ever taking root, from ever finding its way here. Because unfortunately, sometimes crime is attracted by prosperity and targets prosperity.

And the other are regional threats – the regional threats based on illegitimate territorial claims by a narcotrafficking regime. And I want to be frank, and I've said this during my time as a senator, and I have full confidence in saying now as the Secretary of State: There will be consequences for adventurism. There will be consequences for aggressive actions. And that's why our partnership in that regard will be important. That is not what we want to be a feature of our relationship, but it is a necessity of our relationship, because you have a very difficult challenge on your hands with a dictator that's making illegitimate territorial claims.

And so you have our full commitment and support – today we're demonstrating it – both in tangible ways, and we're going to look for ways to make it long-term and sustainable ways, to make abundantly clear that we are invested both as a nation and from our people in being your partner in transformation and in prosperity. And we will not allow illegitimate territorial claims to be an impediment to your dreams and to your right to develop this country into a symbol that I hope will inspire others to follow the example you set, Mr. President.

So thank you. Thank you for the chance to be with you. (Applause.)

MODERATOR: Thank you very much, Excellency, and Secretary Rubio. Members of the media, in the interests of time, we will accommodate four questions. We will feed two questions from the local media, and two from our visiting media. I recognize Stabroek News from the local media, as well as Mr. Campbell from the local media. From the visiting media – okay, you represent? Good. Great. And – all right, we'll start with Marcelle from Stabroek News.

SECRETARY RUBIO: Hi.

QUESTION: Good afternoon, sir.

SECRETARY RUBIO: Good afternoon.

QUESTION: Marcelle Thomas from the Stabroek News. You just spoke of consequences for aggressive actions, and that the U.S. is Guyana's partner. Given Venezuela's unprovoked aggression towards Guyana, I want to know if your country would stand by Guyana militarily if Venezuela were to attack this country. And what would be the U.S.'s response should Venezuela attack U.S. oil major ExxonMobil, which is operating in Guyana's waters?

SECRETARY RUBIO: It will be a very bad day for the Venezuelan regime if they were to attack Guyana or attack ExxonMobil or anything like – it would be a very bad day, a very bad week for them. And it would not end well for them. (Applause.) I'm not going to get into details of what we'll do; we're not big on those kinds of threats. I think everybody understands, and I want it to be clear – we've made this clear repeatedly – I think the U.S. Navy today is making it clear and demonstrating our ability to – we have a big navy and it can get almost anywhere in the – it can get anywhere in the world. And we have commitments that exist today with Guyana. We want to build on those and expand on those. And we'll leave it for the appropriate time, but suffice it to say that if that regime were to do something such as that, it would be a very bad move. It would be a big mistake for them.

MODERATOR: We now invite from our visiting media. Please remember to identify yourself and the media house you represent.

QUESTION: Hi, thank you. Hello, Mr. Secretary.

SECRETARY RUBIO: Hi.

QUESTION: Hello, Mr. President. Thank you for taking questions from us. We appreciate it. Humeyra Pamuk from Reuters. Mr. Secretary, a Turkish student in Boston was detained and handcuffed on the street by plainclothes agents. A year ago she wrote an opinion piece about the Gaza war. Could you help us understand what the specific action she took led to her visa being revoked? And what was your State Department's role in that process?

SECRETARY RUBIO: We revoked her visa. It's an F1 visa, I believe. We revoked it, and here's why – and I'll say it again; I've said it everywhere. Let me be abundantly clear, okay. If you go apply for a visa right now anywhere in the world – let me just send this message out – if you apply for a visa to enter the United States and be a student and you tell us that the reason why you're coming to the United States is not just because you want to write op-eds, but because you want to participate in movements that are involved in doing things like vandalizing universities, harassing students, taking over buildings, creating a ruckus, we're not going to give you a visa. If you lie to us and get a visa and then enter the United States and with that visa participate in that sort of activity, we're going to take away your visa.

Now, once you've lost your visa, you're no longer legally in the United States, and we have a right, like every country in the world has a right, to remove you from our country. So it's just that simple.

I think it's crazy – I think it's stupid for any country in the world to welcome people into their country that are going to go to their universities as visitors – they're visitors – and say I'm going to your universities to start a riot, I'm going to your universities to take over a library and harass people. I don't care what movement you're involved in. Why would any country in the world allow people to come and disrupt? We gave you a visa to come and study and get a degree, not to become a social activist that tears up our university campuses. And if we've given you a visa and then you decide to do that, we're going to take it away.

I encourage every country to do that, by the way, because I think it's crazy to invite students into your country that are coming onto your campus and destabilizing it. We're just not going to have it. So we'll revoke your visa; and once your visa is revoked, you're illegally in the country and you have to leave. Every country in the world has a right to decide who comes in as a visitor and who doesn't.

If you invite me into your home because you say, "I want to come to your house for dinner," and I go to your house and I start putting mud on your couch and spray-painting your kitchen, I bet you you're going to kick me out. Well, we're going to do the same thing if you come into the United States as a visitor and create a ruckus for us. We don't want it. We don't want it in our country. Go back and do it in your country, but you're not going to do it in our country.

QUESTION: A follow-up?

SECRETARY RUBIO: Sure. Just tell me your follow-up and I'll tell every – and depending on your question, I'll answer it or not.

MODERATOR: No follow-up questions. All right. I now invite our Guyanese –

SECRETARY RUBIO: No, no. She had – can I get her follow-up real quick? Go ahead.

QUESTION: Could you confirm – there's new reporting that 300 visas – State Department has revoked 300 (inaudible).

SECRETARY RUBIO: Maybe more. It might be more than 300 at this point. We do it every day. Every time I find one of these lunatics, I take away their visa.

QUESTION: It could – you're saying it could be more than 300 visas?

SECRETARY RUBIO: Sure. I hope – I mean, at some point I hope we run out because we've gotten rid of all of them. But we're looking every day for these lunatics that are tearing things up. And by the way, we want to get rid of gang members, too.

So Venezuela sent us a bunch of gang members. I'm sure you've heard of Tren de Aragua, Mr. President – a terrible gang, vicious gang. They flooded in our – yesterday – just so everybody knows, yesterday one of these gang members who was involved in New York City in attacking a police officer was deported back to Venezuela, because they're now taking flights again because of some strong measures we've taken. And this guy lands – this guy's a guy that attacked a police officer in New York City and laughed about it in court with a smirk on his face. When he gets off the plane in Venezuela, he's welcomed by this character named Diosdado Cabello. I don't know if you've heard of this guy. And he welcomes him, hugging the guy. So does anybody have any doubt that these people are pushing these people into the United States to destabilize us and the region?

So yeah, we're looking for people like this, and we want to get them out of the United States, absolutely.

MODERATOR: Thank you. We'll now field a question from Guyana.

QUESTION: Thank you. Kurt Campbell, Newsroom. President Ali, you've already spoken about how President Trump's plans – tariff plans for China's ships could affect regional trade. I just wanted to know if in your trade talks today if that issue was specifically discussed –

SECRETARY RUBIO: Yes.

QUESTION: – by Secretary of State Rubio.

SECRETARY RUBIO: And I can tell you – oh, you're asking him. I'm sorry. (Laughter.)

QUESTION: It's for both of you. What assurances can you give Guyana and this hemisphere in terms of stemming indirect consequences?

SECRETARY RUBIO: Yes. Well, that's – look, the goal the President has in doing so is we need to have an ability to build ships in this world that don't just come from China, okay. I think it's just dangerous to have one country in the world building all the ships. I assure you that – and we don't want a war, but I mean, they're not going to build ships for us if we get in trouble, right? So we need to have alternatives to Chinese ships, and we're trying to create a market and a demand for alternatives to Chinese shipping construction. And I'm the first one to admit that the United States made a terrible mistake when we deindustrialized and we allowed all these industries to leave our country and go to other places. Now we're paying the consequences, but we have to fix it.

So I do believe – I can't speak – I don't – the trade portfolio does not belong to the Department of State, but I do believe that we will take this back because we've heard this not just here, Mr. President. We've heard it throughout our visits here in the Caribbean. And we're going to take it back and explain to those who are in charge of trade policy that there are some implications to applying it to certain nations who are partners and who are seeking to develop their economies in ways that I think serve the national interest of the United States, not to mention the national interest of our partners nations, and seeing what can happen.

So I can't make a commitment to those exempt, because that's not something we handle in the Department of State. What I can commit to is that I will most certainly raise this issue as a recurring issue, in multiple places, that it would have a real detrimental effect on economic development. Maybe in 10 years it won't be an issue because there's been some diversification, maybe in five, but right now it would be problematic. That message I'll take back to Washington

and to my colleagues that are handling the trade portfolio, and we'll see how the President decides to proceed. But rest assured we will take that message back.

PRESIDENT ALI: And just to echo the sentiments that, yes, we did discuss it and the region would have raised it also. But there Secretary Rubio is – as he said, will take this back and to see whether there can be any special initiative for the region, given our specific circumstances.

But let me say also that we have a responsibility to our friends. The U.S. is a great friend of ours. The U.S. would have made it very clear that they are ready to stand by us in our development, in our economic expansion, in our security, and in our defense. And I will say very boldly that such friends must have some different and preferential treatment, because a friend who will defend me when I need a friend to defend me, must be a friend that enjoys some special place in our hearts and in our country, and that will be the case. Thank you.

QUESTION: And just quickly, illegal migration was also listed as a topic of discussion. Could you say what are the expectations from Guyana in this regard and any discussions on third-country deportations?

SECRETARY RUBIO: Well, we want to work with you on that. I think that's a problem for you as well. I mean, obviously, because of the combination of your growing economy, labor needs, and your geography, you have been a place where a lot of people have come in, and I think you want it to be the right people, right? So I think if we have information that someone has entered your country who has bad intentions, we want to be able to share that with your government because you don't want that.

You don't want those – if we have information on a Tren de Aragua gang member from Venezuela, we want to make sure that we're – we have collaboration and we're sharing that information. If we have information that some narcotrafficker is taking up shop here and has decided to try to turn this into a base of operation, which could become – could lead to violence and warfare here, gang warfare, we want to be able to share that with you. We want to prevent these problems from happening.

So from the perspective of Guyana, which is not a source country of migration to the United States per se – illegal migration – but it is a country that receives, unfortunately, you're getting a lot of people. And not everybody that comes here – I mean, most people are probably here to

work hard and so forth, but not everyone. So if we have information that someone is in your country that we know is a bad person, we want to be able to share it with you. We want to be able to share it with you very quickly. So that sort of information sharing has to be a cornerstone of this security agreement that we've signed today and want to continue to expand upon.

MODERATOR: We will now field our final question from our visiting media.

QUESTION: Thank you so much. Vera with the – Vera Bergengruen with Wall Street Journal.

SECRETARY RUBIO: They're very tough, this Wall Street – be careful. All right. (Laughter.)

QUESTION: Secretary Rubio, when you and President Bukele – you mentioned Tren de Aragua several times. When you and President Bukele negotiated the deal to transfer the U.S. deportees to his prison in CECOT, did you discuss any provisions to ensure that individuals mistakenly identified as gang members would have access to legal recourse and that they can secure their release if they are wrongly brought – wrongfully detained?

SECRETARY RUBIO: Yeah, we have – that list was carefully vetted, provided to us by Homeland Security. We have confidence in it. What we negotiated is the reality that they, in El Salvador, comply with all the international requirements for imprisonment. So we sent them people. It was a combination of people – gang members, people we knew were involved in activities that were not productive to the United States, all of them removable in terms of our laws, all of them; every single one of them was someone who was removable from the United States irrespective – and MS-13 members, some of – many of whom are Salvadoran that we had identified as MS-13 members, that they had helped us identify as well. And that – so it was a combination of people that we sent. And we may send more. We'll see. I mean, it's up to their willingness to accept, but we are grateful to them for the opportunity to do that.

And remember, one of the reasons why we had to send some of those people there was because at the time Venezuela wasn't taking their people back. The Maduro regime – I say Venezuela, but it's not – it's the Maduro regime – was not taking their people back. They refused to take people back, their own people. They have an obligation. If you are a country and someone is illegally in another country, you have an obligation to take those people back, whether they're criminals or not. Venezuela said they wouldn't take them back, so we had to find a place to send them,

especially the ones that had records and – or ones that we had strong suspicions and evidence that were involved in illicit activity.

And so we had to send some to El Salvador because of that. Now they've taken them back. And one of them yesterday gets off an airplane, and this narcotrafficker Cabello greets him and hugs him on the tarmac. Now, what I heard ultimately, by the way, is that some of these gang members we sent back were so bad to Venezuela – they were so bad that after hugging them, maybe not this guy but I don't know, they had to put four or five of them back in jail. Because that's how dangerous these people are, even though they hugged them on the tarmac and put on this show.

These are some really bad people. Tren de Aragua is one of the most dangerous gangs the world has ever seen, okay? When they were held temporarily in Guantanamo while being transferred to Honduras because that's when the Venezuelans picked some of them up, the Marines at Guantanamo said these are some of the roughest people we've ever interacted with. They were worse than the al-Qaida guys that were in their jails. Think about that. So that's who we're getting rid of, and we want to get rid of more of them.

MODERATOR: Ladies and gentlemen, members of the media, this brings the end to our media conference. And I would like to invite his excellency and Secretary Rubio for a photo op right on the stage. (Applause.)

TAGS

Bureau of Western Hemisphere Affairs | Combating Drugs and Crime | Economic Growth and Prosperity | Economic Prosperity and Trade Policy | Energy | Energy | Guyana | Office of the Spokesperson | Official International Travel | The Secretary of State | Venezuela

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EXHIBIT DD

Trump Admin Spies on Social Media of Student Visa Holders

Ideological purge of foreign students revealed in new leaked directive

KEN KLIPPENSTEIN
MAR 28, 2025

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Big Spying in Little Marco's State Department

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The Trump administration is requiring that foreign students studying in, or seeking to study in the United States, pass an ideological test in order to obtain a visa, according to a "sensitive" State Department directive issued by Secretary of State Marco Rubio and which I obtained.

The crackdown, instituted on Tuesday, makes it "mandatory" for consular officers and State Department personnel to conduct a "social media review" — including screenshotting posts — of new and returning student visa applicants for any evidence of terrorist connections. Such connections are defined broadly to include "advocating for, sympathizing with, or persuading others to endorse or espouse terrorist activities or support" a terrorist organization. Though the document doesn't explicitly define what counts as advocacy, it mentions "conduct that bears a hostile attitude toward U.S. citizens or U.S. culture (including government, institutions, or founding principles)."

Specific reference is made to students seeking to participate "in pro-Hamas events," which is how the Trump administration has characterized student protests against the war in Gaza.

"When you apply to enter the United States and you get a visa, you are a guest," Secretary of State Marco Rubio said on March 16 in remarks quoted in the directive "If you tell us when you apply for a visa, I'm coming to the U.S. to participate in pro-Hamas events, that runs counter to the foreign policy interest of the United States ..... if you had told us you were going to do that, we never would have given you the visa."

The order to "comprehensively review and screen every visa applicant" appears directed at Palestinian and other foreign students who are "sympathetic" to Hamas, but typical of every government directive, it also opens the door for broader ideological vetting. It also directs the social media of visa applicants to be assessed for "potential security and non-security related ineligibilities [that] pose a threat to U.S. national security."

The directive, dated March 25, bears the subject line "Enhanced Screening and Social Media Vetting for Visa Applicants." It begins with a reference to two of Trump's executive orders, including one on "measures to combat anti-semitism" and another on combating foreign terrorists and other national security threats to public safety. The directive applies to F, M, and J student visa, which encompass:

- **F visa** (Academic Student): Full-time students at an accredited college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training program.
- **M visa** (Vocational Student): Students in vocational or other nonacademic programs, other than language training.
- **J visa** (Exchange Visitors): Foreign nationals in the United States for educational, cultural, or work-related exchange programs, such as teaching, studying, conducting research, or receiving training.

"Evidence suggesting a student visa applicant intends to travel to the United States to engage in unlawful activities clearly calls into question whether the applicant possesses intent and/or the ability to solely pursue a full course of study," the directive also says.

The order requires visa decision-makers to take screenshots of "potentially derogatory information" to both document their decisions and to prevent visa applicants and holders from deleting or altering their previous posts.

What social media is reviewed and how that is done is governed by the State Department Foreign Affairs Handbook section 7 FAH-1 H-954.4, according to the

directive, dealing with "Social Media Review." That section of the handbook, though otherwise online, has not been released to the public.

I've included a copy of the leaked directive in its entirety below so you can see for yourself what you think. If you appreciate journalism that respects its readers intelligence enough to let them come to their own conclusions, do us a solid by becoming a paid subscriber.

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— *Edited by William M. Arkin*

MRN: 25 STATE 26168

Date/DTG: Mar 25, 2025 / 251914Z MAR 25

From: SECSTATE WASHDC

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E.O.: 13526

TAGS: CVIS, CMGT, PTER, KFRD

Captions: SENSITIVE

Reference: 25 STATE 5914

Subject: (U) Action Request: Enhanced Screening and Social Media Vetting for Visa Applicants

1. (U) This is an action request. **See paragraph 7.**

2. (**SBU**) **SUMMARY:** The protection of our nation and its citizens is a consular officer's first consideration. Pursuant to the implementation of Executive Order (E.O.) 14161 and E.O. 14188, known respectively as *Protecting the United States from Foreign Terrorists and Other National Security and Public Safety Threats, and Additional Measures to Combat Anti-Semitism*, effective immediately, consular officers must refer certain student and exchange visitor (F, M, and J) visa applicants to the Fraud Prevention Unit (FPU) for a mandatory social media check as described below. As the Secretary stated on March 16: "We don't want people in our country that are going to be committing crimes and undermining our national security or the public safety. It's that simple. Especially people that are here as guests. That is what a visa is… It is a visitor into our country. And if you violate the terms of your

visitation, you are going to leave." The Visa Office will host webinars for consular officers to discuss this guidance on April 3 and April 4, 2025. **END SUMMARY.**

3. (**SBU**) **Consular Officers Play a Critical Role in Protecting National Security:** As part of screening every case for potential ineligibilities, consular officers MUST ADDRESS any derogatory information indicating that a visa applicant may be subject to the terrorism-related ineligibility grounds of the Immigration and Nationality Act (INA). This includes advocating for, sympathizing with, or persuading others to endorse or espouse terrorist activities or support a DESIGNATED FOREIGN TERRORIST ORGANIZATION (FTO).

4. (**SBU**) **Every Visa Decision is a National Security Decision:** In Ref A, the Visa Office directed consular officers to maintain extra vigilance and to comprehensively review and screen every visa applicant for potential security and non-security related ineligibilities including to assess whether the applicant poses a threat to U.S. national security. Any nonimmigrant visa applicant who has not established to a consular officer's satisfaction that the applicant meets all standards required in that visa classification should be refused under 214(b), as appropriate. This includes establishing that the applicant does not intend to engage in activities inconsistent with the requested visa status. If 214(b) does not apply to the visa classification, consular officers should refuse any nonimmigrant or immigrant visa case presenting such concerns under section 221(g) of the INA for further review of additional ineligibility grounds, including by requesting a Security Advisory Opinion (SAO), as appropriate.

5. (U) This was reflected well by the Secretary's statement on March 16, that "when you apply to enter the United States and you get a visa, you are a guest...if you tell us when you apply for a visa, I'm coming to the U.S. to participate in pro-Hamas events, that runs counter to the foreign policy interest of the United States.....if you had told us you were going to do that, we never would have given you the visa."

6. (**SBU**) **Situations that Cast Doubt on Students' Intent or Credibility:** As described in 9 FAM 402,5-5(C), an applicant applying for an F-1 or M-1 student visa must demonstrate intent to enter the United States solely to pursue a full course of study at an approved institution. In addition, J-1 visa applicants who are college, university, and other post-secondary students are required to pursue a full course of study as described in 9 FAM 402.5-6(E)(11). Evidence suggesting a student visa applicant intends to travel to the United States to engage in unlawful activities clearly calls into question whether the applicant possesses intent and/or the ability to solely pursue a full course of study. While many activities may not fall under the INA's definitions of "terrorist activity," you should otherwise consider that information in

assessing the credibility of a visa applicant's claimed purpose of travel. INA section 214(b) requires the applicant to show credibly that all activities in which he or she is expected to engage in while in the United States are consistent with the specific requirements of their visa classification.

7. (**SBU**) **ACTION REQUEST: Mandatory Social Media Reviews for Students and Student Exchange Visitors**. Effective immediately, consular officers must refer all new or returning F-1, M-1, or student J-1 visa applications meeting one or more of the following criteria, that the consular officer has determined is otherwise eligible for the requested nonimmigrant status, to the FPU via ECAS as described in Z FAH-1 H-945.4,_ using the SOCIAL MEDIA REVIEW category. **All** student visa case referred for social media vetting under the criteria below **must** be referred in ECAS to ensure global tracking of this work:
    a. (SBU) An applicant who is otherwise eligible and for whom you have reason to believe has openly advocated for a designated foreign terrorist organization;
    b. (SBU) An applicant who was previously in the United States in F-1, M-1, or J-1 visa status between October 7, 2023, and August 31, 2024; or
    c. (SBU) An applicant whose previous SEVIS record was terminated between October 7, 2023, and the present.
8. (**SBU**) **Documenting the Results of the Social Media Review:** If the social media review uncovers potentially derogatory information indicating that the applicant may not be eligible for a visa, Fraud Prevention Units are required to take screenshots of social media findings to the extent it is relevant to a visa ineligibility, to preserve the record against the applicant's later alteration of the information. Limit screenshots to information relevant to connecting the applicant, the applicant's actions, and a visa ineligibility. The screenshots must be uploaded to the applicant's case record in the CCD. Consular officers do not need to upload social media findings if the review does not reveal derogatory information, but consular officers must enter case notes stating they conducted a social media review which did not reveal derogatory information. When a social media review uncovers potentially derogatory information which may lead to INA 212(a)(3) ineligibilities, consular officers should follow the instructions in 9 FAM 304.2 to submit an SAO. Consular officers are reminded to only apply inadmissibility grounds under INA 212(a) in accordance with applicable procedures including to request an SAO or Advisory Opinion (AO) as directed in the Foreign Affairs Manual FAM).
9. (**SBU**) **Support for Terrorist – Grounds and Definitions for INA 212(a)(3)(B):** All consular officers should carefully review 9 FAM 302.6 to understand the grounds under which an applicant may be ineligible under 3B, including that an applicant who "endorses or espouses terrorist activity or persuades others

to endorse or espouse terrorist activity or support a terrorist organization" is ineligible. Consular officers should consider these grounds and definitions when conducting interviews and pursuing lines of inquiry. Because terms in INA 212(a)(3)(B), are broadly defined, consular officers should elicit as much pertinent information as possible from visa applicants with suspected ties to terrorist organizations or terrorist activity. This includes the names of all relevant organizations potentially involved in terrorist activity and the applicant's relationship with them (for example, by current membership or past financial contributions or other support). Evidence that an applicant advocates for terrorist activity, or otherwise demonstrates a degree of public approval or public advocacy for terrorist activity or a terrorist organization, may be indicative of ineligibility under INA 212(a)(3)(B). This may be evident in conduct that bears a hostile attitude toward U.S. citizens or U.S. culture (including government, institutions, or founding principles). Or it may be evident in advocacy or sympathy for foreign terrorist organizations. All of these matters may open lines of inquiry regarding the applicant's credibility and purpose of travel. Consular officers should inquire into the nature and activities of those organizations. If a consular officer believes an applicant may be ineligible under this provision or otherwise has any evident ties to a foreign terrorist organization, the consular officer **must** refuse the case 221(g) and request an SAO.

10. (**SBU**) **Intention to Engage in Unlawful Activity:** Consular officers are also reminded of guidance in 9 FAM 302.5-4 regarding the applicability of INA 212(a)(3)(A)(ii) under which a visa applicant is ineligible if the consular officer knows or has reason to believe that the applicant is traveling to the United States solely, principally, or incidentally to engage in any other unlawful activity. Consular officers should take care to enter detailed case notes regarding the specific activities expected in the United States and request an advisory opinion per 9 FAM 302.5-4(g).
11. (**SBU**) **Revocations of Valid Visas:** If, subsequent to visa issuance, information becomes available to post that an individual may no longer be eligible for a visa due to particularized information indicating an ineligibility under specific INA provisions, including 214(b), post should follow the procedures to revoke or request prudential revocation as described in 9 FAM 403.11 for nonimmigrant visas or 9 FAM 504.12 for immigrant visas. The Visa Office reminds posts that consular officers do not have the authority to revoke a visa based on a suspected ineligibility or based on derogatory information that is insufficient to support an ineligibility finding - other than a revocation based on driving under the influence (DUI) - and that such cases should be referred to CA/VO/SAC/RC in accordance with 9 FAM 403.11-5(B) for further review. A consular officer's revocation must be based on an actual finding that the individual is ineligible for the visa.

12. (U) **Additional Guidance:** The Visa Office will host webinars for consular officers to discuss this guidance on Thursday, April 3 and Friday, April 4, 2025. Invitations with links to these webinars will be sent separately. The FAM will be updated to reflect this guidance.
13. (U) **Inquiries:** Post must refer any U.S. media inquiries regarding E.O.s to CA-Press@state.gov and congressional inquiries regarding E.O.s to ConsularOnTheHIll@state.gov. Posts may respond to requests from international media regarding E.O.s using CA's cleared press guidance located on CA Web, copying CA-PRESS@STATE.GOV.
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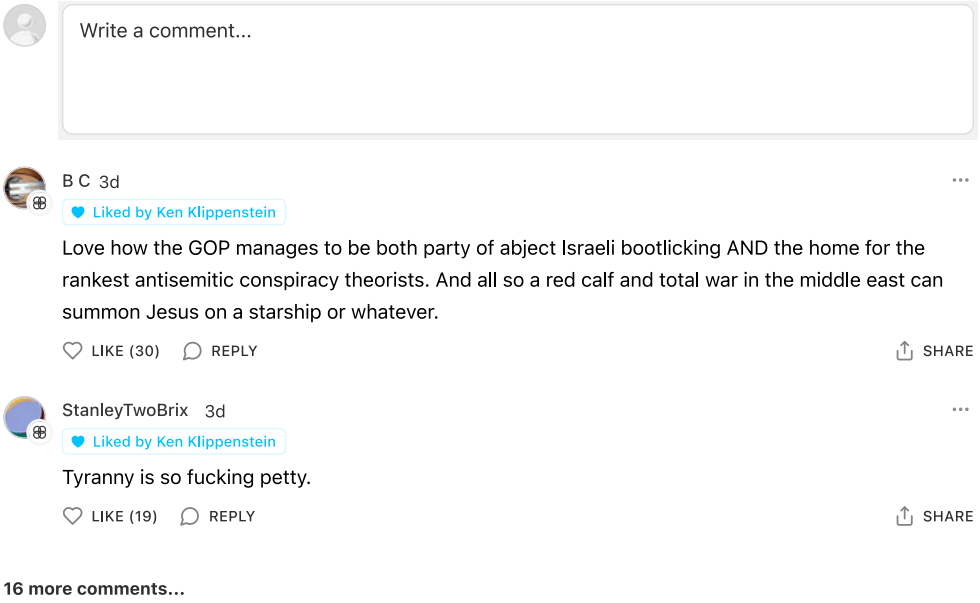
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EXHIBIT EE

US immigration

US issues broad order to consulates to vet student visas over 'terrorist activity'

State department shares new standard for denials based on social media posts, financial donations and memberships



People rally in support of Rumeysa Ozturk in Somerville, Massachusetts, on Tuesday. Photograph: Faith Ninivaggi/Reuters

Joseph Gedeon *in Washington*

Fri 28 Mar 2025 15.06 EDT

The United States has ordered consular offices to significantly expand their screening processes for student visa applicants, including through comprehensive social media investigations, to exclude people they deem to support terrorism.

Coming after several high-profile visa revocations and targeted arrests over pro-Palestinian campus activism, a state department cable from 25 March, obtained by the Guardian, describes a new standard for visa denials based on a broad definition of what constitutes support for "terrorist activity". The directive states that "evidence that an applicant advocates for terrorist activity, or otherwise demonstrates a degree of public approval or public advocacy for terrorist activity or a terrorist organization" can be grounds for visa rejection.

It specifically targets new and renewing F, M and J student visa applications, providing explicit instructions for consular officers to conduct mandatory social media reviews digging into applicants' lives online. Officers are directed to examine the social media of all students applying to a visa for evidence of activities the administration defines as a threat to national security or terrorism.

The directive mandates that fraud prevention units, which receive flagged applications, take screenshots of "potentially derogatory" social media content, creating a permanent digital record that can be used to deny entry. Those officers are instructed to preserve screenshots "to the extent it is relevant to a visa ineligibility" and upload them to the applicant's case record - even if the posts are later altered or deleted.

"Evidence that an applicant advocates for terrorist activity or otherwise demonstrates a degree of public approval or public advocacy for terrorist

activity or a terrorist organization may be indicative of ineligibility," reads the memo, sent by the secretary of state, Marco Rubio. "This may be evident in conduct that bears a hostile attitude towards US citizens or US culture, including government institutions or founding principles."

The memo says the vetting process should extend to students in the US as of 7 October 2023 whose visas are up for renewal, noting the day that Hamas led an attack on Israel, prompting Israel's subsequent barrage of airstrikes and ground invasion that have amounted to more than 50,000 people reported killed.

In recent weeks, the government has revoked the visas of a number of students it claims have expressed support for Hamas. The new procedures are certain to prompt concerns that social media posts supportive of the Palestinians, that contain critical commentary on US foreign policy, or that indicate attendance at a campus protest could trigger a comprehensive visa review.

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The cable does not require visa denials to be predicated on explicit support for any specific group, and goes beyond traditional security screening, allowing officers to investigate an applicant's relationships with organizations, including current membership, financial contributions or other forms of support.

The state department did not immediately respond to a request for comment.

The new order lands amid an already intensifying crackdown on pro-Palestinian activists nationwide. Rubio on Thursday said he had revoked more than 300 visas, targeting what he calls "lunatics" connected to campus protests. The latest example is the capture of Rumeysa Ozturk, a Turkish Fulbright scholar at Tufts University, who was detained by plainclothes agents wearing masks in broad daylight.

The updated screening process references two of Trump's early term executive orders focused on foreign terrorists and combating antisemitism.

"Every visa decision is a national security decision," the memo reads.

Article count **off**

Why you can rely on the Guardian not to bow to Trump – or anyone

I hope you appreciated this article. Before you move on, I wanted to ask whether you could support the Guardian's journalism as we face the unprecedented challenges of covering the second Trump administration.

As Trump himself observed: "The first term, everybody was fighting me. In this term, everybody wants to be my friend."

He's not entirely wrong. All around us, media organizations have begun to capitulate. First, two news outlets pulled election endorsements at the behest of their billionaire owners. Next, prominent reporters bent the knee at Mar-a-Lago. And then a major network - ABC News - rolled over in response to Trump's legal challenges and agreed to a $16m million settlement in his favor.

The Guardian is clear: we have no interest in being Donald Trump's - or any politician's - friend. Our allegiance as independent journalists is not to those in

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Betsy Reed
Editor, Guardian US



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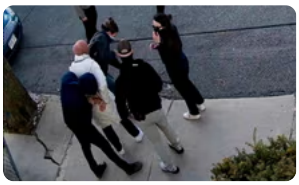
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Trump Immigration Policies Increase Peril For International Students

By **Stuart Anderson**, Senior Contributor. Stuart Anderson writes...

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Mar 31, 2025, 09:09am EDT

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Signage on the Tufts University Campus on March 27, 2025, in Somerville, Massachusetts. Graduate **... More**
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International students face increasing peril under Trump administration policies targeting the protests, articles and social media posts of visa holders. Immigration enforcement authorities have arrested protest participants and op-ed writers, and the State Department has canceled hundreds of student visas and told individuals to self-

deport or face the consequences. While government officials say they are enforcing the president's executive orders, attorneys argue that the administration's actions are unconstitutional. Education organizations expect the Trump administration's actions will discourage international students from coming to the United States.

Immigration Authorities Nabbing Students Off The Street And Canceling Visas

On March 27, 2025, "Secretary of State Marco Rubio estimated that he had signed perhaps more than 300 letters revoking the visas of students, visitors and others to force their expulsion from the United States because of their foreign policy views or criminal activities," reported the *New York Times*.

On March 8, 2025, Immigration and Customs Enforcement arrested Mahmoud Khalil, a lawful permanent resident and pro-Palestinian protester who graduated in December from Columbia University. The Trump administration used an immigration law provision that allows for deportation if the Secretary of State believes an alien's presence or activities "would have potentially serious adverse foreign policy consequences for the United States." As a federal judge, Donald Trump's sister, Maryanne Trump Barry, ruled that provision unconstitutional for its vagueness, lack of due process and a delegation of authority from Congress to the executive branch that gives the Secretary of State limitless authority. A higher court overturned her opinion on unrelated technical grounds.

On March 25, 2025, in a video that captured significant attention, masked ICE agents arrested Tufts University Ph.D. student Rumeysa Ozturk and sent her to a detention facility in Louisiana. The State Department confirmed that her participation in a joint op-ed criticizing Tufts and Israel played a role in her arrest and potential deportation. "An op-ed by a group of students published in the open daylight of a free press should not be a factor in anyone's arrest," wrote *Washington Post* columnist Kathleen Parker. In the majority opinion in *Bridges v. Wixon* (1945), Justice William O. Douglas declared, "Freedom of speech and of the press is accorded aliens residing in this country."

If someone had not seen the arrest and recorded a video, it is possible that the student would have just "disappeared" by moving to detention in another state with no record in the ICE online detention locator, according to former Cornell Law Professor Stephen Yale-Loehr and Jonathan Grode of Green & Spiegel.

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Yale-Loehr and Grode see three problems that threaten the ability of international students to remain in the United States. First, the State Department is canceling visas due to an exercise of free speech that administration officials find objectionable. Second, ICE denies due process since students cannot respond to charges. Third, student SEVIS records are terminated for "failure to maintain status" because the State Department revokes a visa and makes them subject to removal. (SEVIS, headquartered with ICE, is used to maintain information on international students.)

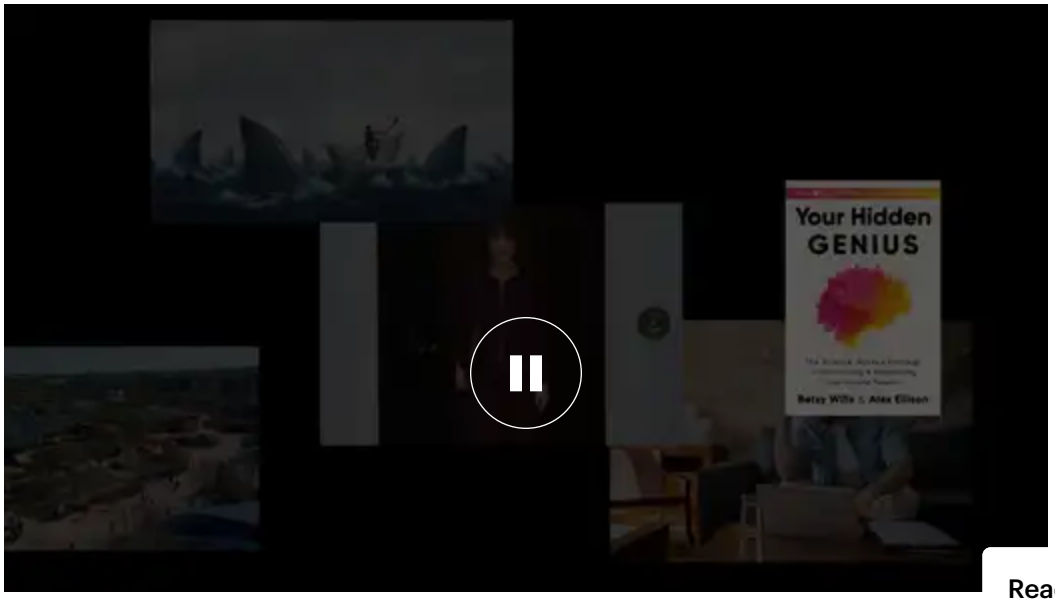
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"Three university officials, who were given anonymity so they could speak freely, across the country report that, in recent days, student residency statuses in the Student and Exchange Visitor Information System . . . are being changed without their knowledge," reported *Zeteo*.



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Attorneys believe the State Department is identifying students, possibly using AI (as reported by *Axios*), revoking passport visa travel stamps and turning to ICE to terminate the student visa record and potentially detain a student. “Given how minor the issues are for most of the 300 students affected so far, such as writing an op-ed or a speeding ticket, a university cannot give any kind of certainty to students,” said Grode. “Anyone could be at risk. Some universities are checking on visa revocations hourly and being on call to share SEVIS termination with the student quickly.”

“Even if the visa is revoked and the F-1 status has been terminated in SEVIS, a foreign student can still continue to study and, if placed in deportation proceedings, should challenge the deportation before an immigration judge,” said immigration attorney Cyrus Mehta. “If removal proceedings have not commenced, I think a student can also challenge the notice that they have been terminated in SEVIS in federal district court through the Administrative Procedure Act on the grounds that the action was arbitrary, capricious and the student was not given any warning or notice to respond.”

Mehta believes a student could also challenge an action on First Amendment grounds. “If the student is placed in removal, then too can a student challenge on First Amendment grounds, but the student may need to do this at the Court of Appeals stage since an immigration judge and the Board of Immigration Appeals may rubber stamp Rubio’s determination,” he said. According to the *Matter of Ruiz-Massieu*, decided as

amended June 10, 1999, in the U.S. Department of Justice Executive Office for Immigration Review Board of Immigration Appeals, a letter from the Secretary of State is sufficient evidence of deportability under the foreign policy provision. "If a student is detained upon being placed in removal, the student can challenge the detention in federal court through a habeas petition and could also seek a bond hearing before an immigration judge," added Mehta.

Lubna Kably of *The Times of India* reported that hundreds of international students have received emails from the State Department warning them to self-deport or face arrest and deportation. "The crackdown is based on social-media reviews being conducted by DOS (which includes Consulate officials). Thus, even new student applications . . . will also come under such social media scrutiny." Kably reports that some students have received the emails "for something as innocuous as sharing a social media post."



Donald Trump signs executive orders in the Oval Office of the White House on January 20, 2025 in **... More**
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Impact Of Immigration Policies On Where International Students Choose To Study

Education organizations are alarmed by the Trump administration's actions and are concerned about their impact on international students' decisions on where to attend school. International students represent between 50% and 70% of full-time graduate students in key technical fields at U.S. universities and are a significant source of high-skilled talent for employers. They also provide revenue that subsidizes U.S. student tuition at many colleges and universities and, supporters say, help establish economic, political and other connections between Americans and individuals from different backgrounds.

"International students and their families seek predictability, security, and a welcoming environment when choosing where to study," said Fanta Aw, executive director and CEO of NAFSA: Association of International Educators. "Given recent actions by the government related to visa revocation, termination of status, and detentions of some international students, they are deeply fearful and understandably concerned about their safety and future in the United States."

Aw believes losing international student contributions will negatively impact U.S. engagement with the world and its economic strength, national security and global competitiveness. She notes, "Students have many choices when it comes to study destination. This is likely to result in prospective students choosing to study elsewhere."

Miriam Feldblum, executive director of the Presidents' Alliance on Higher Education and Immigration, shares Aw's concerns. "It is deeply disturbing to see these immigration enforcement actions targeting international students and other noncitizen campus members that appear to lack clear cause, violate their Fifth Amendment protections, including due process and legal representation, and for at least a number of them, be based on speech or associations that are protected by the First Amendment," she said. A forthcoming "travel ban" could also block visas for international students from individual countries.

"These and other actions we are seeing will no doubt lead to a decline in America's reputation as the premier destination of choice for global talent from around the world, and a decline in new international student enrollments," said Feldblum. "Their loss will really be our loss. We will lose a generation of talented students and scholars."

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EXHIBIT GG

Constitutional Considerations Relating to Proposed Enhanced Vetting of Aliens in the United States for Counterterrorism Purposes

This paper addresses the constitutional framework governing agencies' efforts to support the counterterrorism vetting of aliens in the United States, including lawful permanent residents (LPRs),[1] on an initial and recurrent basis. We assume that any vetting program would entail querying information in the government's possession to determine whether an alien is associated with terrorist activity. We also assume that, in appropriate cases, the government would take lawful action to address the alien's status (*e.g.*, to remove the individual from the United States or to revoke immigration benefits).

Executive Summary

The caselaw is unsettled on important questions regarding the extent to which Congress's broad power to regulate immigration is limited by the constitutional rights of aliens in the United States. The principles developed in the caselaw, however, offer the following guidance in assessing the scope of any enhanced efforts to vet aliens who are inside the United States or who have been admitted to the United States:

(1) The proposals under consideration should be assessed on the assumption that aliens admitted to the United States are generally protected by the Constitution. Aliens in the United States have due process rights and can challenge the use of information to take actions that deprive them of cognizable liberty and property interests, including revocation of immigration benefits. And aliens here can also invoke protections under the First Amendment and the Equal Protection Clause. The scope of an alien's constitutional rights may vary depending on the context of the challenge and status of the alien. A court will likely scrutinize measures that apply to lawful permanent resident aliens most closely, because they will probably be treated by the courts as having many of the constitutional rights possessed by U.S. citizens.

(2) However, Congress has broad power in the Constitution to regulate immigration. The scope of that power, even as to aliens in the United States who have certain constitutional rights, would almost certainly encompass reasonable efforts to query the full range of already-acquired government information to assess whether aliens pose terrorism-related risks to the country. While it is conceivable that collection of certain types of information from aliens in the United States to facilitate counterterrorism vetting could face First Amendment challenges, the government likely has considerable discretion to do so provided it has legitimate reasons. Constitutional issues are more likely to be presented with respect to any actions taken against the alien based on any information discovered in the vetting process.

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[1] Specifically, we have been asked to analyze the constitutional restrictions pertinent to vetting visa holders within the United States, aliens admitted to the United States, and other beneficiaries under our immigration laws within the United States (but not naturalized U.S. citizens). We have not been asked to analyze constitutional restrictions applicable to those who are outside the United States or those applicable to aliens who are not lawfully in the United States.

(b)(5)

Because the parameters of the enhanced vetting program are not settled, we cannot assess concrete proposals, but below we set out the constitutional considerations that should be taken into account, including the areas of greatest litigation risk.[3] We first address whether aliens admitted to the United States can invoke constitutional rights to limit the government's authority to collect, access, or use the information about them to take actions affecting their rights. We then address the potential constitutional implications of significantly expanding the retention, dissemination, or use of certain types of intelligence information.

I. The Constitutional Framework for Assessing the Vetting Proposal: Aliens' Rights and Immigration Authority

A. Constitutional Rights of Aliens Inside the United States

While the law in this area is evolving and fact-sensitive, a few principles can be gleaned from the relevant cases. First, lawful permanent residents would probably be treated by the courts as having many of the constitutional rights possessed by U.S. citizens; these rights may even be recognized when lawful permanent residents are outside the country, at the very least, to the extent they are being vetted for purposes of determining whether they may reenter the country. *See Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (holding that a permanent resident alien can invoke the Due Process Clause when attempting to return to the United States from abroad); *Kwong Hai Chew* v. *Colding*, 344 U.S. 590, 600 (1953) (resident alien entitled to procedural due process rights after being denied reentry into the country); *cf.* Exec. Order No. 13,780, Fed. Reg. 13209, 13,214 (Mar. 6, 2017) (excepting "any lawful permanent resident of the United States" from the scope of a temporary ban on entry of certain aliens into the United States).[4]

Second, even aliens who are not LPRs who enter the United States and develop substantial connections to this country gain some rights guaranteed by the Constitution. *See United States v. Verdugo-Urquidez*, 494 U.S. 259, 271 (1990) ("[A]liens receive constitutional protections when they have come within the territory of the United States and developed substantial connections with this country."); *Almeida-Sanchez v. United States*, 413 U.S. 266, 273 (1973) (holding that a Mexican citizen with a valid United States work permit enjoyed Fourth Amendment protections and that border agents violated his Fourth Amendment rights when, lacking reasonable suspicion and acting in the United States and far from the border, they seized and searched his car); *Johnson v. Eisentrager*, 339 U.S. 763, 770 (1950) ("The alien . . . has been accorded a generous and ascending scale of rights as he increases his identity with our society.") Additionally, courts have held that those rights may apply, depending on the

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[3] The law in this area is also somewhat unsettled. This memorandum contributes to an ongoing interagency discussion of an evolving vetting process; it is not a final agency position.

[4] The Supreme Court has suggested, at least in dicta, that there may be cases in which an LPR's absence from the United States may be so prolonged and present such circumstances that it could be fairly determined that the alien abandoned his due process interest in retaining his or her LPR status. *See Plasencia*, 459 U.S. at 33-34.

circumstances and constitutional right at issue, to certain aliens while they are outside the United States or seeking to reenter the United States. *See Ibrahim v. DHS*, 669 F.3d 983, 995 (9th Cir. 2012) (student visa holder who had studied at Stanford for 4 years, was mistakenly placed on the No Fly List, and was prevented from returning to the United States had "significant voluntary connection" with the United States sufficient to "assert claims under the First and Fifth Amendments") What is a "substantial connection" to this country for constitutional purposes is not well-defined in the caselaw.

Third, an alien's presence within U.S. territory is generally a sufficient connection to confer constitutional rights, particularly outside of the immigration context. For example, the Supreme Court has suggested that all persons within the United States, including aliens, have due process protections, *see Mathews v. Diaz*, 426 U.S. 67 (1976) ("There are literally millions of aliens within the jurisdiction of the United States. The Fifth Amendment, as well as the Fourteenth Amendment, protects every one of these persons from deprivation of life, liberty, or property without due process of law."); *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent."), though what process is due to any particular individual may well vary based on the circumstances. The government's authority to search and seize an alien's property inside the United States is limited by the Fourth Amendment. *See Yanez-Marquez v. Lynch*, 789 F.3d 434, 468 (4th Cir. 2015) (finding that execution of search warrant against illegal aliens' residence outside of hours authorized in warrant was a Fourth Amendment violation but not one egregious enough to merit suppression in removal hearing); *Martinez-Aguero v. Gonzalez*, 459 F.3d 618, 626 (5th Cir. 2006) (finding Fourth Amendment violation in alien's arrest and agent's use of excessive force). Aliens here can also invoke equal protection rights. *See Plyler v. Doe*, 457 U. S. 202, 210 (1982). And aliens here can invoke First Amendment rights. *See Bridges v. Wixon*, 326 U.S. 135, 148 (1945) ("Freedom of speech and of press is accorded aliens residing in this country").

Fourth, aliens outside the United States generally lack constitutional rights. *Verdugo*, 494 U.S. at 271. Vetting measures taken against aliens outside the United States are, as a general matter, unlikely to raise constitutional concerns, at least with respect to aliens other than LPRs and those with substantial ties to this country asserting a right to reenter the country. It should be noted, however, that United States citizens with cognizable constitutional claims could challenge measures imposed on aliens outside the United States to the extent those measures affect the U.S. citizens' constitutional rights, although their ability to get relief has been limited. Even aliens abroad may be able to assert the rights of third-party U.S. citizens themselves in limited circumstances. *See Kerry v. Din*, 135 S. Ct. 2128 (2015) (Kennedy, J., concurring in judgment) (assuming, without deciding, that U.S. citizen had procedural due process right to an explanation of the grounds for the denial of alien husband's visa application, right was satisfied); *Kleindienst v. Mandel*, 408 U.S. 753, 762 (1972) (holding that U.S. citizens could challenge denial of discretionary waiver of visa ineligibility to an alien invited to speak, but finding visa denial was valid exercise of authority); *Morales-Santana*, 137 S. Ct. at 1689 (alien had third-party standing to challenge alleged denial of equal protection rights of U.S. citizen father, although remedy did not provide relief to alien); *see also Am. Academy of Religion v. Napolitano*, 573 F.3d 115, 125 (2d Cir. 2009) (holding that court could review alien's visa denial, which was based on

terrorism-related grounds, under *Mandel* based on plaintiff organizations' First Amendment rights).

Fifth, "aliens seeking initial entry to the country or who [are] apprehended immediately after entry," generally lack the full panoply of rights afforded to aliens who have resided in the country for a significant period of time, or who have entered lawfully. *Castro v. U.S. Dep't of Homeland Sec.*, 835 F.3d 422, 447-48 (3d Cir. 2016) (Suspension Clause did not apply to such aliens); *see also Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 210 (1953) ("Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control."); *Castro v. Cabrera*, 742 F.3d 595, 599-600 (5th Cir. 2014) (aliens detained and aggressively questioned while being denied entry to the United States lacked Fourth Amendment rights because the law treated them as if outside the United States); *cf. United States ex rel. Turner v. Williams*, 194 U.S. 279, 292 (1924) (finding arriving alien seeking initial admission to the United States outside the protection of the First Amendment). The preclusion of certain constitutional claims for such aliens seeking entry involves the "entry fiction" that an alien who has not been admitted—even if he is present in the United States—is "treated for constitutional purposes, 'as if stopped at the border.'" *Zadvydas*, 533 U.S. at 693, *quoting Mezei*, 345 U.S. at 213, 215. There are limits to this "entry fiction," and aliens stopped at the border can assert constitutional rights in certain instances, especially against claims of violations of bodily integrity. For instance, the Fifth Circuit has explained that while it applies the "entry fiction" in the immigration context to preclude Fourth Amendment claims for aliens who have been denied entry, the fiction will not apply if there are claims of "gross physical abuse" or claims outside the immigration context. *Cabrera*, 742 F.3d at 600; *see also Martinez-Aguero v. Gonzalez*, 459 F.3d 618, 623 (5th Cir. 2006) (declining to apply "entry fiction" to preclude alien's challenge to use of excessive force).

In short, it seems likely that at least a large fraction of those aliens located in the United States who would be the subject of the vetting would be able to assert various constitutional rights. We therefore recommend assessing proposals being considered on the assumption that the aliens within the United States are generally protected by the Constitution. To the extent that they challenge immigration measures that regulate who is entitled to be in this country, review may be under a deferential standard of review, as explained below.

B. Political Branches' Authority Over Immigration

Although aliens inside the United States may be able to assert a range of constitutional rights, the power of the political branches over immigration matters has been accorded extraordinary judicial deference. *See Harisiades v. Shaughnessy*, 342 U.S. 580, 588-89 (1952). Indeed, in the exercise of its broad power over immigration, "Congress regularly makes rules that would be unacceptable if applied to citizens." *Reno v. Flores*, 507 U.S. 292, 305-06 (1993); *see also Din*, 135 S. Ct. at 2140 (Kennedy, J., concurring in judgment) (plurality rejected a Fifth Amendment due process challenge brought by a U.S. citizen against the denial of her spouse's visa; citing "the congressional power to make rules for the exclusion of aliens, and the ensuing power to delegate authority to the Attorney General to exercise substantial discretion in that field"); *INS v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999) ("[J]udicial deference to the Executive Branch is especially appropriate in the immigration context where officials exercise especially

sensitive political functions that implicate questions of foreign relations.") (quotation marks and citation omitted). Despite the wide deference afforded in the immigration context, however, "Congress may not ignore [aliens' constitutional rights] in the exercise of its 'plenary' power of deportation." *Bridges*, 326 U.S. at 161 (Murphy, J., concurring) (finding alien's detention for removal because of communist affiliation to be unlawful); *Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1693 (2017) (acknowledging "Congress' 'exceptionally broad power' to admit or exclude aliens" but declining to defer to the Executive Branch in an equal protection challenge to a citizenship-granting statute). Government action taken against aliens should not be arbitrary and should not discriminate on bases that cannot be justified. *See Shahla v. INS*, 749 F.2d 561, 563 n.2 (9th Cir. 1984) ("the judicial branch may examine whether the political branches have used a foreign policy crisis as an excuse for treating aliens arbitrarily").

II. Potential Constitutional Issues

A. Constraints on Vetting

The Constitution does not generally restrict the government's ability to use aliens' identifiers to query data it already holds in order to determine whether the alien has connections to terrorism. However, mistaken inclusion of individuals on watchlists has given rise to constitutional and other claims. *See, e.g., Abdelfattah v. Dep't Homeland Sec'y*, 787 F.3d 524 (D.C. Cir. 2015) (alien sought expungement of his information from U.S. Customs and Border Protection's TECS database, but court found no constitutional violation that could be the basis for the requested relief); *Menard v. Saxby*, 498 F.2d 1017, 1030 (D.C. Cir. 1974) (remanding for entry of an order to FBI to expunge record of unlawful arrest from criminal files, citing constitutional avoidance as well as statutory interpretation grounds). Such claims generally come to light and have the potential to be actionable once an adverse action is taken against the target. *See Ibrahim v. DHS*, 62 F. Supp. 3d 909, 930 (N.D. Cal. 2014) (ordering government to remove alien's name from various watchlists to which it was added in error, but noting that "until concrete, reviewable adverse action occurs against a nominee, the Executive Branch must be free to maintain its watchlists in secret").

There may also be claims against programs related to vetting that are targeted against particular individuals or groups, alleging that the targeting itself is on an impermissible basis. For instance, the government after 9/11 instituted a program (that has since been discontinued) requiring non-LPR males over the age of 16 from designated countries—including Muslim majority states and North Korea—to appear for registration and fingerprinting. Courts upheld the program against equal protection challenges. *See Rajah v. Mukasey*, 544 F.3d 427, 439 (2d Cir. 2008) (stating that the court "join[s] every circuit that has considered the issue in concluding that [National Security Entry-Exit Registration System (NSEERS)] does not violate Equal Protection guarantees," and noting the absence of evidence that the program was motivated by animus on account of religion, ethnicity, gender or race) (citing cases). The courts have applied the principle that "Congress may permissibly set immigration criteria based on an alien's nationality or place of origin" to conduct deferential review of such challenges. *See Kandamar v. Gonzales*, 464 F.3d 65, 72 (1st Cir. 2006).

Aliens have also raised selective enforcement claims as defenses to deportation, claiming that they were targeted because they were members of a particular group. However, the Supreme Court has effectively closed the door to such claims, stating that "[a]s a general matter . . . an alien unlawfully in this country has no constitutional right to assert selective enforcement

as a defense against his deportation." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 488 (1999). The Court left open "the possibility of a rare case in which the alleged basis of discrimination is so outrageous that the foregoing considerations [that allowing selective enforcement claims would result in delayed removals, chill law enforcement efforts, and require courts to evaluate foreign policy] can be overcome." *Id.* at 491.

B. Constraints on Collection

It is possible that aliens in the United States may challenge the collection through immigration forms of identity information revealing their political views or associations or infringing on their privacy.[5] While aliens legally present inside the United States may invoke First Amendment or equal protection rights, previous information collections have nevertheless withstood constitutional scrutiny based on the executive's broad authority to regulate immigration. The INA has long required aliens to register and be fingerprinted if they remain in the United States for thirty days or more. The statutes also gives the government broad authority to ask questions in that process. 8 U.S.C. §§ 1302 (requiring registration and fingerprinting), 1304 (requiring registration forms that may include questions on "such additional matters as may be prescribed"), 1305(a) (permitting Attorney General, with 10 days' notice, to require aliens who must be registered to provide current address and other information). *See Rajah*, 544 F.3d at 439 (2d Cir. 2008) (upholding NSEERS registration, which required certain aliens to register, be fingerprinted, and present immigration-related paperwork); *see also United States v. Sacco*, 428 F.2d 264, 271 (9th Cir. 1970) (registration statute did not violate right against self-incrimination).

The statutory authority for the Secretary of Homeland Security to require certain reporting is more limited for LPRs than for non-LPR aliens. The Secretary may "prescribe special regulations and forms for the registration and fingerprinting" of "special groups" of non-resident aliens other than those "lawfully admitted to the United States for permanent residence." 8 U.S.C. § 1303(a). LPRs may be nonetheless required to provide, upon ten days' notice, their current address and "furnish such additional information as the [Secretary] may require," although the nature and extent of the additional information that may be required under this provision is untested. 8 U.S.C. § 1305(b).[6]

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[5] We assume for purposes of this memorandum that the "collection" of information at issue would be the collection of identity-related information that immigrants or visitors provide via on immigration or travel forms. As such, it would not involve a search or a seizure within the meaning of the Fourth Amendment. *See Rajah*, 544 F.3d at 441 ("the government does not violate the Fourth Amendment by obtaining documents or statements in the course of an alien's compliance with a statutorily authorized registration program"). Different issues may be presented if the information collection were unrelated to the purposes or went beyond the scope described. *See id.* ("The Fourth Amendment does provide protection against random or gratuitous questioning related to an individual's immigration status.").

[6] Some residual statutory references to the Attorney General that pertain to the transferred functions of the former INS are now deemed to refer to the Secretary. *See* 6 U.S.C. §§ 251, 271(b), 557; 6 U.S.C. § 542 note; 8 U.S.C. § 1551 note.

Although there has long been statutory authority to require all aliens to provide information to the government on a recurring basis, the constitutional limits of that authority are unsettled. The Second Circuit has cautioned that this statutory authority to request information might not "authorize the gathering of information whose collection, in itself, might raise constitutional questions." *Rajah*, 544 F.3d at 436 n.9. There may be relevancy limits on the type of information that may be requested. *See United States v. Witkovich*, 353 U.S. 194, 195 (1957) (construing a grant of authority to the Attorney General to ask aliens whatever questions he "deem[s] fit and proper" as limited to questions "reasonably calculated to keep the Attorney General advised regarding the continued availability for departure of aliens whose deportation is overdue," and rejecting questions about alien's memberships in clubs and societies).

Accordingly, although the standard for balancing federal immigration-related authority against the constitutional rights of aliens is not entirely clear and potentially leaves significant room for government regulation, any measures to collection information should be assessed to determine whether they are supported by legitimate reasons. The case of recurrent vetting for LPRs may present the most issues, particularly if changes in the process were imposed retroactively on those who already have their status.

One collection warranting particular scrutiny is the proposed expansion of the collection of social media identifiers through immigration or travel-related forms or INA-authorized updates.[7] Currently social media identifiers are collected on a voluntary basis from visitors who travel using the Electronic System for Travel Authorization (ESTA). ESTA is the automated system for determining the eligibility of travelers from countries participating in the Visa Waiver Program (VWP) to travel here. There are proposals to expand this collection of social media identifiers and to make it compulsory.

Aliens in the United States might raise First Amendment challenges if the collection of social media identifiers reveals their views or associations—*e.g.*, if the identifier itself reveals an association with a viewpoint-based group or expressed a political view. Similar claims have failed when the government has a legitimate reason for the collection. For example, the Ninth Circuit upheld a requirement that an LPR applying for naturalization list all organizations with which he had ever been affiliated. *Price v. INS*, 962 F.2d 836, 842-44 (9th Cir. 1992) (acknowledging First Amendment right but applying deferential standard to limit review to whether the requirement was "facially legitimate and bona fide"); *but see id.* at 844-45 (Noonan, J., dissenting) (arguing that LPR had same constitutional rights as citizens and thus more exacting First Amendment scrutiny should be applied), even though the same requirement had been struck down when applied to (citizen) teachers. *See Shelton v. Tucker*, 364 U.S. 479 (1960) (holding unconstitutional a requirement that teachers in public schools, as a condition of

[7] We are not analyzing the constitutional issues that might be presented if the government also compelled the disclosure of passwords or had a policy of analyzing and collecting the content of aliens' social media posts. For instance, the Privacy Act prohibits the collection and maintenance of any record describing how an individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity." 5 U.S.C. § 552a(e)(7). The Department of Homeland Security has drafted a paper on the Privacy Act implications for recurrent vetting.

employment, disclose annually all organizations to which they belonged or regularly contributed within the preceding five years).

Aliens may also argue that required disclosure of social media identifiers compromises a right to anonymous speech recognized as a protected form of free expression. *See, e.g.*, *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 341-42 (1995) ("[A]n author's decision to remain anonymous . . . is an aspect of the freedom of speech protected by the First Amendment"); *Watchtower Bible & Tract Soc'y v. Vill. of Stratton*, 536 U.S. 150, 166 (2002) ("The requirement that a canvasser must be identified in a permit application filed in the mayor's office and available for public inspection necessarily results in a surrender of [constitutionally protected] anonymity"). Requiring individuals to disclose their social media identifiers might reveal their authorship of otherwise anonymous speech and thereby chill the aliens' expression. Indeed, cases have recognized that a law that has a chilling effect on speech may be problematic under the First Amendment more broadly. *See Arizona Free Enterprise Club v. Bennett*, 564 U.S. 721, 746 (2011) (a law that does not directly restrict speech may nonetheless infringe on protected speech by creating a chilling effect); *see also Presbyterian Church v. United States*, 870 F.2d 518, 522-23 (9th Cir. 1989) (finding cognizable claim that INS covert surveillance in churches as part of an investigative of a sanctuary movement to aid refugees chilled participants from participating in worship activities).

A key factor in how courts will rule on such challenges is the standard of review that they adopt, which itself may be affected by the type of challenge and the alien's status. Courts have frequently adopted a deferential standard of review in the immigration context, *see, e.g., Price*, 962 F.2d at 842 (applying deferential standard to alien's First Amendment challenge to denial of petition for naturalization), but that standard is not certain, particularly for LPRs. *See Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1065 (9th Cir. 1995) (rejecting deferential standard for alleged infringement of First Amendment rights in deportation decision).[8]

Finally, we note that non-LPR aliens outside the United States do not enjoy First Amendment rights, and presumably much information collected in the immigration system comes from applications filled out by aliens abroad. *See Turner*, 194 U.S. at 292 (excludable arriving alien is not entitled to First Amendment rights because he has not yet become part of "the people" protected under the First Amendment). However, the legal analysis applicable to handling or uses of such information that is still retained after an alien becomes an LPR (or citizen) would change, so, for purposes of retaining and managing records, it may be important to identify the point in time when an alien's status changes.

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[8] In addition, the collection of social media identifiers might also be challenged as an invasion of a constitutional right to information privacy. Challenges to collection of drug treatment and prescription data as violating a right to privacy were considered (though rejected) in *NASA v. Nelson*, 562 U.S. 134 (2011), and *Whalen v. Roe*, 429 U.S. 589 (1977), which assumed for purposes of discussion that the Constitution protects a general right to informational privacy that could result in close judicial scrutiny. The Supreme Court has reserved the question whether such a right exists, but if it does, the collection would have to be a reasonable use of government powers, and the court would also consider provisions that protect against the public disclosure of the information.

C. Constraints on Use

Aliens are generally entitled to due process rights before immigration benefits can be terminated or revoked, or the alien can be removed. To the extent that actions taken based on vetting results affect other applicable constitutional rights such as the freedoms of expression and association, aliens may litigate those uses as well. In any of those challenges, the government may be required to disclose sensitive information to justify its actions.

1. Due process rights in immigration proceedings

As explained above, aliens in the United States have due process rights. *See Zadvydas*, 533 U.S. at 693. The nature and extent of those due process rights may vary, depending on the alien's status and the type of proceeding. *See id.* at 693-94. Typically, due process requires that the government provide a person with notice of the deprivation and an opportunity to be heard before a neutral party. In most instances in the context of termination of immigration benefits, immigration statutes and agency regulations provide aliens a right to notice of intent to terminate immigration benefits, and an opportunity to present opposing evidence to an immigration judge. *See, e.g.*, 8 C.F.R. § 205.2 (revocation of approval of certain petitions); 8 C.F.R. § 208.24(c) (termination of asylum or withholding of removal); 8 C.F.R. § 246.1 (rescission of adjustment of status). When the government seeks to remove aliens from the United States, aliens must have "a reasonable opportunity" to examine the government's evidence, to present evidence on their own behalf, and to cross-examine witnesses against them. 8 U.S.C. § 1229a(b)(4)(B); *see* 8 C.F.R. § 1240.10(a)(4) (same). Aliens who have LPR status are, for example, entitled to robust due process protections before removal. *See Rafeedie v. INS*, 880 F.2d 506, 520-23 (D.C. Cir. 1989).

In contrast, where aliens are pursuing a new application for immigration benefits to which they do not have an entitlement—such as an employment-based nonimmigrant status or adjustment of status to that of an LPR—even if the alien is already present in the United States, due process protections generally do not apply, because aliens have no liberty interest in discretionary benefits to which they have no entitlement. *See Jay v. Boyd*, 351 U.S. 345, 354 (1956). However, depending upon the particular immigration benefit, certain agency guidelines and regulations may extend process rights that are not constitutionally required.

One due process right is the right to be informed of the evidence being used against the alien. If in litigation a court finds that an alien is entitled to know the basis for an action, the government may be required to disclose sensitive information in order to proceed with the case. Agencies contributing information to the vetting program should be aware of this risk. Aliens may also attempt to challenge the adequacy and accuracy of that information. Nonetheless, the right to examine and challenge national security information is limited in certain immigration-related processes. For example, although aliens must be afforded a reasonable opportunity to examine evidence against them in removal proceedings before an immigration court, aliens are not entitled to examine national security information proffered by the Government in opposition to their admission or in connection with a request for discretionary

relief from removal. 8 U.S.C. § 1229a(b)(4)(B); *see also, e.g.*, 8 C.F.R. §§ 103.2(b)(16); 1003.46; 1240.11(a)(3), (c)(3)(iv).[9]

2. Due process rights associated with other uses

If the enhanced vetting results are used for other purposes, such as watchlisting or credentialing decisions, the same issues that are currently being litigated for those uses would apply to the use of the enhanced vetting results. Aliens may be able to raise constitutional issues, depending on the right infringed as well as the alien's status and the use. In the watchlisting context, for instance, several courts have held that certain aliens had constitutionally protected liberty interests such as in traveling internationally by air that were affected by their purported placements on the No Fly List and that triggered the protections of procedural due process. *See, e.g., Latif v. Holder*, 28 F. Supp. 3d 1134, 1149-50 (D. Or. 2014) (LPRs placed on No Fly List had constitutionally protected liberty interests in traveling internationally by air and in their reputations); *see also Ibrahim*, 62 F. Supp. 3d 909 (nonimmigrant alien who came to U.S. on student visa was erroneously placed on No Fly List, which affected her right to travel, right to be free from incarceration, and right to be free from the stigma and humiliation of a public denial of boarding and incarceration). Plaintiffs in the terrorism watchlisting context have in due process challenges contested the adequacy of the procedures, the reasonableness of the standards for listing, and the adequacy and accuracy of the information for individual decisions. *Latif*, 28 F. Supp. 3d at 1161, 1162 (holding that then-applicable redress procedures for the No Fly List fell "far short of satisfying the requirements of due process," which required that plaintiffs be provided "with notice regarding their status on the No-Fly List and the reasons for placement on that List"); *see also Latif v. Lynch*, 2016 WL 1239925 (D. Or. Mar. 28, 2016).

If the results of vetting were used to take actions that restricted an alien's constitutionally protected interests, then aliens would likely bring challenges similar to those being litigated in the watchlisting context. For new uses of this information, agencies would need to build a record in the administrative phase to support the action taken. In subsequent litigation, aliens might challenge the information used to list them, the standards or thresholds required for the action, and the adequacy of the process. There could be due-process-based obligations to disclose information that the government used in its decision to take action. For these reasons, any administrative process that would involve the use of the vetting results should be carefully designed.

3. First Amendment limitations on use

The government's use of an alien's expressive or associational information, such as information concerning association with certain groups, to deny or rescind an immigration benefit may be challenged based on the Free Speech Clause, the Free Exercise Clause, the Establishment Clause, or the First Amendment's protections for the freedom of association. There may also be restrictions on government action, even against aliens outside the United States, designed to discriminate on the basis of religion. *Cf. Int'l Refugee Assistance*

[9] The Alien Terrorist Removal Court, a special court composed of U.S. district court judges to review applications for the removal of alien terrorists, which has never been used, provides for the use of undisclosed classified information in a removal case. 8 U.S.C. § 1534; *see also* 8 U.S.C. § 1225(c) (allowing for removal of certain arriving aliens based on undisclosed confidential information).

Project v. Trump, 857 F.3d 554 (4th Cir.), *as amended* (May 31, 2017), *as amended* (June 15, 2017) (holding that because the second travel ban executive order's "primary purpose is to exclude persons from the United States on the basis of their religious beliefs" it likely violates the Establishment Clause), *vacated and remanded*, 138 S. Ct. 353 (2017).

While the Supreme Court has stated that "[f]reedom of speech and of press is accorded aliens residing in this country," *Bridges*, 326 U.S. at 148, Congress's plenary power over immigration has meant that a lower level of judicial scrutiny typically applies in immigration-related proceedings, and immigration statutes implicating First Amendment protections have historically withstood constitutional scrutiny. The immigration statutes have long required the exclusion, deportation, and removal (in some circumstances) of aliens based upon their association with organizations advocating communism or the overthrow of the United States government, and the Supreme Court has repeatedly upheld these statutes as constitutional. *See, e.g., Harisiades*, 342 U.S. at 592 (rejecting First Amendment challenge to deportation for membership in Communist Party by referring to constitutionality of anti-Communist criminal statutes); *Galvan v. Press*, 347 U.S. 522, 529 (1954) (upholding deportation of a former member of a Communist organization who did not personally advocate the violent overthrow of the Government); *Carlson v. Landon*, 342 U.S. 524 (1952).

Aliens have tried to challenge immigration actions as discriminating on the basis of aliens' protected speech. However, so long as there is a legitimate basis for removing an alien—*e.g.*, a disqualifying conviction or non-compliance with immigration law—courts have been reluctant to second-guess the government's motives. In 1999, the Supreme Court rejected another challenge involving an associational bar in the immigration law. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471 (1999) (*AAADC*). The Ninth Circuit had upheld on First Amendment grounds a preliminary injunction against selective deportation of aliens whom the government alleged were members of an organization that advocated communism and terrorism. They were also charged with status violations such as overstaying a visa. *Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1055-56 (9th Cir. 1995) ("the foreign policy powers which permit the political branches great discretion to determine which aliens to exclude from entering this country do not authorize those political branches to subject aliens who reside here to a fundamentally different First Amendment associational right"). While the case was pending, Congress amended the law to limit judicial review to final orders of removal, thereby precluding adjudication of the plaintiffs' lawsuit. The Supreme Court rejected plaintiffs' argument that the Court should exercise jurisdiction notwithstanding the review-limiting statute because the government had selectively prosecuted them based on their affiliation with an unpopular group. The Court explained that "[w]hen an alien's continuing presence in this country is in violation of the immigration laws, the Government does not offend the Constitution by deporting him for the additional reason that it believes him to be a member of an organization that supports terrorist activity." *AAADC*, 525 U.S. at 491-92.

The same statute limiting judicial review has also been construed to limit aliens' ability to mount First Amendment challenges to certain immigration actions outside of direct review of a removal order. *See Humphries v. Various Fed. USINS Emps.*, 164 F.3d 936, 945 (5th Cir. 1999) ("Pursuant to [8 U.S.C.] § 1252(g), we therefore have no jurisdiction to entertain [plaintiffs'] allegations [in *Bivens* suit] that the INS excluded him in violation of the First Amendment"); *but see Kwai Fun Wong v. United States*, 373 F.3d 952, 964-65 (9th Cir. 2004) (holding that § 1252(g) did not bar foreign religious leader's *Bivens* actions against INS officials alleging First

and Fifth Amendment violations in relation to detention, adjustment of status denial, and revocation of parole). Despite the restrictions on judicial review, First Amendment challenges to actions taken based on an alien's speech or association can be expected to continue.

Despite these hurdles to First Amendment challenges, First Amendment interests might still be implicated when the government regulates core First Amendment activity. *Rowoldt v. Perfetto*, 355 U.S. 115 (1957) (imposing a higher standard of proof and requiring government to show "meaningful association" with the Communist Party); *Immigration Laws and Iranian Students*, 4A Op. O.L.C. 133, 138 (1979) (explaining that "[w]e have serious doubt whether the identification of the class of deportable persons could be made to turn on" whether aliens had participated in marches or advocated for the death of the Shah but also opining that "the Attorney General could determine that the presence of [aliens] severely injures the ability of this country to conduct foreign policy and threatens maintenance of the public order"); *cf. Rafeedie*, 880 F.2d at 517 (recognizing that summary exclusion proceeding could have chilling effect if alien is not provided with evidence used against him, since he may fear that he is being excluded "for his legitimate activities as an outspoken critic of the Government's foreign policy").

4. Other rights

Depending on the uses that are made of vetting information, aliens may also bring challenges based on other constitutional rights. Aliens have also brought equal protection claims under the Due Process Clause to challenge immigration actions, but they have met with little success. The equal protection guarantee does apply to aliens within the United States, but federal authority in the areas of immigration and naturalization is plenary, so classifications among groups of aliens or on account of nationality drawn as a basis for determining their eligibility to enter or remain in the United States have been upheld against an equal protection challenge when there was a facially legitimate and bona fide reason for the classification. *See, e.g., Rajah*, 544 F.3d at 438; *Resendiz–Alcaraz v. U.S. Att'y Gen.*, 383 F.3d 1262, 1271 (11th Cir. 2004). Courts may only apply the deferential standard to these classifications if the distinctions are properly characterized as arising out of an exercise of the federal government's power to regulate the presence of aliens in this country. *See Morales-Santana*, 137 S. Ct. at 1689 (invalidating a provision of the INA that did not involve that power "under the heightened scrutiny that now attends all gender-based classifications" (internal citations omitted)).

III. Fourth Amendment Considerations Related to Querying or Disseminating Information Lawfully Collected Under Foreign Intelligence Authorities

New and expanded systematic use and dissemination of personal information held by the government may require reexamination of whether some of the government's collection of the information complies with the Fourth Amendment's requirement of reasonableness, where the information was lawfully obtained under foreign intelligence authorities such as FISA or Executive Order 12333. Courts considering Fourth Amendment challenges to the collection of FISA information have recognized that "the Fourth Amendment does not apply to searches and seizures by the United States against a non-resident alien in a foreign country." *United States v. Mohamud*, 843 F.3d 420, 439 (9th Cir. 2016) (internal quotation marks omitted), *cert. denied*, __ S. Ct. __, 2018 WL 311442 (Jan. 8, 2018). Collection targeting a non-resident alien outside the

United States, however, may result in incidental collection on U.S. persons[10] or on persons located in the United States who, for example, may be communicating with the non-resident alien target. The fact of such incidental collection does not itself render the collection violative of the Fourth Amendment. Nor would the sharing of information acquired through such incidental collection necessarily violate the Fourth Amendment. *See, e.g., id.* at 439-40, 443; *In re Directives Pursuant to Sec. 105B of For. Intelligence Surveillance Act*, 551 F.3d 1004, 1015 (FISA Ct. Rev. 2008).

However, intelligence collection programs must be reasonable under the Fourth Amendment, an inquiry that takes into account post-collection handling, dissemination, and use of the information. *See, e.g., Mohamud*, 843 F.3d at 443. Under the vetting proposal, queries might be run against a large number of telephone numbers and social media identifiers. The results might reveal, and subject to review, communications to, from, and about U.S. persons that the government possesses but does not currently examine. Many of the communications likely would have nothing to do with the purpose of the proposal. The extent of the intrusion on U.S. persons would increase if the numbers or identifiers of LPRs are included in the queries, particularly in the absence of any suspicion that the LPR is associated with terrorist activity or that the query will return foreign intelligence information. The Ninth Circuit has held that, under section 702 of the Foreign Intelligence Surveillance Act (FISA), "[a]n important component of the reasonableness inquiry is whether the [Foreign Intelligence Surveillance Court]-approved targeting and minimization measures sufficiently protect the privacy interest of U.S. persons." *Mohamud*, 843 F.3d at 443; *see also [Caption Redacted]*, 2011 WL 10945618, at *27 (FISA Ct. Oct. 3, 2011) ("[t]he [FISA] Court of Review and this Court have recognized that the procedures governing retention, use, and dissemination bear on the reasonableness under the Fourth Amendment of a program for collecting foreign intelligence information.").

In this context, the volume of Fourth Amendment protected information collected and how it is protected and disseminated are key considerations. When the Ninth Circuit evaluated the collection of FISA Section 702 information used in a criminal prosecution, the court found "the most troubling aspect of this 'incidental' collection" was "its volume, which is vast, not *de minimis*." *Mohamud*, 843 F.3d at 440. In evaluating the constitutionality of the program, that vast volume increased "the importance of minimization procedures [governing retention and dissemination of information] once the communications are collected." *Id.*; *see also [Caption Redacted]*, 2011 WL 10945618. Indeed, the Foreign Intelligence Surveillance Court found that one program in which NSA collected "Multicommunication Transactions" (MCTs) was not reasonable under the Fourth Amendment because the procedures governing retention, use, and dissemination did not adequately address Fourth-Amendment protected information. Both the volume of domestic communications collected and the nature of the intrusion—personal communications of U.S. persons and persons in the United States—factored into the court's analysis. *[Caption Redacted]*, 2011 WL 10945618, at *26-28.

If enhanced vetting changes the nature or volume of the retention, use, or dissemination of information about U.S. persons that had been collected through intrusive means under different foreign intelligence authorities such as FISA, courts may need to re-evaluate the reasonableness under the Fourth Amendment of the procedures that are applied to protect Fourth

[10] Under FISA, a U.S. person includes both citizens and LPRs (as well as certain corporations). 50 U.S.C. § 1801(i).

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EXHIBIT HH

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Inadmissibility Based on Endorsing or Espousing Terrorist Activity: First Amendment Concerns

1. Introduction

This paper discusses First Amendment concerns that may arise in applying the security-related ground of inadmissibility under section 212(a)(3)(B)(i)(VII) of the Immigration and Nationality Act (INA), as amended, which renders inadmissible any alien who "endorses or espouses" terrorist activity.[1] That ground of inadmissibility is applied exceedingly rarely, but is considered available for use in compelling circumstances. Whether use of ~~this~~ that inadmissibility ground raises First Amendment- concerns will depend on a number of factors, including whether the individual is entitled to First Amendment protection, whether a U.S. citizen has a First Amendment interest in hearing from the alien, and whether the speech itself is protected by the First Amendment. Lastly, this paper will briefly discuss alternative inadmissibility grounds that

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range along a spectrum, depending on the aliens' contacts with the United States and the character of the speech at issue. On one end of the spectrum, Supreme Court decisions appear to establish that the government may exclude aliens whose advocacy or beliefs pose a threat to the national security of the United States or the security of its nationals. On the other end, lawful permanent residents very likely could not be excluded or removed for expressing mere philosophical support for terrorism or for endorsing the activities of groups whose activities do not implicate the foreign policy interests of the United States.

2. INA Ground of Inadmissibility

a. Scope

INA § 212(a)(3)(B)(i)(VII) specifies that any alien who "endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization" is inadmissible.[2] The terms "endorse" and "espouse" are not defined in the INA or relevant

[1] This paper does not discuss the security-related deportability provisions under INA § 237(a)(4)(B), which incorporate by reference the grounds of inadmissibility under INA §§ 212(a)(3)(B) and (F). The First Amendment implications discussed in this paper, however, are applicable to the use of the security-related deportability ground under INA § 237(a)(4)(B).

[2] Pursuant to INA § 212(a)(3)(B)(iii), "terrorist activity" includes "any activity which is unlawful under the laws of the place where it is committed" and which involves any of the listed activities under INA §§ 212(a)(3)(B)(iii)(I)-(VI). INA § 212(a)(3)(B)(vi) provides for three types of terrorist organizations. Two of these – -INA

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b. Statutory History

The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) of 2001 created the INA's first "endorse or espouse" provision, establishing that an alien who "used [his or her] *position of prominence* within any country to endorse or espouse terrorist activity, or to persuade others to support terrorist activity or a terrorist organization, *in a way that the Secretary of State has determined undermines United States efforts to reduce or eliminate terrorist activities*" is inadmissible. Pub. L. No. 107-56, § 411, 115 Stat. 272, 346 (2001) (emphasis added); INA § 212(a)(3)(B)(i)(VI) (2004). The REAL ID Act of 2005 broadened the provision, lifting the restriction that, *inter alia*, the alien be a person of prominence in order to be found inadmissible or removable. Pub. L.

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3. The Applicability of the First Amendment

~~It is a well-established principle that a~~Aliens abroad generally enjoy no constitutional right of entry into the United States, and Congress enjoys plenary authority to determine what categories of aliens are inadmissible. *See Kerry v. Din*, 135 S. Ct. 2128, 2131 (2015) ("[A]n unadmitted and nonresident alien … has no right of entry into the United States, and no cause of action to press in furtherance of his claim for admission"). In *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972), the Supreme Court upheld the Attorney General's denial of a discretionary waiver of ineligibility for admission for a self-described revolutionary Marxist visa applicant who was a non-resident, ~~and~~ outside the United States and found inadmissible on the basis of his politics. Yet, Congress's authority is not unfettered, and it can exercise its plenary power over

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§§ 212(a)(3)(B)(vi)(I) and (II) – involve Secretary of State designations, and the third is for an "undesignated" group pursuant to INA § 212(a)(3)(B)(vi)(III).

[3] *Endorse,* Merriam-Webster.com, https://www.merriam-webster.com/dictionary/endorse (last accessed Apr. 17, 2017).

[4] *Espouse*, Black's Law Dictionary (10th ed. 2014).

[5] *Espouse,* Merriam-Webster.com, https://www.merriam-webster.com/dictionary/espouse (last accessed Apr. 17, 2017).

immigration only if it "does not offend some other constitutional restriction." ~~*See*~~ *INS v. Chadha*, 462 U.S. 919, 941 (1983) (citation omitted).

The Supreme Court has made some sweeping statements about Congress's power to exclude or deport aliens for reasons that would otherwise violate the constitutional rights of citizens. The Court has stated, for example, that "the power to exclude aliens is inherent in sovereignty, necessary for maintaining normal international relations and defending the country against foreign encroachments and dangers – a power to be exercised exclusively by the political branches of government." *Mandel*, 408 U.S. at 765-66. It has observed that "over no conceivable subject is the legislative power of Congress more complete than it is over" the admission of aliens. *Oceanic Steam Navigation Co. v. Stranahan*, 214 U.S. 320, 339 (1909); *accord Fiallo v. Bell*, 430 U.S. 787, 792 (1977). "Any policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power and maintenance of a republican form of government. Such matters are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference." *Harisiades v. Shaughnessy*, 342 U.S. 580, 588–89 (1952); *see also Galvan v. Press*, 347 U.S. 522, 531 (1954) ("that the formulation of these policies is entrusted exclusively to Congress has become about as firmly embedded in the legislative and judicial tissues of our body politic as any aspect of our government"). Moreover, the "Court has firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens." *Demore v. Kim*, 538 U.S. 510, 522 (2003). The Court has thus permitted the government to exclude aliens on the basis of "political beliefs, sex, and illegitimacy," and permitted the government to "deport resident aliens on the basis of political beliefs," "affiliation," and even "conduct that wholly antedated the relevant prohibitory regulation." *Constitutionality of Closing the Palestine Information Office, an Affiliate of the Palestine Liberation Organization*, 11 Op. O.L.C. 104, 109 (1987).

There is nevertheless reason to doubt the breadth of some of those characterizations, because aliens in the United States do enjoy some constitutional protections. *See generally Bluman v. Fed. Election Comm'n*, 800 F. Supp. 2d 281, 286 (D.D.C. 2011) (three-judge court) (Kavanaugh, J.) ("We know from more than a century of Supreme Court case law that foreign citizens in the United States enjoy many of the same constitutional rights that U.S. citizens do."), *aff'd*, 565 U.S. 1104 (2012). Within the United States, the First Amendment confers a fundamental right to express and receive ideas. *Stanley v. Georgia*, 394 U.S. 557, 564 (1969). The Government ordinarily may not restrict expression because of its message: "Congress shall make no law…abridging the freedom of speech, or of the press." U.S. Const. amend. I. And, notwithstanding the broad statements quoted above, the Supreme Court has flatly stated that "[f]reedom of speech and of press is accorded aliens residing in this country." *Bridges v. Wixon*, 326 U.S. 135, 148 (1945) (citing *Bridges v. California*, 314 U.S. 252 (1941)).

Reconciling the two lines of authority – acknowledging both that Congress's power is at its apex when exercised to control the admission of aliens and that aliens have some, albeit unique and possibly circumscribed, constitutional rights – is difficult. The case law does, however, establish some landmarks that help to guide analysis of the relevant issues.

When addressing First Amendment-type activities of aliens, a threshold issue is whether or not the First Amendment applies to a particular alien, based on the alien's location and existing links to the United States. *See, e.g.*, *United States v. Verdugo-Urquidez,* 494 U.S. 259, 271 (1990) (explaining that aliens "receive constitutional protections ~~are protected by the Constitution~~ ~~"~~when they have come within the territory of the United States and developed substantial connections with this country"); *Plyler v. Doe,* 457 U.S. 202, 210-12 (1982) (holding that illegal aliens are protected by the Equal Protection Clause in the context of public education); *Mathews v. Diaz,* 426 U.S. 67, 77 (1976) (holding that the Fifth and Fourteenth Amendments protect all aliens within the jurisdiction of the United States, even those "whose presence in this country is unlawful, involuntary, or transitory," from "deprivation of life, liberty, or property without due process of law"). According to longstanding Supreme Court precedent, courts should apply a territorial test to distinguish between aliens residing within the United States and aliens abroad who apply for visas or seek admission at the U.S. border in determining their ~~C~~constitutional rights. Courts also have applied constitutional protections in cases where an alien had significant U.S. contacts, and in cases where a U.S. citizen challenged a visa denial to an alien based on the U.S. citizen's First Amendment rights.[6]

These standards ~~are (primarily?) derived~~ derive from case law in light of the specific factual circumstances presented. Thus, while this paper discusses general considerations that would apply in determining the applicability of First Amendment protections for aliens, it is impossible to identify bright~~-~~-line rules that would consistently predict the outcome of litigation against the United States for having found inadmissible an alien based on statements that endorse or espouse terrorist activity.

a. Limitations Based on a Alien's Status and Location

Generally, aliens who reside within the territory of the United States stand on equal footing with U.S. citizens to assert First Amendment liberties, whereas aliens abroad, including visa applicants at U.S. embassies and consulates and applicants for admission at U.S. ports of entry, lack this constitutional protection.[7] However, even aliens outside the United States with significant U.S. contacts (including aliens who are lawful permanent residents of the United States) may be entitled to First Amendment protections.

[6] The United States also has an international human rights obligation to ensure that "[e]veryone shall have the right to freedom of expression" under Article 19 of the International Covenant on Civil and Political Rights (ICCPR). That ~~is~~ treaty obligation, however, applies only to ~~all~~ individuals who are within the territory of the United States and subject to its jurisdiction. *See* ICCPR, Article 2(1).

[7] An exhaustive discussion of particular scenarios in which application of the inadmissibility ground could be challenged on First Amendment grounds is beyond the scope of this paper. For example, a case where the alien made his or her speech *within* the United States, subsequently departed, and later sought reentry or admission would involve a complex First Amendment analysis on the use of INA § 212(a)(3)(B)(i)(VII).

DRAFT

i. Aliens in the Interior of the United States

Aliens within the borders of the United States and who have developed other significant ties to the United States receive constitutional protections. . *See ~~United States v.~~ Verdugo-Urquidez*, 494 U.S. ~~259,~~ at 271 ~~(1990) ("[A]liens receive constitutional protections when they have come within the territory of the United States and developed substantial connections with this country.")~~; *see also Rafeedie v. INS*, 795 F. Supp. 13, 21 (D.D.C. 1992) (finding a lawful resident alien enjoyed the same First Amendment rights as citizens). Regardless of immigration status, once an alien enters and resides in the United States, he or she ~~becomes invested with~~gains at least some of the rights guaranteed by the Constitution, including those protected by the First Amendment. *See Bridges v. Wixon*, 326 U.S. ~~135,~~ at 148 ~~(1945)~~ ("Freedom of speech and of press is accorded aliens residing in this country.") (citations omitted).

Even so, at least some First Amendment protections apply differently to aliens than to citizens. In the realm of campaign finance, for example, the government may bar aliens from engaging in issue advocacy that is permitted for citizens. *See Bluman*, 565 U.S. 1104, *aff'g* 800 F. Supp. 2d 281; *see also Citizens United v. FEC,* 558 U.S. 310, 419-424 & n.51 (2010) (Stevens, J., joined by Ginsburg, Breyer, and Sotomayor, JJ., concurring in part and dissenting in part) ("The Government routinely places special restrictions on the speech rights of … foreigners …. Although we have not reviewed them directly, we have never cast doubt on laws that place special restrictions on campaign spending by foreign nationals."). Moreover, the Supreme Court held, albeit long ago, that the First Amendment does not protect aliens from deportation because of membership in the Communist Party, *see Harisiades,* 342 U.S. at 591-92, nor because they are anarchists, whether political or merely philosophical, *United States ex rel. Turner v. Williams*, 194 U.S. 279, 294 (1904) (explaining that even "[i]f the word 'anarchists' should be interpreted as including aliens whose anarchistic views are professed as those of political philosophers, innocent of evil intent, it would follow that Congress was of opinion that the tendency of the general exploitation of such views is so dangerous to the public weal that aliens who hold and advocate them would be undesirable additions to our population, whether permanently or temporarily, whether many or few; and, in the light of previous decisions, the act, even in this aspect, would not be unconstitutional, as applicable to any alien who is opposed to all organized government.").

Given their broadest reading, these cases suggest that Congress could exclude and deport aliens on the basis of their advocacy and beliefs merely because "Congress was of opinion that the tendency of the general exploitation of such views is so dangerous to the public weal that aliens who hold and advocate them would be undesirable additions to our population, whether permanently or temporarily, whether many or few." *Williams*, 194 U.S. at 294. Somewhat less expansively, one could interpret the cases as standing for the proposition that the government may limit the speech of aliens – and perhaps exclude or expel them – because its "historical power to exclude aliens from participation in its democratic political institutions [is] part of the sovereign's obligation to preserve the basic conception of a political community." *Foley v. Connelie*, 435 U.S. 291, 295 (1978). Finally, at their narrowest, these cases could be read as indicating that ~~T~~the First Amendment extends its privileges equally to citizens and resident

aliens. *Bridges v. Wixon*, 326 U.S. ~~*Id.*~~ at 161 (Murphy, J., concurring), and that any limitations on First Amendment activities of *resident* aliens must therefore be consistent with the protections afforded to U.S. citizens. The Court's recent embrace of the view that removal from the United States should be seen as "a particularly severe penalty," *Lee v. United States*, No. 16-327, 2017 WL 2694701, at *9 (U.S. June 23, 2017) (quoting *Padilla v. Kentucky*, 559 U.S. 356, 265 (2010)), rather than merely a "withdrawal of the privilege of remaining in the United States," *Constitutionality of Closing the Palestine Information Office*, 11 Op. O.L.C. at 109, further suggests that the Court will treat aliens already present in the United States as having First Amendment protections against removal. On the latter view, to the extent the government seeks to regulate the content of the speech of aliens through its power to exclude or expel, its laws must meet the dictates of strict scrutiny – that is, be narrowly tailored to achieve a compelling government interest.

ii. Aliens Outside the United States or at a Port of Entry

The Supreme Court has long held that the rights guaranteed by the Constitution do not extend to aliens seeking admission for the first time to the United States: "The Bill of Rights is a futile authority for the alien seeking admission for the first time to these shores." *See Bridges v. Wixon*, 326 U.S. at 161 (Murphy, J., concurring).

Lawful permanent resident aliens, however, ~~are considered to~~ have ~~C~~constitutional rights, even when they are at ~~the~~ a port of entry seeking to reenter the United States. *See Landon v. Plasencia*, 459 U.S. 21 (1982); *Kwong Hai Chew v. Colding*, 344 U.S. 590 (1953). In addition, ~~C~~some courts have ~~recently~~ found that aliens abroad who are not lawful permanent residents but who have otherwise developed substantial connections to the United States, may have sufficient ties to assert at least some ~~C~~constitutional rights. *See Ibrahim v. DHS*, 669 F.3d 983, 995-96 (9th Cir. 2012) (holding that Ibrahim, although abroad at the time of her suit, ~~-~~had previously established significant voluntary connections with the United States during her residence in California that permitted her to assert claims under the First and Fifth Amendments) (collecting cases).

iii. Rights of U.S. Citizens to Hear and Assemble with Aliens Outside the United States

While the First Amendment does not apply to aliens seeking initial admission to the United States, the Supreme Court has recognized a limited right of U.S. citizens to "hear, speak, and debate with" a visa applicant. *Kleindienst v. Mandel*, 408 U.S. ~~753,~~ at 762 ~~(1972)~~; *see also Stanley v. Georgia*, 394 U.S. 557, 564 (1969) ("It is now well established that the Constitution protects the right to receive information and ideas."). Consequently, citizens have been found to have standing to challenge the Government's exclusion of aliens who ~~otherwise~~ lack standing to assert First Amendment protections on their own. *See, e.g., Amer. Acad. of Religion v. Napolitano*, 573 F.3d 115 (2d Cir. 2009).

Even so, the fact that citizens have a First Amendment interest in receiving the speech of aliens sufficient to confer standing is not tantamount to saying that the interest is significant enough to give rise to a freestanding basis for challenging an alien's exclusion or deportation. ~~However, t~~The Court has limited its inquiry into inadmissibility or visa ineligibility determinations on the basis of listeners' rights to whether the Government provided a "facially legitimate and bona fide" reason for its action. *See Mandel*, 408 U.S. at 776, 770 (declining to balance the asserted First Amendment interests of U.S. citizens in the denial of a nonimmigrant visa waiver for a revolutionary Marxist speaker against "Congress' 'plenary power to make rules for the admission of aliens….'") (citation omitted); *see also Kerry v. Din*, ~~576 U.S. ___~~, 135 S. Ct. ~~2128,~~ at 2139-140 ~~(2015)~~ (Kennedy, J. and Alito, J., concurring) (stressing that the reasoning of *Mandel* is particularly applicable "where national security is involved").[8]

Dozens of cases have challenged Executive Orders 13769 and 13780 on First Amendment grounds and involved arguments based on *Din* and *Mandel*. *See, e.g.*, *Washington v. Trump*, 847 F.3d 1151, 1162 (9th Cir. 2017) (finding that *Mandel* applies to individual visa adjudications by a consular officer and not to the Executive's decisions on immigration policy). The outcomes of these cases~~, –~~ including ~~appeals currently before the Fourth and Ninth Circuits, may impact~~ potential disposition by the Supreme Court, *see Trump v. International Refugee Assistance Project*, 137 S. Ct. 2080 (2017) (granting certiorari in cases from Fourth and Ninth Circuits) – may shed further light on the assessments presented here.

b. General Limitations on Speech

If a particular alien enjoys constitutional protections, the inquiry turns to whether the speech subjecting the alien to the inadmissibility ground is protected speech within the scope of the First Amendment. Given that the inadmissibility ground at INA § 212(a)(3)(B)(i)(VII), on its face, is a content-based regulation, if the speech is protected speech, the statute would likely be subject to strict scrutiny standard of review.

i. Speech Not Protected Under the First Amendment

The Supreme Court has established that certain kinds of speech are unprotected by the First Amendment because the speech – as a category – is of such slight social value that any benefit

[8] Recently, the Seventh Circuit in *Hazama v. Tillerson*, 851 F.3d 706~~, 708~~ (7th~~.~~ Cir. 2017), suggested that review of visa refusal decisions beyond the facially legitimate and bona fide standard may be available: "In general, courts have no authority to second-guess the Executive's decisions—rulings that are typically made by consular officers of the Department of State. *See Samirah v. Holder*, 627 F.3d 652, 662 (7th Cir. 2010). That said, the Court has never entirely slammed the door shut on review of consular decisions on visas." 851 F.3d at 708. The Seventh Circuit further noted that, "as the final allusion to the First Amendment [in *Mandel*] implies, some courts have held that if a visa denial affects the constitutional rights of American citizens, then it may be reviewable. *Cardenas v. United States,* 826 F.3d 1164, 1169 (9th Cir. 2016); *see also Din*, 135 S.Ct. at 2141–42 (dissenting opinion of Breyer, J., joined by Ginsburg, Sotomayor, and Kagan, JJ., recognizing this right); *Id.* at 2139 (concurrence in judgment of Kennedy, J., joined by Alito, J., assuming arguendo that such a right exists)." *Hazama*, 851 F.3d at 709.

that may be derived from speech of the relevant kind is clearly outweighed by the social interest in order and morality. *See R.A.V. v. City of St. Paul*, 505 U.S. 377, 383 (1992). The recognized categories of unprotected speech are ~~permitted regulations on speech in certain, limited circumstances, including~~ obscenity, defamation, fraud, incitement to violence, and speech integral to criminal conduct. *See United States v. Stevens,* 559 U.S. 460, 468 (2010) (citations

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directed at inciting "imminent lawless action" ~~and~~that is likely to produce such action. *Brandenburg v. Ohio*, 395 U.S. 444, 447-48 (1969).[9] The Court in *Bradenburg* did not define "imminent"; there have been varied interpretations of the term. *See id.* at 446 (finding the "mere abstract teaching … of moral propriety or even moral necessity for a resort to force and violence is not the same as preparing a group for violent action) (citation omitted); *see also Hess v. Indiana,* 414 U.S. 105, 108-09 (1973) (per curium) (finding defendant's shouting "[we'll] take the [expletive] street later" at an anti-war rally was protected speech because it called for illegal action at "some indefinite future time" and was not directed to any person or group of persons); *cf. People v. Rubin,* 96 Cal. App. 3d 968, 978 (Cal. Ct. App. 1979) (finding defendant's statement offering money to anyone who harms a Nazi Party member during planned march in five weeks was "imminent").

Imminent violence is not the only basis courts have used to find that speech may be proscribed~~is unprotected~~. The U.S. Court of Appeals for the Fourth Circuit has held that where a speaker acts with the purpose of assisting in the commission of a crime, the First Amendment does not insulate the speaker from responsibility for his actions simply because he may have disseminated his message to a wide audience. *Rice v. Paladin Enterprises, Inc.*, 128 F.3d 233, 250 (4th Cir. 1997) (noting that the First Amendment did not protect "teaching of the technical methods of criminal activity - in this case, the technical methods of murder"), *cert. denied* 523 U.S. 1074 (1998).

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ii. Restricting Protected Speech and Heightened Standard of Review

The government may place restrictions on protected speech under certain circumstances; however, when a statute restricts speech based on its content, courts generally apply strict scrutiny to determine whether the government has proven that the statute is narrowly tailored to serve a compelling government interest. *See Reed v. Town of Gilbert, Ariz.,* 135 S. Ct. 2218, 2228 (2015) ("A law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of 'animus toward the ideas contained' in the regulated speech.") (citation omitted). For instance, the Court has found content that is generally considered undesirable or disturbing to be protected speech. *See United*

[9] This test evolved from the "clear and present danger" standard in *Schenck v. United States,* 249 U.S. 47, 52 (1919). *See also Dennis v. United States,* 341 U.S. 494, 509 (1951) (relying on the *Schenck* standard to find that speech advocating the overthrow of U.S. government was not protected under First Amendment).

States v. Stevens, 559 U.S. 460 (2010) (holding that a statute criminalizing depictions of animal cruelty was overbroad because it captured content far beyond the government's assertion that it would ~~only~~ be applied only where there was a compelling government interest, namely cases of extreme animal cruelty); *Miller v. California,* 413 U.S. 15, 23-24 (1973) ("[S]tatutes designed to regulate obscene materials must be carefully limited."); *Jenkins v. Georgia,* 418 U.S. 153, 161 (1974) (finding that explicit material was not obscene). It is rare for a content-based law that regulates protected speech to survive strict scrutiny. *See Williams-Yulee v. Fla. Bar,* 135 S. Ct. 1656, 1666 (2015) (finding that prohibiting judges from soliciting campaign donations served to maintain public confidence in the integrity of the judicial system, and that the importance of this effort meant that such a prohibition "is therefore one of the rare cases in which a speech restriction withstands strict scrutiny").

Recently, however, the Court has found that the federal statute criminalizing the provision of material support for terrorist activities in the form of speech that is "coordinated with" a designated Foreign Terrorist Organization (FTO) is permissible under the First Amendment. *See Holder v. Humanitarian Law Project,* 561 U.S. 1, 36 (2010) (finding that the prohibition on material support provided in the form of "training" and "expert advice" did not violate the First Amendment, even when that support was to promote the terrorist organizations' nonviolent acts). Because it ~~The Court~~ found that 18 U.S.C. § 2339B prohibited not only conduct but also content-based speech ~~and~~, ~~as a result,~~ it applied "a more demanding standard" of review, *i.e.* strict scrutiny. *Id.* at 28 (noting the standard of review in *United States v. O'Brien,* 391 U.S. 367 (1968) – intermediate scrutiny – did not provide the applicable standard for reviewing content-based regulation of speech under 18 U.S.C. § 2339B). The Court concluded that 18 U.S.C. § 2339B was "drawn to cover only a narrow category of speech to, under the direction of, or in coordination with" FTOs, rather than "independent advocacy" of such groups, and thus achieved the government's interest in combatting terrorism and protecting national security, an "urgent objective of the highest order." *Id.* at 26-28.

Courts may be open to a broader interpretation of what it means to direct speech to, coordinate with, or act under the direction of a FTO, so as to constitute material support under the criminal statutes. In *United States v. Mehanna*, the First Circuit upheld a material support conviction under 18 U.S.C. § 2339B for a defendant accused of providing support to Al-Qaeda by traveling to Yemen in an unsuccessful attempt to join the group, as well as translating from Arabic to English publicly available Al-Qaeda-generated propaganda and posting the translations on a website sympathetic to Al-Qaeda. 735 F.3d 32 (1st Cir. 2013), *cert. denied*, 135 S. Ct. 49 (2014). The defendant argued that his translations were First Amendment-protected speech demonstrating "independent advocacy" on behalf of the FTO, and that the jury was improperly instructed regarding what it means "to coordinate" with a FTO under the statute. In finding no legal error with the jury instruction, the First Circuit relied on *Humanitarian Law Project* to find the defendant's translations were "in coordination" with a FTO because "a direct link" between the defendant and the FTO was not required for material support to occur. *Id.* at 49-50. It may be possible to argue, therefore, that certain forms of speech-related activity may be considered material support to a terrorist organization, even if an individual has not had direct contact with the FTO.

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4. Endorsing or Espousing Terrorist Activity

Courts have not addressed the constitutionality of INA § 212(a)(3)(B)(i)(VII). Should there be a plaintiff with standing, whether First Amendment protections would apply and, if so, whether the strict scrutiny standard could be the appropriate test could be assessed only in light of the

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law indicates~~court cases have shown~~, ~~-~~the analysis will be highly fact specific. If the speech at issue is determined to be "protected," then INA § 212(a)(3)(B)(i)(VII) is likely to be considered a content-based regulation ~~and thus~~ subject to strict scrutiny. In ~~this~~ such cases, the government would need to articulate the rationale for excluding individuals who have endorsed or espoused terrorist activity, so that a court may determine whether INA § 212(a)(3)(B)(i)(VII) is narrowly tailored to that government interest.

Taken together, several Supreme Court decisions appear to provide reasonably strong support for the proposition that the government has a compelling government interest in excluding or expelling nonresident aliens whose endorsement or espousal of terrorism threatens the security of United States nationals or the national security of the United States. In *Humanitarian Law Project*, the Court held that the "Government's interest in combating terrorism is an urgent objective of the highest order," and that preventing the provision of material support to "an entity [designated] a 'foreign terrorist organization'" was tailored to achieve that interest. 561 U.S. at 9, 28. An entity's designation as an FTO requires a finding by the Secretary of State that it is foreign, engages in "terrorist activity" or "terrorism," and thereby "threatens the security of United States nationals or the national security of the United States." *Id.* at 9. The Court held that even U.S. citizens could be prevented from providing material support to such organization "in the form of speech." *Id.* at 28.

Mandel, *Harisades*, *Bridges*, and *Williams* also point to the conclusion that aliens may be excluded or expelled on the basis of speech or beliefs that pose a threat to the security of the United States. In *Mandel*, the parties conceded that Congress could enact a blanket prohibition against entry of aliens who advocated "world communism or the establishment in the United States of a totalitarian dictatorship." 408 U.S. at 755, 767. In *Harisiades*, the Court explained that the First Amendment does not protect aliens from deportation on account of their membership in the Communist Party because the government has the authority to deport individuals who engage in the "teaching of violence" as a means of bringing about a "change in the existing order." 342 U.S. at 591-92. In *Bridges*, the Court suggested that the United States could likely deport an individual for advocating the violent overthrow of the government. 326 U.S. at 147-48, 164. And in *Williams*, the Court explained the excluding anarchists is permissible because "as human governments endure they cannot be denied the power of self-preservation." 194 U.S. at 293-94. In each case, the ideology underlying the speech in question

could be characterized as posing a threat to the United States government itself, rather than as merely representing ideas with which the government disagreed.

In light of those decisions, the application of INA § 212(a)(3)(B)(i)(VII) is most likely to be defensible in circumstances where a nonresident alien has endorsed or supported not terrorist activity of any kind, but terrorist activities that can reasonably be characterized as posing a threat to the national security of the United States or the security of its nationals. As a result, any regulations or policies implementing that provision should be tailored to ensure that all – or at least the great majority – of its applications will involve such circumstances rather than aliens who have expressed support for terrorism at a more abstract level or in contexts that would not implicate the security of the United States or its nationals.

5. Alternative Inadmissibility Grounds

Evidence relevant to an analysis of the "endorse or espouse" inadmissibility ground in a particular case may support raising other terrorism-related inadmissibility grounds or bars to relief under INA § 212(a)(3)(B), including those which courts have already deemed constitutional. Certain online speech and/or conduct may fall within the realm of other types of terrorist activity, such as solicitation of an individual to engage in terrorist activity or becoming a member of a terrorist organization. See INA § 212(a)(3)(B)(iv)(V). *But see Daneshvar v. Ashcroft*, 355 F.3d 615, 627-28 (6th Cir. 2004) (holding that the Board erred in deciding whether applicant was inadmissible due to solicitation for membership in an undesignated terrorist organization because the inadmissibility ground requires consideration of the applicant's requisite state of mind). Knowingly providing material support to a terrorist organization may also provide an alternative security-related ground of inadmissibility. See INA §-212(a)(3)(B)(iv)(VI)-(). The INA's list of acts qualifying as material support is not exhaustive. *See Singh-Kaur v. Ashcroft*, 385 F.3d 293, 298 (3d Cir. 2004) ("No language in the [INA] limits 'material support' …-. [because] Congress intended to illustrate a broad concept rather than narrowly circumscribe a term with exclusive categories."). In addition, the immigration material support provision is broader than the criminal material support provisions because the INA encompasses material support to undesignated terrorist organizations as well as FTOs. See INA §§ 212(a)(3)(B)(iv)(VI)(dd), (vi)(III) (extending the prohibition on the provision of "material support" to acts perpetrated by "a group of two or more individuals, whether organized or not, which engages in" terrorist activity).

6. Conclusion

The security-related inadmissibility ground for endorsing or espousing terrorist activity targets speech that demonstrates a degree of public approval or public advocacy for terrorist activity. Depending on an alien's immigration status, contacts with the United States, and location, First Amendment concerns may limit use of this inadmissibility ground.

In cases involving aliens within the United States interior, -lawful permanent residents either inside or outside the United States, or aliens outside the United States who have significant U.S.

contacts, First Amendment protections could apply. If the restricted speech meets the *Brandenburg* test as speech inciting "imminent and lawless" activity, a court will likely find such speech to be ~~unprotected by the~~proscribable, notwithstanding the First Amendment. If the speech is found to be protected, the application of the INA's content-based restriction on speech will likely be subject to a heightened standard of review. While it is rare for a statute to survive strict scrutiny, the Court in *Humanitarian Law Project* found the criminalization of material support for terrorist activity in the form of speech to be constitutional where that speech was "coordinated with" a designated FTO. This could be relevant to whether application of this inadmissibility ground would pass strict scrutiny. ~~-~~Even if the speech is made by an individual who is not entitled to First Amendment protections, the refusal of a visa or denial of entry may impact the First Amendment rights of U.S. citizens to hear and assemble with the alien.

Overall, the constitutionality of the application of this inadmissibility ground will be highly dependent on the speaker's circumstances, the content of the speech, the intent and influence of the speaker relative to the audience.

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EXHIBIT II

University student targeted by Trump leaves the US



GETTY IMAGES

Max Matza

BBC News

1 April 2025, 04:12 BST

A Cornell University graduate student who had his US visa revoked due to protest activities against Israel has chosen to leave the US rather than be deported.

Momodou Taal, who is a joint citizen of the UK and The Gambia, had his student visa revoked due to his on-campus protest activities last year as the Israel-Gaza war raged.

Mr Taal previously sued to block his deportation, but on Monday posted on X that he had chosen to leave the country "free and with my head held high". It comes after a judge had denied his request to delay his deportation.

The Trump administration is cracking down on international students who have been active in protests against Israel on university campuses.

Mr Taal is at least the second international student to opt to leave the US after being targeted for removal by the US Department of Homeland Security. The Trump administration identifies these cases as "self-deportations".

"Given what we have seen across the United States, I have lost faith that a favourable ruling from the courts would guarantee my personal safety and ability to express my beliefs," Mr Taal posted on X on Monday.

"I have lost faith I could walk the streets without being abducted. Weighing up these options. I took the decision to leave on my own terms."

Mr Taal was suspended twice by Cornell, an Ivy League school in upstate New York, due to protest activities. On the day of the Hamas attack against Israel in 2023, he posted: "Glory to the Resistance."

"We are in solidarity with the armed resistance in Palestine from the river to the sea," he later told a crowd of protesters, according to The Cornell Daily Sun newspaper.

At least 300 university students had their student visas revoked due to involvement in pro-Palestinian protests, Secretary of State Marco Rubio said last week.

Trump officials said the Immigration and Nationality Act allows the State Department to deport non-citizens who are "adversarial to the foreign policy and national security interests" of the US.

The arrests are a part of Trump's pledge to combat what the administration has classified as antisemitism, which was written into an executive order in January.

Critics have decried the deportations as a violation of free speech.

Another student who chose to flee the US, Indian scholar Ranjani Srinivasan, told CNN that she wants to clear her name.

"I'm not a terrorist sympathiser," she told CNN, adding: "I'm literally just a random student."

She added that she hopes to re-enrol at Columbia University, which was the epicentre of student protests last year, and finish her PhD programme.

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