***Congress Wrote a Deportation Law to Be Used ‘Sparingly.’ Trump Has Other Ideas***

A crackdown targeting foreign students protesting Israel’s treatment of Palestinians conflicts with free-speech protections that lawmakers added in 1990.

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April 1, 2025

The Trump administration is asserting that it has broad power under [a 1952 law](https://www.law.cornell.edu/uscode/text/8/1227) to kick out foreign students who participated in pro-Palestinian protests. That statute says the secretary of state can deem noncitizens deportable for foreign policy reasons, and the secretary, Marco Rubio, [made it clear](https://www.state.gov/secretary-of-state-marco-rubio-and-guyanese-president-irfaan-ali-at-a-joint-press-availability/) recently that he had already used it to cancel hundreds of student visas.

“It might be more than 300 at this point,” Mr. Rubio said last week. “We do it every day. Every time I find one of these lunatics, I take away their visa.”

But that expansive conception of power appears to conflict with a key limit Congress added nearly four decades after the law passed. Lawmakers explained that the modification, which is [recorded elsewhere in federal statute books](https://www.law.cornell.edu/uscode/text/8/1182), means the law may be used “only in unusual circumstances” and “sparingly” if the problem stems from foreigners’ exercise of free speech.

Lawmakers also gave two examples of when deporting someone under the 1952 law over speech would still be legitimate. Both scenarios, laid out in [a report](https://static01.nyt.com/newsgraphics/documenttools/7d4e4b335fe40d9e/7f7043c8-full.pdf) explaining [the 1990 bill that enacted the restriction](https://www.congress.gov/bill/101st-congress/senate-bill/358), were highly exceptional.

The first was if a particular foreigner’s mere presence in the United States would somehow violate a treaty. The other was if it “could result in imminent harm to the lives or property” of Americans abroad, like when allowing the former shah of Iran to come to the United States in 1979 led to a riot at the U.S. Embassy in Tehran and a hostage crisis.

The additional guardrails raise questions over what rights foreign students are entitled to and underscore the Trump administration’s far-ranging interpretation of its authority in aggressively moving to deport those who have protested Israel’s war in Gaza. The executive branch has broad discretion to deny visas to applicants while they are abroad. But once noncitizens are on American soil, they are protected by the Constitution, which includes the rights to free speech and due process.

The administration’s policy began in March with the detention of [Mahmoud Khalil,](https://www.nytimes.com/2025/03/10/us/politics/mahmoud-khalil-legal-resident-deportation.html) a former Columbia University graduate student who served as a spokesman for campus protesters and who had a green card allowing for permanent residency. Afterward, Mr. Trump [declared on social media](https://truthsocial.com/@realDonaldTrump/posts/114139222625284782) that it was “the first arrest of many to come.”

Other arrests of [foreign students whose visas were abruptly canceled](https://www.courtlistener.com/docket/69755722/suri-v-trump/) have started to emerge. One, captured on video last week, went viral: Immigration officers, in plain clothes and masked, descend on [Rumeysa Ozturk](https://www.nytimes.com/2025/03/27/us/politics/tufts-ice-crackdown.html), a Tufts University graduate student from Turkey, on a street in Somerville, Mass. She is promptly whisked into an S.U.V. and driven off.

Ms. Ozturk had [co-written an opinion essay in a student newspaper](https://www.tuftsdaily.com/article/2024/03/4ftk27sm6jkj)accusing Israel of genocide, but to date there has been no public accusation that she did anything else. In his remarks last week commenting on Ms. Ozturk’s arrest, Mr. Rubio laid out a wide-ranging standard for how he is using the law to deport foreign students who have criticized Israel.

He said he intended to deport all foreign students who “participate in movements that are involved in doing things like vandalizing universities, harassing students, taking over buildings, creating a ruckus.” The wording suggested that people need not have personally behaved in a disruptive fashion to be targeted if other like-minded people had been unruly.

Congress enacted the original version of the law during the era of McCarthyism and widespread fear of Soviet Communist subversion. It empowered the secretary of state to deem deportable any noncitizen whose presence or activities in the United States the official reasonably believes “would have potentially serious adverse foreign policy consequences.”

But with the Cold War ending, Congress modified the law for situations in which the perceived problem was a noncitizen’s beliefs, statements or associations. To use the deportation law in such circumstances, lawmakers raised the standard to cases in which a foreigner’s presence in the United States “[would compromise a compelling United States foreign policy interest](https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1182&num=0&edition=prelim).”

In a conference [report](https://static01.nyt.com/newsgraphics/documenttools/7d4e4b335fe40d9e/7f7043c8-full.pdf), lawmakers also explained that they intended this new threshold to be interpreted as a “significantly higher” standard than the general rule.

Because the legal challenges over the Trump administration’s attempts to expel foreign students are still nascent, the government has yet to offer a detailed explanation of its reasoning in court filings.

But when Mr. Khalil was arrested, [people with knowledge of the matter](https://www.nytimes.com/2025/03/10/us/trump-rubio-khalil-columbia-student-protests.html) explained the rationale the administration had developed in internal deliberations.

The logic was this: The administration considered the campus protests against Israel’s treatment of Palestinians to have been antisemitic and to have created a hostile environment for Jewish students. Allowing foreign citizens who participated in such protests to remain in the country would, therefore, undermine a U.S. foreign policy objective of combating antisemitism around the world.

There is little precedent to the legal fight erupting over the Trump administration’s move largely because, until now, the law had been used sparingly.

Since Congress enacted the 1990 provision, there have been some 11.7 million removal cases — and in only 15 of them was that provision invoked, a group of 150 immigration lawyers and legal scholars said in [a friend-of-the-court brief](https://ccrjustice.org/sites/default/files/attach/2025/03/110-1_3-24-25_Immigration-amicus-brief_w.pdf) filed on Friday in Mr. Khalil’s case. Just four of those cases resulted in people being ordered deported, they said.

The available data the scholars drew on did not identify who those people were or their specific circumstances, including whether any were lawful permanent residents, they said. They added: “It may well be that Mr. Khalil’s case is unprecedented in the history of this provision and in the history of the United States. At a minimum, the government’s assertion of authority here is extraordinary — indeed, vanishingly rare.”

There also appears to be only one case on record in which a federal district court judge has interpreted the 1952 law.

In 1996, [Judge Maryanne Trump Barry](https://www.nytimes.com/2023/11/13/us/politics/maryanne-trump-barry-dead.html), [President Trump’s sister](https://www.nytimes.com/2025/03/24/us/politics/mahmoud-khalil-trump-sister-law.html), [struck down the provision as unconstitutional](https://law.justia.com/cases/federal/district-courts/FSupp/915/681/1618129/). She said it was too vague for people to know what might render them deportable, and it gave too much unbounded power to the secretary of state. An appeals court later [vacated](https://casetext.com/case/massieu-v-reno-2) her ruling for technical reasons, without analyzing the law’s constitutionality.

The case before Judge Barry involved a corrupt foreign official, not someone whose free-speech activities had made him a target, so her ruling did not turn on the restrictions Congress later added. But she scrutinized the modification anyway, and suggested that it may still be unconstitutionally vague despite a higher standard.

Given the unfolding wave of arrests, many other rulings assessing the law may soon join Judge Barry’s opinion. Immigration law experts, aware of the implications, warned that the power the Trump administration was claiming could go far beyond its foreign policy about Israel.

“The presence of Ukrainians who are critical of Russia, supporters of more security cooperation with Europe, and economists skeptical of tariffs on Mexico, Canada, and China, could all suddenly be considered adverse to U.S. foreign policy interests and subject to deportation based on the unilateral determination of the secretary of state,” they wrote. “This list has no end, and no meaningful limiting principles.”

***A correction was made on***

***April 1, 2025***

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*An earlier version of this article misspelled the surname of the former Columbia University student who was arrested by immigration officers. He is Mahmoud Khalil, not Kahlil.*