

## Can We Deport Foreigners Advocating Evil?

by George Fishman

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In then-President Joe Biden’s words, Hamas’ October 7, 2023, intricately orchestrated murder of over one thousand Israelis was an act of “pure, unadulterated evil,” resulting in “the deadliest day for Jews since the Holocaust,” with “[c]hildren slaughtered”, “[b]abies slaughtered”, “[e]ntire families massacred”.<sup>1</sup>

Americans then witnessed the spectacle of intricately orchestrated and brazen celebrations on U.S. college campuses of Hamas’ atrocities, with foreign students seemingly taking first chair. At now notorious Columbia University in New York City, between 38 and 55 percent of students are foreign, depending on how they are counted, according to my former Center for Immigration Studies colleague John Feere.<sup>2</sup> Columbia student Mahmoud Khalil, according to the White House press secretary, “organized group protests ... that not only disrupted college campus classes and harassed Jewish-American students and made them feel unsafe on their own college campus, but also distributed pro-Hamas propaganda fliers.”<sup>3</sup>

The curriculum for these masterclasses in hate was apparently copied from the Students for Justice in Palestine (SJP) handbook. The Anti-Defamation League reported SJP chapters giddily celebrating Hamas’ massacres, including the Tufts University chapter proclaiming that “[f]ootage of liberation fighters from Gaza paragliding into occupied territory [Israel] has especially shown the creativity necessary to take back stolen land”, and the Bard University chapter proclaiming “Liberation ... requires confrontation by any means necessary. From the river to the sea [alluding to the eradication of Israel], we will continue to fight”.<sup>4</sup> Last October, Swarthmore College needed to send a message<sup>5</sup> “condemning” the Swarthmore SJP chapter’s internet post, “Happy October 7th everyone! In honor of this glorious day and all our martyred revolutionaries”. Swarthmore stated that “celebrating the killing of innocent people is shocking and reprehensible.”

As Hamas would gladly kill every Jew in Israel had it the opportunity, this all calls to mind the incitement driving the 1994 Rwandan genocide. U.S. Senator Edward Kennedy wrote Secretary of State Warren Christopher of reports that “a private station affiliated with an extremist Hutu political party” was broadcasting messages urging the “kill[ing of] all remaining Tutsi children”, urging “Take up your machetes; the graves are only half full! Who will help us fill them?” Kennedy warned that the broadcasts were “continuing to incite genocide of the Tutsi people” and pled with Christopher to help jam them.<sup>6</sup>

It seems like a pretty commonsense proposition that a nation need not tolerate guests who celebrate and advocate mass murder. As Sen. Tom Cotton, R-Ark., has written, “While American citizens may have a First Amendment right to speak disgusting vitriol if they so choose, no foreign national has a right to advocate for terrorism in the United States.”<sup>7</sup>

Fortunately, federal law provides powerful tools enabling the removal of aliens who advocate terrorism and incite genocide. I should know. I had the honor of assisting House Judiciary Committee Chairman F. James Sensenbrenner, Jr., R-Wis, in his successful push for the inclusion of provisions in the USA-PATRIOT Act<sup>8</sup> in 2001 and the REAL ID Act<sup>9</sup> in 2005 providing for the deportation of aliens who endorse or espouse terrorism. One year earlier, Congress made subject to deportation aliens who incite genocide.<sup>10</sup> In 1990, Congress created a ground of deportation for aliens “whose presence or activities in the [U.S.] the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences”.<sup>11</sup> It is with this last tool that the Department of Homeland security is seeking the removal of Mahmoud Khalil.

What about the First Amendment “rights” of foreign students? Simply put, aliens do not have the same level of First Amendment rights as American citizens. Michael Kagan, professor of law at the William S. Boyd School of Law at the University of Nevada, Las Vegas, has cautioned that “immigrants’ freedom of speech is on insecure legal ground” and “is quite precarious constitutionally”, bemoaning the fact that “the Supreme Court through the years has sent ambivalent and conflicting signals about immigrant free speech rights.”<sup>12</sup>

Consider that in 2011, before joining the Supreme Court, Brett Kavanaugh concluded while serving on the D.C. Circuit Court of Appeals that “the (Supreme) Court has further indicated that aliens’ First Amendment rights might be less robust than those of citizens in certain discrete areas,” noting the Court’s ruling that, in Kavanaugh’s words, the “First Amendment does not protect aliens from deportation because of membership in the Communist Party.”<sup>13</sup>

Consider that in 2010, liberal Supreme Court justices John Paul Stevens, Ruth Bader Ginsburg, Stephen Breyer, and Sonia Sotomayor concluded that “[t]he Government routinely places special restrictions on the speech rights of [among other groups] foreigners” and “when such restrictions are justified by a legitimate governmental interest, they do not necessarily raise constitutional problems.”<sup>14</sup>

Consider that in 1999, the Supreme Court ruled that “the Government does not offend the Constitution by deporting [an illegal alien] for the additional reason that it believes him to be a member of an organization that supports terrorist activity.”<sup>15</sup> Following that decision, the soon-to-be executive director<sup>16</sup> of the American Immigration Lawyers Association proclaimed, “What the decision boils down to is one simple, clear message: immigrants have no First Amendment rights.”<sup>17</sup>

Despite the availability of powerful statutory tools, and despite President Biden’s professions of revulsion as to Hamas, Biden’s Secretary of Homeland Security Alejandro Mayorkas and his Secretary of State Antony Blinken took no action to seek the removal of foreign students advocating terrorism or genocide. To their shame, it took President Trump to turn President Biden’s revulsion into results.

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<sup>1</sup> “Remarks by President Biden on the October 7th Terrorist Attacks and the Resilience of the State of Israel and its People”, The White House, October 18, 2023, <https://bidenwhitehouse.archives.gov/briefing-room/speeches-remarks/2023/10/18/remarks-by-president-biden-on-the-october-7th-terrorist-attacks-and-the-resilience-of-the-state-of-israel-and-its-people-tel-aviv-israel/>.

<sup>2</sup> Jon Feere, “Schools with the Highest Foreign Student Populations”, Center for Immigration Studies, April 25, 2024, <https://cis.org/Feere/Schools-Highest-Foreign-Student-Populations>

<sup>3</sup> Steven Nelson, “Columbia anti-Israel agitator Mahmoud Khalil being deported over ‘pro-Hamas propaganda flyers,’ White House says”, *New York Post*, March 11, 2025, <https://nypost.com/2025/03/11/us-news/mahmoud-khalil-columbia-anti-israel-agitator-being-deported-over-pro-hamas-flyers-white-house/>.

<sup>4</sup> Anti-Defamation League, “Students for Justice in Palestine (SJP)”, August 9, 2024, <https://www.adl.org/resources/backgrounders/students-justice-palestine-sjp>.

<sup>5</sup> Stephanie Ives, “Rejecting the Glorification of Violence”, Swarthmore Division of Student Affairs, October 11, 2024, <https://www.swarthmore.edu/division-student-affairs/rejecting-glorification-violence>.

<sup>6</sup> Edward M. Kennedy, “Letter to The Honorable Warren Christopher, Secretary of State [Jamming radio broadcasts that are continuing to incite genocide of the Tutsi people]”, June 1, 1994, <https://francegenocidetutsi.ddns.net/search/fgtshow.php?num=24598>.

<sup>7</sup> Tom Cotton, “Letter to Alejandro Mayorkas”, October 16, 2023, [https://www.cotton.senate.gov/imo/media/doc/letter\\_to\\_mayorkas.pdf](https://www.cotton.senate.gov/imo/media/doc/letter_to_mayorkas.pdf).

<sup>8</sup> PUBLIC LAW 107-56, October 26, 2001, <https://www.congress.gov/107/statute/STATUTE-115/STATUTE-115-Pg272.pdf>.

<sup>9</sup> PUBLIC LAW 109–13, May 11, 2005, <https://www.congress.gov/109/statute/STATUTE-119/STATUTE-119-Pg231.pdf>.

<sup>10</sup> PUBLIC LAW 108–458, December 17, 2004, <https://www.congress.gov/108/statute/STATUTE-118/STATUTE-118-Pg3638.pdf>.

<sup>11</sup> PUBLIC LAW 101-649, November 29, 1990, <https://www.congress.gov/101/statute/STATUTE-104/STATUTE-104-Pg4978.pdf>.

<sup>12</sup> Michael Kagan, “When Immigrants Speak: The Precarious Status of Non-CitizenWhen Immigrants Speak: The Precarious Status of Non-Citizen”, *Scholarly Works* 996, 2016, <https://scholars.law.unlv.edu/facpub/996/>.

<sup>13</sup> *Bluman v. Federal Election Commission*, 800 F.Supp.2d 281 (2011), [https://jackbalkin.yale.edu/sites/default/files/files/Bluman%20v.%20FEC.%20800%20F.Supp.2d%20281%20\(2011\).pdf](https://jackbalkin.yale.edu/sites/default/files/files/Bluman%20v.%20FEC.%20800%20F.Supp.2d%20281%20(2011).pdf).

<sup>14</sup> *Citizens United v. FEC*, 558 U.S. 310 (2010), <https://supreme.justia.com/cases/federal/us/558/310/>.

<sup>15</sup> *Reno v. AADC*, 525 U.S. 471 (1999), <https://supreme.justia.com/cases/federal/us/525/471/>.

<sup>16</sup> Matt Hayes, “Ties to Terrorism”, *Foxnews.com*, July 10, 2003, <https://web.archive.org/web/20121022015026/http://www.foxnews.com/story/0,2933,91527,00.html>.

<sup>17</sup> Jeanne A. Butterfield, “Do Immigrants Have First Amendment Rights?” *MERIP* 212 (Fall 1999), <https://merip.org/1999/09/do-immigrants-have-first-amendment-rights/>.

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