

“Words Written on Water”—Targeted Immigration Enforcement Under the Trump

Administration

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*“America has been a democracy of convenience. Rights are granted to those who align with power. For the poor, for the people of color, for those who resist injustice, rights are but words written on water.”*¹

-Mahmoud Khalil

On April 17, 2025, from a United States Immigration and Customs Enforcement (ICE) prison cell, Mahmoud Khalil asked us all to consider what it says about America when a lawful permanent resident is detained by ICE for exercising his right to free speech.² Since Donald Trump took office in January, a slew of dehumanizing and legally suspect executive orders and administrative guidelines have been issued.³ These policies, at their core, all target and scapegoat historically marginalized communities.⁴ The rounding up of non-citizens by masked immigration

¹ Mahmoud Khalil, *What Does My Detention by ICE Say About America*, WASH. POST (Apr. 17, 2025), <https://www.washingtonpost.com/opinions/2025/04/17/mahmoud-khalil-columbia-student-ice-detention/>

² *Id.*

³ Coral Davenport, *Inside Trump’s Plan to Halt Hundreds of Regulations*, N.Y. TIMES (Apr. 16, 2025), <https://www.nytimes.com/2025/04/15/us/politics/trump-doge-regulations.html>; Exec. Order No. 14251, 90 Fed. Reg. 14533 (Mar. 27, 2025) (designating agencies as having a primary intelligence function and terminating all collective bargaining agreements.); Exec. Order No. 14252, 90 Fed. Reg. 14563 (Mar. 27, 2025) (removing “improper ideology” from the Smithsonian Museum and reinstating Confederate statutes).

⁴ *Id.* While Trump has demonstrated a pattern of also targeting those who dare to challenge his authority, make no mistake—the Presidential Action targeting law firms is explicitly linked to those firms’ pro bono immigration work.

officials who use their power to intimidate, assault, and threaten⁵ anyone they perceive as subject to immigration detention and deportation ultimately serves the goal of reshaping the United States into a White, Christian nationalist society.⁶

Racially Targeted Immigration Enforcement

Retaliatory and racially targeted immigration enforcement is not a new phenomenon unique to the Trump administration.⁷ This is not to say that the actions by the Trump administration are not pushing the boundaries of the constitution or not committing exceedingly violent human rights violations. Rather, that the extreme tactics used by the Trump administration to chill “undesirable” migration into the United States follows the trajectory of the United States’ history of racism and xenophobia. Current immigration enforcement, which particularly targets people from Latin American countries (though by no means exclusively), echoes the state-sanctioned violence by the hands of the U.S. Border Patrol and white vigilantes at the United States-Mexico border during “Operation Wetback” in the 1950s.⁸ In 1951, President Truman issued a report characterizing the influx of Mexican immigrants as “virtually an invasion.”⁹ President Trump is following the same playbook---his Executive Order, “Protecting the American People Against

⁵ See generally Meg Anderson, *Tackles, Projectiles and Gunfire: Many Fear ICE Tactics are Growing More Violent*, NPR (Oct. 13, 2025), <https://www.npr.org/2025/10/13/10566785/ice-dhs-immigration-tactics-more-violent>.

⁶ See e.g. Kimahli Powell & Jean Freedberg, *The Afrikaner Exception: Race and Strategic Dismantling of U.S. Refugee Protection Under the Trump Administration*, CARR-RYAN CENT. FOR HUM. RIGHTS (May 19, 2025), <https://www.hks.harvard.edu/centers/carr-ryan/our-work/carr-ryan-commentary/afrikaner-exception-race-and-strategic-dismantling>, (“The selective admission of this small group of white Afrikaans-speaking South Africans suggests. . . strategic repurposing of USRAP to advance political and racialized priorities.”); Sandra L. Rierson, *From Dred Scott to Anchor Babies: White Supremacy and the Contemporary Assault on Birthright Citizenship*, 38 GEO. IMM. L.J. 1, 4-5 (2023).

⁷ See *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 488 (1999); *Chae Chan Ping v. U.S. (Chinese Exclusion Case)*, 130 U.S. 581 (1889); Jennifer Lee Koh, *Executive Discretion and First Amendment Constraints on the Deportation State*, 56 GA. L. REV. 1473, 1480 (2022).

⁸ 100 YEAR ANNIVERSARY OF BORDER PATROL VIOLENCE AND: FIGHTING FOR OUR DIGNITY, SOUTHERN BORDER COMMUNITIES COALITION, southernborder.org/100_years_of_fighting_for_our_dignity (last visited Dec. 6, 2025).

⁹ IMMIGRATION HISTORY, OPERATION WETBACK, <https://immigrationhistory.org/item/operation-wetback/>.

Invasion”¹⁰ repeats this rhetoric, while his recent comments characterizing Somali immigrants in Minnesota as “garbage”¹¹ demonize another group of racial and ethnic minorities in the same way.

The Supreme Court’s recent decision in *Noem v. Vasquez-Perdomo*, which effectively grants immigration agents *carte blanc* to racially profile during immigration enforcement, while despicable, is not as great an outlier as we would like to believe. The judicial system has a long history of legitimizing racial profiling in law enforcement.¹² From Reconstruction era policing, to Jim Crow, to now, the use of race in law enforcement is just as much a part of United States history as the American Revolution.¹³ This legacy was adopted by immigration enforcement and sanctioned by the Supreme Court in cases like *United States v. Brignoni-Ponce*.¹⁴ There, the Court held automobile stops by U.S. Border Patrol during “roving patrols” must be grounded in reasonable suspicion based on more than “Mexican ancestry.”¹⁵ Although appearing as a restraint on racial profiling, the Court then went on to identify “Mexican appearance” as a relevant factor in assessing reasonable suspicion.¹⁶ Since this decision, lower courts and immigration enforcement agencies have exploited the appearance factor to sanction increasing use of racial profiling in immigration enforcement.¹⁷

Retaliatory Immigration Enforcement

¹⁰ Exec. Order No. 14159, 90 Fed. Reg. 8443 (Jan. 20, 2025).

¹¹ Laurie Kellman, *Trump Ventures Deeper into Anti-Immigrant Language by Calling People from Somalia ‘Garbage’*, AP (Dec. 5, 2025), <https://apnews.com/article/trump-garbage-somalia-minneapolis-immigrant-omar-03e31bba53519d8a39b419679a3b75d9>.

¹² See *Hudgins v. Wright*, 11 V.A. 134 (1806) (holding phenotypical appearance created a presumption that a Black person was a slave).

¹³ L. Darnell Weeden, *Johnnie Cochran Challenged America’s New Age Officially Unintentional Black Code: A Constitutional Permissible Racial Profiling Policy*, 33 THURGOOD MARSHALL L. REV. 135 137-38 (2007).

¹⁴ Katy Murdza & Walter Ewing, *The Legacy of Racial Profiling Within the U.S. Border Patrol*, AM. IMM. COUNCIL at 10 (2021).

¹⁵ U.S. v. Brignoni-Ponce, 422 U.S. 873, 885-87 (1975).

¹⁶ *Id.* at 887.

¹⁷ Kevin R. Johnson, *Doubling Down on Racial Discrimination: The Racially Disparate Impacts of Crime-Based Removals*, 66 CASE W. RES. L. REV. 993, 1008 (2015).

It is well settled that non-citizens lawfully present in the United States are afforded First and Fifth Amendment protections.¹⁸ However, these protections are not unlimited and are more likely to be weakened when foreign policy is implicated. For example, removals based on membership with the Communist Party during the McCarthy era were generally upheld as consistent with the First Amendment.¹⁹ Support for Palestinian liberation has similarly been held sufficient to circumvent First Amendment protections on foreign policy grounds. In *Reno v. AADC*,²⁰ the Supreme Court upheld the selective deportation of members of the Popular Front for the Liberation of Palestine in part because, “the Executive should not have to disclose its ‘real’ reasons for deeming nationals of a particular country a specific threat. . . and even if it did disclose them a court would be ill equipped to determine their authenticity.”²¹ Importantly, the Court did not foreclose the possibility of a successful selective enforcement deportation claim entirely, ruling that there may be “rare” instances where the alleged discrimination is “so outrageous” that the foreign policy considerations may be overcome.²² The *Reno* opinion also does not address whether a non-citizen can be deported solely for exercising their First Amendment rights because the parties in the case were found to be deportable on other grounds.²³

The first Trump Administration engaged in retaliatory immigration actions, though arguably on firmer legal grounds.²⁴ Maru Mora Villalpando, an undocumented citizen and political activist was issued a Notice to Appear in December 2017, despite the fact that she had been

¹⁸ *Kwong Hai Chew v. Colding*, 344 U.S. 590, 596 (1953).

¹⁹ *Harisiades v. Shaughnessy*, 342 U.S. 580, 592 (1952); *Galvan v. Press*, 347 U.S. 522, 528 (1954) (holding that membership in the Communist Party is grounds for deportation, even without support or knowledge of the Party’s advocacy of violence.).

²⁰ *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 488 (1999).

²¹ *Id.* at 491.

²² *Id.*

²³ *Id.*

²⁴ Rafael Bernal, *She Was Once Up for Deportation. Now She Fights to End All Immigration Detention*, THE HILL (Feb. 21, 2024), <https://thehill.com/latino/4477370-la-resistencia-deportation-immigration-detention/>.

politically active for years.²⁵ Mora Villalpando became a target for her role in organizing against the Northwest Detention Center (NWDC) for inhumane conditions, and although she was not detained, was the subject of vitriol by ICE and the Trump Administration.²⁶ Mora Villalpando’s organization *La Resistencia* eventually filed suit against ICE for its “pattern and practice of selectively enforcing immigration laws against outspoken immigrant rights activists who publicly criticize U.S. immigration law, policy, and enforcement.”²⁷ Similarly, in 2019, student activist Jose Bello-Reyes was detained by ICE 36-hours after publicly reading a poem entitle *Dear America* protesting ICE.²⁸ Although the case was ultimately remanding to the lower courts to apply a burden-shifting standard for the Government to demonstrate that it would have revoked Bello-Reyes bond absent the protected conduct, the Ninth Circuit agreed with the lower court that the timing between Bello-Reyes poetry reading and subsequent detention was “highly suggestive of retaliatory intent.”²⁹

The conduct at issue in Khalil’s case, and in several other instances including that of Rumeysa Öztürk, a graduate student snatched off of the street by masked immigration officials,³⁰ is political speech that goes to the heart of First Amendment Protections.³¹ Khalil aided the negotiations between student protesters and Columbia University’s administration during the

²⁵ *Id.*

²⁶ *Id.*

²⁷ NWDC Resistance v. Immigr. & Customs Enf’t, No. C18-5860JLR 2022 WL 2073052 at 1 (W.D. Wash., June 9, 2022).

²⁸ *Read a Protest Poem, Get Arrested by ICE*, ACLU-SOCAL (June 25, 2019, at 12:30), <https://www.aclusocal.org/en/press-releases/read-protest-poem-get-arrested-ice>.

²⁹ Bello-Reyes v. Gaynor, 985 F.3d 696, 702 (9th Cir. 2021).

³⁰ Chloe Atkins, *Judge Orders Detained Tufts Student Rumeysa Öztürk to be Transferred Back to Vermont*, NBC NEWS (Apr. 11, 2025), <https://www.nbcnews.com/news/us-news/tufts-student-rumeysa-ozturk-rcna201954>

³¹ McIntyre v. Ohio Elections Com’n, 514 U.S. 334, 347 (1995).

student encampments while Öztürk authored a piece advocating for an end to the genocide in Gaza.³²

While Khalil and Öztürks detention has been highly publicized, the government has demonstrated a desire to continue to use this obscure and ambiguous foreign policy provision to deport non-citizens who exercise their right to dissent. The White House and Secretary of State Marco Rubio have been crystal clear on their intentions to revoke legal status from anyone who speaks out against the genocide in Gaza.³³ The threat to send students back to their home country for exercising their right to free speech is even more despicable in cases like that of Yunseo Chung, a Columbia University student and lawful permanent resident who has lived in the United States since she was seven-years old.³⁴ The government in this case is not only attempting to silence what it considers subversive speech—solidarity with Palestinian liberation—but is also attempting to deport a young woman from the Country she has spent the majority of her life to an unfamiliar, foreign land.³⁵

International students and all Immigrants are facing attacks on all fronts: vilified by the Trump Administration, characterized as threats to national security, and being violently detained and deported³⁶ The President purports to be acting in the best interest of the country by issuing

³² Atkins *supra* note 30; Jake Offenhartz, *Immigration Agents Arrest Palestinian Activist Who Helped Lead Columbia University Protests*, A.P. (Mar. 9, 202), <https://apnews.com/article/columbia-university-mahmoud-khalil-ice-15014bcb921f21a9f704d5acdcae7a8>.

³³ SECRETARY OF STATE MARCO RUBIO REMARKS TO THE PRESS, DEP’T OF STATE, (Mar. 28, 2025), <https://www.state.gov/secretary-of-state-marco-rubio-remarks-to-the-press-3/>; Exec. Order No. 14161, 90 Fed. Reg. 8451 (Jan. 20, 2025) (“Protecting the United States from Foreign Terrorists and Other National Security and Public Safety Threats”).

³⁴ Complaint and Petition for Writ of Habeas Corpus, Chug v. Trump, No. 25-cv-02412 (Mar. 24, 2025).

³⁵ *Id.*

³⁶ Over the course of a couple months, thousands of non-immigrant students have also had their Student Exchange Visitor Information System (SEVIS) records terminated by the government without warning and without reason. Johanna Alonso, *What is SEVIS, and How is the Government Using it to go After International Students?*, INSIDE HIGHER ED (Apr. 22, 2025), <https://www.insidehighered.com/news/global/international-students-us/2025/04/22/laws-behind-trumps-student-visa-terminations>; Melissa Sanchez & Jodi S. Cohen, et al, “*I Lost Everything*”: Venezuelans Were Rounded Up in a Dramatic Midnight Raid but Never Charged with a Crime,

executive orders and directing his officials to target politically active students and purported “violent criminals”,³⁷ but the façade is transparent. The Trump Administration targets those who pose a threat to the conservative vision of White Nationalism. When Donald Trump determines that political active students are a threat to the United States’ “culture”³⁸ what he is really saying is that they interrogate and illuminate the white supremacy and colonialism that this country was founded on. When he says that immigrants are criminals and garbage, he is saying that Black and Brown people are disposable. So, what does it say about our democracy when those that speak out against injustice are punished, people are kidnapped from the street and sent to mass detention camps, and the “Rule of Law” can’t stop it?

PROPUBLICA (Nov. 13, 2025), <https://www.propublica.org/article/chicago-venezuela-immigration-ice-fbi-raids-no-criminal-charges>.

³⁷ Exec. Order No. 14161, 90 Fed. Reg. 8451 (Jan. 20, 2025) (“Protecting the United States from Foreign Terrorists and Other National Security and Public Safety Threats”).

³⁸ *Id.*