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Policy Brief: Explaining the Foreign Policy Ground of Removability

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The federal government's arrest and detention of a Columbia University student, Mahmoud Khalil, has put a national spotlight on an obscure provision of immigration law. On March 8, when federal immigration officers arrested him at his home, they initially and incorrectly asserted they were revoking his student visa. Khalil is not in the country on a temporary visa but is a lawful permanent resident. He was later informed that the government's alleged [legal basis](#) for attempting to deport him is Immigration and Nationality Act § 237(a)(4)(C)(i) – a rarely used foreign policy ground for deporting a noncitizen.

This policy brief explains this law and the constitutional and statutory concerns with the government's actions against Khalil. While the ultimate decision in his case will be decided in court, there are compelling signs that the government has violated his due process rights and that the statute itself is unconstitutional. A lawful permanent resident is entitled to live in the United States permanently and to enjoy the rights and protections of the Constitution. The government has not marshalled any evidence or allegations that he is removable and is sidestepping its burden of proof by using these obscure and constitutionally suspect "foreign policy" grounds. In the hands of this administration, this provision could be used against almost anyone who they determine is undermining their foreign policy. The government's actions portend a gross abuse of authority that will test whether courts of law and Congress will allow the administration to trample the Constitution and those it protects. [AILA has issued this statement in response.](#)

How would a lawful permanent resident be deported under this provision?

INA § 237(a)(4)(C)(i) [states](#) that a noncitizen "whose presence or activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States is deportable." Alleging this ground is only the first step and does not automatically authorize deportation. The government must initiate [removal proceedings](#) in immigration court, which affords certain due process protections, including providing notice of the allegations by filing a [Notice to Appear \(NTA\)](#) with legal and factual allegations to support the charges. In court, the government will [need to show](#) the charges are supported by "clear and convincing" evidence. Under this foreign policy ground, the Secretary of State must [submit a letter](#) stating the "facially reasonable and bona fide reasons" for that determination. The person is entitled to challenge the government's evidence, present their own evidence, and be represented by legal counsel if they can afford one.

Special Free Speech and First Amendment Protections

Congress also included special "safe harbor" protections in this foreign policy provision to safeguard First Amendment rights. INA § 237(a)(4)(C)(i) incorporates a parallel provision under [INA § 212\(a\)\(3\)\(C\)](#) that explicitly prevents the removal of someone "because of the alien's past, current, or expected beliefs, statements, or associations, if such beliefs, statements, or associations would be lawful within the United States." To overcome this "exception" the Secretary of State must personally determine the person's presence "would compromise a **compelling** United States foreign policy interest." (emphasis added). Congress established a significantly higher standard by replacing the terms "serious adverse" with "compelling" and by requiring the government prove there be an actual compromise to U.S. foreign policy

rather than merely the “potential” that foreign policy would be comprised. In the [conference report](#) included when the law was passed, Congress explained further how these safeguards should be applied in cases when the government is targeting activities protected under the First Amendment:

It is the intent of the conference committee that this authority would be used sparingly and not merely because there is a likelihood that an alien will make critical remarks about the United States or its policies. ... Furthermore, the conferees intend that the “compelling foreign policy interest” standard be interpreted as a significantly higher standard than the general “potentially serious adverse foreign policy consequences standard.”

Congress explicitly considered examples that might meet the “compelling” standard: when the noncitizen’s presence would violate a treaty or international agreement that the United States is a party to or the [1979 admission of the former Shah of Iran](#) for medical treatment, which prompted the seizure of the American Embassy in Tehran and the infamous [Iranian Hostage Crisis](#). Finally, the safe harbor protection also requires the Secretary of State to notify the leadership of the relevant congressional committees “on a timely basis” when it uses this foreign policy authority to deport someone.

A federal court has found the foreign policy provision unconstitutional

In 1996, a [federal court](#)¹ found INA § 237(a)(4)(C)(i) unconstitutional on the grounds that it is “void for vagueness” and denies the person charged of due process. A well-established constitutional principle requires that laws that prohibit conduct must be sufficiently clear that “ordinary people” can understand what conduct is forbidden. In this case, the court found that the law is “void for vagueness” because

no one outside the Department of State, and perhaps, the President, ever knows what our nation’s frequently covert foreign policy *is* at any given time. ... there is no conceivable way that an alien could know, *ex-ante*, how to conform his or her activities to the requirements of the law.

In addition, the court held that the law denies the person the meaningful opportunity to challenge and probe any evidence the government might bring because that would require the Secretary of State taking the witness stand – calling that possibility “ludicrous.” The court’s ruling was overturned but on different grounds. This appears to be the only reported court case reviewing the statute.

Lawful permanent residents have the right to free speech and other constitutional protections.

Eighty years ago, the Supreme Court, in [Bridges v. Wixon](#), concluded that noncitizens in the United States are protected under the Constitution and have the right to freedom of speech. More broadly, the Court has held that the core protections the Constitution affords to citizens also apply to noncitizens – including the First Amendment, Fifth Amendments, and the due processes clause in the Fourteenth Amendment. As the [Supreme Court wrote in 1953](#), those amendments “extend their inalienable privileges to all ‘persons’ and guard against any encroachment on those rights by federal or state authority.”

Nearly a week after Khalil was arrested and the issuance of the NTA, he has not been charged with any crime or with aiding a foreign-terrorist organization. As a lawful permanent resident, he is protected under

¹ This case was before Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which shifted some citations within the immigration statute.

the First Amendment, and his speech and protest activities are shielded from government infringement. Moreover, if the government’s sole basis for targeting him is his speech-related activities, it bears the higher burden of demonstrating that Khalil’s presence or activities would actually “compromise a compelling foreign policy interest” under INA § 237(a)(4)(C)(i). Finally, there remains the question as to the legality of the statute itself which has been found unconstitutional for vagueness and on due process grounds.

Additional Resources

- Ahilan Arulanantham and Adam Cox, [Explainer on First Amendment and Due Process Issues in Deportation of Pro-Palestinian Student Activist\(s\)](#), Just Security, March 12, 2025.