
AILA

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Cyrus D. Mehta
Editor-in-Chief

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The Lamp of Liberty Burns Brighter When Fueled by Free Speech

The Case Against Ideological Deportation Under Judge William J. Young

Vaman B. Kidambi*

Abstract: This article analyzes the 2025 decision in *American Association of University Professors (AAUP) v. Rubio* as a vital judicial check on executive overreach and a restoration of constitutional equilibrium. Drawing on Justice Louis Brandeis’s landmark concurrence in *Whitney v. California* (1927), the court affirms that lawfully present noncitizens possess First Amendment rights coextensive with those of citizens, thereby reinvigorating the “more speech” doctrine. While this article focuses on the specific circumstances of Rümeyşa Öztürk, her litigation is representative of a broader systemic challenge to non-citizen speech. The pending challenges of Mahmoud Khalil, Mohsen Mahdawi, and Badar Khan Suri underscore that the current constitutional crisis is not an isolated incident, but a widespread threat to the rights of lawfully present noncitizens. This article argues that while *AAUP v. Rubio* correctly prioritizes free expression, a complete constitutional shield requires a synthesized reading of the First Amendment alongside equal protection principles. Although equal protection applies to the federal government via the Fifth Amendment’s Due Process Clause under the doctrine of reverse incorporation, this article uses “equal protection” as a term of art encompassing both the Fifth and Fourteenth Amendment pathways. The author contends that a “dual key” approach is essential to ensuring that the “marketplace of ideas” remains open to those most directly impacted by state action. Such an approach guards against the state’s use of facially neutral immigration laws as a means of circumventing constitutional safeguards indispensable to the preservation of democratic values.

Introduction

Rümeyşa Öztürk¹ was on her way to an iftar dinner when she vanished. Masked ICE agents had detained her on the street and transported her in an unmarked van to a processing facility, where she would spend the next 45 days.² Her arrest and subsequent detention³ was not based on criminal conduct, visa fraud, or any immigration-related violation. Specifically, Öztürk had co-authored an opinion piece in her college student newspaper criticizing Israeli government policy.⁴

Öztürk’s detention was neither an isolated incident nor attributable to bureaucratic error.⁵ It was the calculated result of a team of analysts who

systematically identified foreign students and academics whose social media posts, op-eds, or campus activism expressed pro-Palestinian views.⁶ The standard for targeting was remarkably expansive and included any criticism of Israel that could be construed as “antisemitic.”⁷ In effect, the government utilized immigration law not as a tool for border control, but as a weapon to silence domestic political debate through the threat of physical expulsion.⁸

On September 30, 2025, District Judge William G. Young of the District of Massachusetts declared this practice unconstitutional.⁹ His preliminary injunction in *American Association of University Professors (AAUP) v. Rubio* was remarkable not just for holding that lawfully present noncitizens possess identical First Amendment rights as citizens, but for what it represented—the judiciary’s role in defending the Constitution against the “tanks” of executive overreach.¹⁰

This decision represents a significant judicial evolution that began nearly a decade earlier.¹¹ In the 2018 case *Ragbir v. Homan*,¹² the court grappled with the “weaponization” of deportation against an individual activist.¹³ The Second Circuit held that an alien subject to a final removal order stated a cognizable First Amendment claim by alleging that the government targeted his removal because of his public speech criticizing immigration policies, a form of retaliation that, if true, would effectively suppress his participation in public debate and act like a “gag order.”¹⁴ While *Ragbir* laid the moral groundwork by identifying deportation as a unique form of censorship, *AAUP v. Rubio* marks an evolution in how the courts address retaliation against free expression particularly against academics and institutions.¹⁵ The court appears to be moving from protecting the individual dissenter to issuing a categorical legal declaration: “No law means no law” as it applies to the First Amendment when prohibiting the government from restricting speech based on viewpoint.¹⁶

Yet for all its significance, the current discourse appears to focus somewhat heavily on a First Amendment question: Do noncitizens possess free speech rights? While Judge Young’s answer is an eloquent yes, addressing that question alone may not be adequate to protect, or for that matter, to stop the targeting of individuals like Rümeyşa Öztürk. The First Amendment prohibits the government from punishing speech directly,¹⁷ but it does not prevent the government from selectively enforcing manifestly neutral laws based on impermissible criteria.¹⁸ That protection is found primarily within the Fourteenth Amendment’s Equal Protection Clause.¹⁹

The use of immigration status to silence political expression exceeds the government’s authority.²⁰ When officials target speakers based on a combination of their political views and their immigrant status, they violate a dual constitutional guarantee. By analyzing similar cases through a First Amendment lens alone,²¹ we risk obscuring selective enforcement and leave the state with a “devious workaround” grounded in neutral legislation like immigration law.²²

The implications extend far beyond this administration or this viewpoint. Across generations, America faces the temptation to use law as a weapon

against immigrants who are different, such as Irish Catholics, Chinese laborers, Eastern European Jews, Japanese Americans, Muslim Americans, Indian H-1B workers, and so on. And in each generation, the test is the same: Will America honor its constitutional commitments when those commitments protect noncitizens expressing views we despise? *AAUP v. Rubio* presents that test again, in a form that is particularly bitter because it targets people who came to America believing in an America that champions free expression as a fundamental human right, not a privilege of citizenship.

This article argues that *AAUP v. Rubio* demands a recognition of this renewed *constitutional synergism*. It examines the doctrinal foundations of this judicial evolution, the historical context, and offers a legal framework where the First Amendment and the Equal Protection Clause act to protect individual rights. By viewing deportation as the ultimate form of censorship, this framework argues that federal authorities should be barred from selective enforcement of immigration laws to bypass constitutional limits on suppressing political dissent.

In *AAUP v. Rubio*, Judge Young quoted these words of President Ronald Reagan to remind us of what is at stake:

Freedom is a fragile thing and it's never more than one generation away from extinction. It is not ours by way of inheritance; it must be fought for and defended constantly by each generation, for it comes only once to a people. And those in world history who have known freedom and then lost it have never known it again.²³

The Doctrinal Origins: From *Ragbir* to *Rubio*

*Sticks and stones may break my bones, but words will never hurt me.*²⁴

The deportation campaign that led to *AAUP v. Rubio* began with two executive orders.²⁵ In the executive order titled “Additional Measures to Combat Anti-Semitism,” the president directed the Secretary of State and Secretary of Homeland Security to identify and remove “foreign nationals whose presence in the United States poses a threat to national security or public safety, including through the promotion of antisemitism or support for designated terrorist organizations.”²⁶ On its face, the executive order appeared focused on legitimate national security concerns. Its application, however, revealed a different purpose entirely. Within a short span of time, Immigration and Customs Enforcement detained several foreign nationals, primarily students and faculty members at American universities.²⁷

Interestingly, the legal journey toward the *AAUP v. Rubio* injunction also began not in a vacuum of academic theory, but under somewhat similar tenuous circumstances involving a case of retaliatory enforcement. In

Ragbir v. Homan,²⁸ the Southern District of New York was confronted with a government that sought to deport a prominent activist shortly after he publicly criticized immigration authorities. While the government argued that its power to deport was nearly absolute, the court identified a profound constitutional friction.²⁹

The genesis of this argument, however, goes back a century to Justice Brandeis's landmark concurrence in *Whitney v. California*.³⁰ Brandeis had argued that in a free society, the response to speech we fear is "more speech."³¹ Judge Young recognized that deportation functions as a unique and final veto of that principle. By physically removing a speaker from the United States, the government does not merely "regulate" speech; it censors the speaker's ability to participate in the American marketplace of ideas entirely.³² This theory of "enforced silence" became the moral centerpiece of Young's remarkable legal philosophy.³³

When Judge Young quoted Justice Louis Brandeis's concurrence in *Whitney v. California*, he was doing more than citing precedent. He was reaching across nearly a century of First Amendment jurisprudence to connect a modern immigration case to one of the most eloquent defenses of free speech in American constitutional history. *AAUP v. Rubio* represents the same failure that Brandeis saw in the government. But Brandeis was not confronting the additional dimension present in *AAUP v. Rubio*, where the speaker is a non-citizen and the government's tool is deportation. Here, the "enforced silence" becomes literal and permanent. It is not censorship that can be overcome, or imprisonment that eventually ends. It is physical removal from the forum of debate itself.

The transition from *Ragbir* to *AAUP v. Rubio* represents a vital expansion of this logic. While *Ragbir* protects an individual against an "outrageous" act of retaliation, Judge Young's *AAUP v. Rubio* decision addresses a systemic policy of "ideological deportation."³⁴ Here, Judge Young advances a "more perfect" vision of the First Amendment: not merely a defense against personal vendettas, but a shield against weaponizing immigration law for viewpoint-based censorship. By declaring "no law means no law,"³⁵ the court effectively stripped away the "plenary power" override that previously allowed the executive to ignore the Bill of Rights under the guise of border management.³⁶

However, the "moral clarity" of the First Amendment is only half of the solution. As *AAUP v. Rubio* demonstrates, the government rarely accepts responsibility for punishing speech. Instead, the classic justification is almost always "law enforcement." In other words, proving impermissible intent in such situations is almost impossible.³⁷ To stop the cycle of targeting, the courts must recognize that when the state uses a person's "alienage" as a pretext for viewpoint suppression, it has crossed into the territory of the Fourteenth Amendment.³⁸ This is where the combined effect between speech and equal protection becomes the only viable safeguard.

Historical Echoes: The Red Scare

The “ideological deportation” at issue in *AAUP v. Rubio* echoes some of the darkest chapters in American immigration history. Time and again, moments of national fear have transformed immigration law into a weapon against unpopular ideas.

The Palmer Raids of 1919-1920, pursuant to the Espionage Act of 1917, offer a stark example.³⁹ Attorney General A. Mitchell Palmer along with his enthusiastic partner, the 24-year-old J. Edgar Hoover, head of the General Intelligence Division of the Bureau of Investigation, ordered the arrest and deportation of thousands of noncitizens, not for crimes they committed, but for the political beliefs they held.⁴⁰ One prominent case during this era involved the arrest and subsequent deportation of Emma Goldman, a self-proclaimed anarchist. While being held on Ellis Island, she wrote *Deportation, Its Meaning and Menace: Last Message to the People of America*. On page 17, she wrote:

It is the practice of picking men upon the street, on the merest suspicion of “political untrustworthiness,” of arresting them in their club rooms or homes, tearing them away from their families, locking them up in jails or detention pens, holding them incommunicado for weeks and months, depriving them of a hearing in open court, denying them a trial by jury, and finally deporting them or banishing them to unknown shores. All this, not for any crime committed or even any punishable act charged, but merely on the denunciation of an enemy or the irresponsible . . .⁴¹

A generation later, the pattern repeated. The McCarran-Walter Act of 1952 codified ideological exclusion, authorizing the government to bar or deport anyone who “advocate[d] the economic, international, and governmental doctrines of world communism.”⁴² Under this law, along with other extreme measures, writers like Carlos Fuentes and Gabriel García Márquez were denied entry, scholars were turned away from academic conferences, and longtime residents faced removal for past political affiliations and their perceived left-leaning sympathies.⁴³ The Act had a chilling effect on American science and academia. Foreign scientists were routinely denied visas to attend international conferences held in the United States.⁴⁴ These restrictions created barriers to international scientific collaboration and exchange that undermined American leadership in research and higher education. The Supreme Court upheld these tactics in *Harisiades v. Shaughnessy*, reasoning that Congress possessed plenary power over immigration and could consider an alien’s political ideology in making admission and removal decisions.⁴⁵ On page 154, Judge Young explicitly rejects the government’s reliance on *Harisiades*, noting that it predates the “modern First Amendment” and cannot justify the current “ideological-deportation policy.”

And yet the government continued targeting noncitizens for their views for the next four decades. Most of the ideological exclusion provisions were not fully repealed until 1990.⁴⁶ Until that point, the U.S. Department of State maintained a massive database (the “Lookout Book”) that contained the names of hundreds of thousands of individuals flagged for their political associations.⁴⁷

Judge Young’s 2025 opinion, however, consciously draws upon long-standing constitutional precedent. He relies on landmark cases like *Yamataya v. Fisher* to establish that the power to deport is not a “lawless” power constrained by due process, and *Bridges v. Wixon*, which famously noted that the First Amendment does not contain a “citizenship” exception.⁴⁸ By rooting his findings in these precedents, Young demonstrates that the “magnificent Constitution” was designed specifically to weather these periodic storms of national anxiety.⁴⁹

However, the modern era has introduced a more subtle—and arguably more chilling—weapon: the “prudential revocation” of visas.⁵⁰ Unlike the visible raids of the 1920s and the xenophobic actions of the government in the 1940s and 1950s, prudential revocation allows federal officials to cancel a noncitizen’s legal status based on “derogatory information” that often consists of nothing more than protected political expression.⁵¹ This administrative maneuver operates in the shadows, creating a pervasive “chilling effect” on university campuses and within immigrant communities.⁵² When a student knows that a single op-ed or social media post can trigger a visa revocation without a hearing, the Brandeisian ideal of “more speech” is effectively strangled before it can even begin.⁵³ In *Whitney*, Brandeis argued that speech is the primary remedy for speech. But as Judge Young notes, this remedy is impossible if the speaker is physically expelled from the forum. Deportation is the ultimate “enforced silence” because it denies the speaker the ability to defend their ideas or participate in the “processes of education” that Brandeis championed. To prevent the executive from using “prudential” tools to bypass permanent rights, the judiciary must recognize that when the government targets a viewpoint through an administrative workaround, it has committed a dual violation of both expression and equality.⁵⁴

The Synergistic Approach: A Legal Framework for Modern Times

The fundamental flaw in current noncitizen speech jurisprudence is the tendency to treat the First and Fourteenth Amendments as isolated silos. When courts analyze a case like *AAUP v. Rubio* through a First Amendment lens alone, they successfully identify the *motive* (viewpoint discrimination) but often struggle to address the *mechanism* (the selective application of immigration law to exclude the viewpoint). Instead, the judiciary must adopt a synergistic framework that recognizes these two clauses as a single, unified check on unbridled executive power allowed to run amok.

Viewpoint Discrimination as the Constitutional Trigger

Under this framework, the First Amendment serves as the initial diagnostic tool. If a plaintiff can demonstrate that their expressive activity—such as Rümeyşa Öztürk’s op-ed or the “Tiger Team’s” reliance on ideological blacklists was a substantial or motivating factor in an enforcement action, the First Amendment’s protections are triggered. At this stage, the government’s “plenary power” defense should lose its traditional weight. As Judge Young’s 161-page opinion makes clear, the authority to manage borders is not a license to manage the marketplace of ideas.⁵⁵

Selective Enforcement as the Fourteenth Amendment Mechanism

Once the discriminatory motive is established, the analysis must shift to the Equal Protection Clause to address the *method* of enforcement.⁵⁶ Historically, the government has used manifestly neutral criteria—such as a technical visa violation or a prudential national safety concern—to mask its true intent. The synergistic framework strips away this mask by applying the “suspect classification” test of alienage.

Under *Graham v. Richardson*, classifications based on alienage are “inherently suspect” and subject to close judicial scrutiny.⁵⁷ By applying this standard to selective enforcement, the burden shifts to the government. It must prove not only that it had a legal basis to deport, but that it would have taken the same drastic action—the physical expulsion from the forum—against any other individual in the same legal position who had *not* expressed the dissenting view.

The Result: A “Dual Key” Standard of Review

This framework creates a “dual key” review on executive overreach. For the government to prevail in a case involving noncitizen speech, it must satisfy both:

- *The First Amendment Key*. The action must not be a retributive or prudential response to the speaker’s viewpoint.
- *The Equal Protection Key*. The use of immigration status must not be a selective application of law used to bypass the First Amendment’s categorical prohibitions.

By requiring this synergistic check, the judiciary can finally close the alienage gap. This prevents the Departments of State and Homeland Security from accomplishing through prudential revocation or ideological deportation what the Constitution forbids them from doing through direct censorship.⁵⁸

Beyond the Injunction: The Looming Constitutional Battle

While Judge Young's 161-page opinion in *AAUP v. Rubio* provides a well-reasoned decision in that the trial proved that the administration's "emergency" justifications were pretextual—contradicted by its own internal threat assessments—and established a powerful moral and legal victory for the plaintiffs, this case is merely the opening chapter of a larger constitutional battle. As the matter moves to the First Circuit, the government is expected to center its defense on the intersection of national security, foreign policy, and executive plenary power.⁵⁹

The appeal will likely center on the reach of the First Amendment, with the government arguing it does not grant noncitizens an "unqualified" right to remain while engaging in speech deemed harmful to foreign policy. Central to the appeal will be the interpretation of INA § 237(a)(4)(C).⁶⁰ The government will argue that the Secretary of State has broad, "facially legitimate and bona fide" reasons to revoke visas if a noncitizen's presence creates friction with key allies, regardless of whether the person presents a direct physical danger.⁶¹ The government will seek to reconcile the categorical "no law means no law" stance with decades of precedent, such as *Kleindienst v. Mandel*, which suggests the government has wider latitude to exclude or deport noncitizens for reasons that would be unconstitutional if applied to citizens.⁶²

The vulnerability of this defense becomes apparent when we consider the government's primary response: the claim that they were not punishing speech at all, but simply enforcing immigration law. In their telling, the targeting of pro-Palestinian voices is mere correlation, not causation. This claim further highlights the risk of analyzing these cases solely through a First Amendment lens.⁶³ Because immigration law is patently neutral on its face, a court focusing exclusively on speech might miss the mechanism of the violation: the selective enforcement of neutral laws based on impermissible criteria.

The Necessity of Equal Protection—Reimagined for Emphasis

Imagine a more sophisticated version of the government action outlined previously in the Öztürk matter. Instead of via an explicit "threat matrix," officials identify dissenters and then scrutinize their files for technicalities. For example, an F-1 student who failed to register in a timely fashion for fall classes, an immigrant's change of address on Form AR-11 containing the wrong zip code, an H-1B employee who was laid off and is in the 60-day grace period, an H-4 dependent who inadvertently "volunteered" at the local food bank. Under strict First Amendment analysis, proving pretext is difficult when a legal basis for removal, however minor, exists.

This is where the Equal Protection Clause becomes essential. The Fourteenth Amendment protects “persons,” not “citizens.” A distinction that, in hindsight, appears both deliberate and meaningful. Early in our history, *Yick Wo v. Hopkins* established that the law cannot be administered with “an evil eye and an unequal hand.”⁶⁴ By synthesizing the “personhood” protections of *Plyler v. Doe* with the “equal hand” requirement of *Yick Wo*, we arrive at a pincer-like hold on the current situation: the government may not use the machinery of immigration law to achieve a specific objective—viewpoint suppression—that the Constitution expressly forbids.⁶⁵

As stated earlier, classifications based on alienage are subject to close judicial scrutiny.⁶⁶ While the Supreme Court has allowed for more deferential review of federal alienage classifications in cases like *Mathews v. Diaz*, that deference must yield when the classification intersects with the suppression of fundamental rights.⁶⁷

The campaign in *AAUP v. Rubio* involved alienage plus viewpoint discrimination. The government did not target all noncitizens; it specifically targeted noncitizens who expressed disfavored political views. This intersection demands the highest level of scrutiny under both the First Amendment and the Equal Protection Clause.

Finally, the selective prosecution doctrine, formulated in cases like *Wayte v. United States* and *United States v. Armstrong*, provides the necessary framework for analyzing this pretextual enforcement.⁶⁸ To succeed, a plaintiff must show:

- *Discriminatory Effect*. Others similarly situated were not prosecuted.
- *Discriminatory Purpose*. The policy was motivated by an impermissible ground.⁶⁹

The evidence in *AAUP v. Rubio* satisfies both. Pro-Israel foreign students who attended rallies or wrote op-eds faced no such scrutiny, while pro-Palestinian speakers were targeted for identical technical violations.⁷⁰ Furthermore, the public statements of Secretary Marco Rubio and Secretary Kristi Noem calling for students to “think twice” before criticizing certain policies serve as direct evidence of a discriminatory purpose.⁷¹

Preventing the Quiet Purge

By applying a synergistic approach that marries First Amendment expression with Fourteenth Amendment Equal Protection, the law can peel back the veneer of neutrality. As the Supreme Court noted in *Yick Wo*, a law administered with “an unequal hand” is no less a constitutional violation than one that is discriminatory on its face.⁷² Without this dual-layered scrutiny, the government remains free to hide its targeting of specific groups behind the shield of administrative regularity. Therefore, *Yick Wo* provides the blueprint:

a neutral ordinance becomes unconstitutional when it is used to target a specific group.⁷³

The danger of modern protest suppression lies in the “quiet” purge, where the state utilizes facially neutral ordinances to hollow out the First Amendment. This pairing serves as a deeper democratic principle. While noncitizens lack the vote, they are subject to our laws and contribute to our civil society. If they cannot elect representatives, they should at least be able to participate in the informal politics of public discourse, albeit responsibly. When the government attempts to deport these speakers, it does not merely violate individual rights, it eliminates any possibility of democratic deliberation. The “library of ideas” becomes an echo chamber where the only permitted perspectives are those met with executive approval. This risk is exacerbated by recent executive efforts to insulate constitutional claims from federal judicial review by confining them to the agency’s internal adjudicative process.⁷⁴

The plenary power doctrine was never intended to be a license for viewpoint-based filtering. As the court noted in *INS v. Chadha*, immigration authority remains subject to constitutional requirements.⁷⁵

When the government uses threats of deportation to silence disparate voices, it sends a chilling message to all noncitizens: *your presence is contingent on your silence*. This doesn’t just harm the deported; it harms the citizenry, which loses access to the perspectives necessary for informed judgment. Universities lose scholars, communities lose neighbors, and democracy loses the deliberative character that Justice Brandeis celebrated and that the Constitution was built to protect.⁷⁶

Final Words: Constitutional Courage

“Those who won our independence were not cowards,” Brandeis wrote in 1927.⁷⁷ That courage was not just found on the battlefield, but in the conviction that our system is strong enough to withstand even the most abrasive dissent. Today, that means trusting in “more speech” rather than reaching for the “enforced silence” of deportation. It means recognizing that the Equal Protection Clause prevents the government from using alienage as a weapon to accomplish what direct censorship would prohibit.⁷⁸

Judge Young demonstrated this courage by issuing an opinion that was both unpopular and professionally risky.⁷⁹ The question now for the appellate courts, and for us as a society, is whether we will show the same resolve. Will we keep America open to all voices, or will we allow it to be curated by government decree?

The answer matters far beyond the fate of Rümeyşa Öztürk. A democracy that deports its critics rather than engaging with them is no longer a democracy. It is something the founders rejected and something Judge Young courageously stood against. Ultimately, the lamp of liberty only burns brightly when it is

lit by the fire of free speech—a flame that must be protected for every person who stands upon American soil.⁸⁰

As Judge Young noted in his postscript, “Where a jury sits, there burns the lamp of liberty.”⁸¹

Notes

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1. While this article focuses on the specific circumstances of Rümeyşa Öztürk, her litigation is representative of a broader systemic challenge to noncitizen speech. The experiences of Mahmoud Khalil, Mohsen Mahdawi, and Badar Khan Suri—whose respective challenges to executive overreach remain pending—underscore that Öztürk’s plight is not an isolated incident but rather the “face” of a widespread constitutional crisis regarding the rights of lawfully present noncitizens. See *Khalil v. Joyce*, No. 2:25-cv-01963 (D.N.J. 2025); *Mahdawi v. Trump*, 781 F. Supp. 3d 214 (D. Vt. 2025); *Suri v. Trump*, No. 1:25-cv-00480 (E.D. Va. 2025).

2. Rümeyşa Öztürk, *What I Witnessed Inside an ICE Women’s Prison*, VANITY FAIR (July 17, 2025), <https://www.vanityfair.com/news/story/rumeysa-ozturk-what-i-witnessed-inside-an-ice-womens-prison>.

3. On January 29, 2026, the immigration court held that the Department of Homeland Security had not met its burden of proving removability, and the immigration court thereby terminated removal proceedings against Öztürk. See Letter from Monica H. Allard et al., Counsel for Petitioner-Appellee, to Catherine O’Hagan Wolfe, Clerk, U.S. Court of Appeals for the Second Circuit, *Ozturk v. Hyde*, No. 25-1019 (2d Cir. Feb. 9, 2026) (Fed. R. App. P. 28(j) letter), Dkt. 236.1, <https://fingfx.thomson-reuters.com/gfx/legaldocs/klyvjamdnp/02092026ozturk.pdf>.

4. Rümeyşa Öztürk & Fatima Rahman et al., *Try Again, President Kumar: Renewing Calls for Tufts to Adopt March 4 TCU Senate Resolutions*, TUFTS DAILY (Mar. 26, 2024), www.tuftsdaily.com/article/2024/03/4ftk27sm6jkj.

5. Michael Casey, *Babson College Student Mistakenly Deported, Interview Says*, WBUR (Jan. 16, 2026), <https://www.wbur.org/news/2026/01/16/babson-college-student-mistakenly-deported-interview>.

6. Johanna Alonso, *AAUP v. Rubio Reveals Details of Deportation Efforts*, INSIDE HIGHER ED (July 21, 2025), www.insidehighered.com/news/global/international-students-us/2025/07/21/aaup-v-rubio-reveals-details-deportation-efforts.

7. *Am. Ass’n of Univ. Professors v. Rubio*, No. 1:25-cv-10685, slip op. at 152-54 (D. Mass. Sept. 30, 2025) (finding the administration’s enforcement standard for “antisemitic” conduct “remarkably expansive”).

8. *Id.* at 158.

9. *Id.* at 147. This is where Judge Young issues his most direct constitutional rebuke, stating: “For all these reasons, this Court finds as fact and concludes as matter of law that Secretaries Noem and Rubio and their several agents and subordinates acted in concert to misuse the sweeping powers of their respective offices to target noncitizen pro-Palestinians for deportation primarily on account of their First Amendment protected political speech. They did so in order to strike fear into similarly situated noncitizen

pro-Palestinian individuals, pro-actively (and effectively) curbing lawful pro-Palestinian speech and intentionally denying such individuals (including the plaintiffs here) the freedom of speech that is their right. Moreover, the effect of these targeted deportation proceedings continues unconstitutionally to chill freedom of speech to this day.”

10. *Id.* at cover page (reproducing an anonymous postcard sent to the court: “Trump Has Pardons and Tanks . . . What Do You Have?”).

11. This article seeks to limit its scope to the evolving nature of judicial review in First Amendment cases. For an excellent analysis of the plenary power of the government to exclude noncitizens, see Hiroshi Motomura, *Immigration Law After a Century of Plenary Power: Phantom Constitutional Norms and Statutory Interpretation*, 100 YALE L.J. 545 (1990).

12. The named defendant, Thomas Homan, served as the Acting Director of U.S. Immigration and Customs Enforcement (ICE) at the time of the litigation. As of 2025, Homan serves as the “Border Czar” in the second Trump administration.

13. In *Ragbir v. Homan*, 923 F.3d 53 (2d Cir. 2019), the Second Circuit Court of Appeals examined the case of Ravi Ragbir, an immigrant rights activist facing deportation. Ragbir, who had been a vocal critic of U.S. immigration policies, argued that his deportation was motivated by retaliatory animus due to his activism. The court assessed allegations of improper use of immigration enforcement as a means to silence dissent and grappled with the broader implications for the rights of individuals in deportation proceedings, emphasizing the need for fair treatment in such cases.

14. *Id.* at 53.

15. It will be interesting to see how the courts deal with a surge in “retaliation based on viewpoint discrimination” cases being filed against ICE actions in various states. See *State of Minnesota v. Noem*, No. 0:26-cv-00190 (D. Minn. Jan. 12, 2026).

16. Hugo L. Black, *The Bill of Rights*, 35 N.Y.U. L. REV. 865, 867 (1960); *Am. Ass’n of Univ. Professors v. Rubio*, No. 1:25-cv-10685, slip op. at 3 (D. Mass. Sept. 30, 2025).

17. U.S. CONST. amend. I (“Congress shall make no law . . . abridging the freedom of speech”).

18. See, e.g., *Washington v. Davis*, 426 U.S. 229 (1976).

19. U.S. Const. amend. XIV; *Yick Wo v. Hopkins*, 118 U.S. 356, 373-74 (1886); *Wayte v. United States*, 470 U.S. 598, 608 (1985).

20. Michael Kagan, *When Immigrants Speak: The Precarious Status of Noncitizen Speech Under the First Amendment*, 57 B.C. L. REV. 1237 (2016).

21. *But cf.* *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 488 (1999) (“[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”).

22. See *Yick Wo*, 118 U.S. at 373-74; *but see id.* This tension suggests that while *Yick Wo* nominally protects against discriminatory intent, the “deportation-as-discretion” model in *Am.-Arab Anti-Discrimination Comm.* allows the state to bypass First Amendment scrutiny by tethering enforcement to neutral immigration status.

23. *Am. Ass’n of Univ. Professors v. Rubio*, No. 1:25-cv-10685, slip op. at 159 (D. Mass. Sept. 30, 2025) (quoting Ronald Reagan, Inaugural Address as Governor of California (Jan. 5, 1967)).

24. Old English nursery rhyme, *first recorded in* THE CHRISTIAN RECORDER, Mar. 22, 1862.

25. Exec. Order No. 14161, 90 Fed. Reg. 8451 (Jan. 30, 2025); Exec. Order No. 14188, 90 Fed. Reg. 8847 (Jan. 29, 2025).

26. *Id.* at § 2.

27. Miranda Jeyaretnam, *These Are the Students Targeted by Trump's Immigration Enforcement Over Campus Activism*, TIME (Mar. 27, 2025), <https://time.com/7272060/international-students-targeted-trump-ice-detention-deport-campus-palestinian-activism/>.

28. *Ragbir v. Homan*, 923 F.3d 53 (2d Cir. 2019).

29. Daniel Simon, Comment, *Immigration, Retaliation, and Jurisdiction*, 2020 U. CHI. LEGAL F. 467 (discussing the constitutional gap created when the executive branch uses deportation to silence activists while statutory bars prevent judicial intervention).

30. 274 U.S. 357 (1927).

31. *Id.* at 377 (Brandeis, J., concurring).

32. *See generally* *Ragbir*, 923 F.3d 53 (articulating the concept that deportation constitutes a physical removal from the constitutional forum of debate).

33. *See id.* at 53 (recognizing that retaliatory removal can chill speech, creating an “enforced silence”); *Am. Ass’n of Univ. Professors v. Rubio*, No. 1:25-cv-1068, slip op. at 148-54 (D. Mass. Sept. 30, 2025) (applying the concept to domestic political debate, especially with respect to the president’s actions).

34. *Id.* at 45.

35. *Id.* at 3. After quoting the text of the First Amendment, Judge Young opines: “This case—perhaps the most important ever to fall within the jurisdiction of this district court—squarely presents the issue whether noncitizens lawfully present here in [the] United States actually have the same free speech rights as the rest of us. The Court answers this Constitutional question unequivocally ‘yes, they do.’ ‘No law’ means ‘no law.’ The First Amendment does not draw President Trump’s invidious distinction, and it is not to be found in our history or jurisprudence.”

36. The executive branch may effectively bypass traditional Bill of Rights protections under the guise of border management through the “plenary power” doctrine. *See* 8 U.S.C. § 1182(f); *Trump v. Hawaii*, 585 U.S. 667, 702-03 (2018) (holding that the president’s statutory authority to exclude aliens is broad and that judicial review of such national security determinations is highly limited).

37. *Nieves v. Bartlett*, 587 U.S. 391, 398 (2019) (holding that the existence of probable cause for arrest defeats a 42 U.S.C. § 1983 claim for retaliatory arrest).

38. *See* *Graham v. Richardson*, 403 U.S. 365, 372 (1971) (establishing that classifications based on alienage are inherently suspect and subject to strict judicial scrutiny).

39. Espionage Act of 1917, Pub. L. No. 65-24, 40 Stat. 217 (codified as amended at 18 U.S.C. §§ 792-799).

40. *See* Marcie K. Cowley, *Red Scare*, First Amendment Encyclopedia, FREE SPEECH CTR. AT MIDDLE TENN. STATE UNIV. (July 26, 2024), <https://firstamendment.mtsu.edu/article/red-scare/>.

41. Alexander Berkman & Emma Goldman, *Deportation, Its Meaning and Menace; Last Message to the People of America* 17 (M.E. Fitzgerald 1919), <https://ia801600.us.archive.org/5/items/deportationitsme00berkuoft/deportationitsme00berkuoft.pdf>.

42. Immigration and Nationality Act of 1952, Pub. L. No. 82-414, 66 Stat. 163.

43. Marvine Howe, *U.S. Denial of Visas Over Politics of Foreigners; The Battle Is Heating Up*, N.Y. TIMES (July 28, 1985), <https://www.nytimes.com/1985/07/28/world/us-denial-of-visas-over-politics-of-foreigners-the-battle-is-heating-up.html>.

44. Richard J.H. Johnston, *Leading Physicists Protest Visa Curbs as Peril to Science Charge*, N.Y. TIMES (Oct. 13, 1952), <https://www.nytimes.com/1952/10/13/archives/leading-physicists-protest-visa-curbs-as-peril-to-science-charge.html>.

45. *Harisiades v. Shaughnessy*, 342 U.S. 580, 587-91 (1952).

46. Immigration Act of 1990, Pub. L. No. 101-649, § 601, 104 Stat. 4978, 5067 (prohibiting exclusion based on “beliefs, statements, or associations”).

47. U.S. GEN. ACCT. OFF., *Computer Systems: Types and Sources of Department of State Lookout Records*, GAO/IMTEC-89-71FS (Sept. 1989), <https://www.gao.gov/assets/imtec-89-71fs.pdf>.

48. See *Yamataya v. Fisher*, 189 U.S. 86 (1903); *Bridges v. Wixon*, 326 U.S. 135, 148 (1945).

49. *Am. Ass’n of Univ. Professors v. Rubio*, No. 1:25-cv-10685, slip op. at 1 (D. Mass. Sept. 30, 2025).

50. 9 FAM 403.11-5(B) (U.S. Dep’t of State, *last revised* Apr. 29, 2025) (detailing the broad, discretionary authority of consular officers to revoke visas “prudentially”); see also AM. IMMIGR. LAWYERS ASSOC., Practice Alert: Prudential Visa Revocations (Dec. 29, 2025), <https://www.aila.org/library/practice-alert-prudential-visa-revocations> (“The DOS Liaison Committee has received numerous reports of prudential revocation of H-1B visa stamps by Mission India within the last few months, and this issue may have expanded to other consulates.”).

51. *Id.*

52. *Am. Ass’n of Univ. Professors*, No. 1:25-cv-10685, slip op. at 112.

53. See *id.* at 115 (drawing a direct parallel between the 1920s Palmer Raids and the 2025 “Tiger Team” operations).

54. See KNIGHT FIRST AMEND. INST., *DHS “Tiger Team” Scrutinizing Student Protesters Was Told to Investigate 5,000 Names Listed by Canary Mission, ICE Official Testifies* (July 9, 2025).

55. *Am. Ass’n of Univ. Professors*, No. 1:25-cv-10685, slip op. at 98 (noting that the president’s “fixation with retribution” ran “off the rails” of the First Amendment).

56. While the Equal Protection Clause of the Fourteenth Amendment applies directly only to the states, equal protection principles are applied to the federal government through the Fifth Amendment’s Due Process Clause under the doctrine of reverse incorporation established in *Bolling v. Sharpe*, 347 U.S. 497 (1954). The substantive analysis and level of scrutiny applied are functionally equivalent, and this article uses “equal protection” throughout as a term of art encompassing both constitutional pathways.

57. 403 U.S. 365, 372 (1971).

58. See *Am. Ass’n of Univ. Professors*, No. 1:25-cv-10685, slip op. at 100 (asserting that “who we are as a people” is defined by how we treat those we have invited as guests).

59. *Kleindienst v. Mandel*, 408 U.S. 753 (1972).

60. 8 U.S.C. § 1227(a)(4)(C) (An alien is deportable if “[t]he Secretary of State has reasonable ground to believe [their] presence or activities in the United States would have potentially serious adverse foreign policy consequences for the United States.”).

61. *Id.*

62. *Am. Ass’n of Univ. Professors*, No. 1:25-cv-10685, slip op. at 55-60; 408 U.S. 753 (1972).

63. U.S. CONST. amend. XIV, § 1.

64. 118 U.S. 356, 373-74 (1886).

65. 457 U.S. 202 (1982) (holding that undocumented immigrants are “persons” within the meaning of the Equal Protection Clause).

66. *Graham v. Richardson*, 403 U.S. 365, 372 (1971).

67. 426 U.S. 67, 79-80 (1976) (“In the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens.”).

68. *See* *Wayte v. United States*, 470 U.S. 598 (1985); *United States v. Armstrong*, 517 U.S. 456 (1996).

69. *Wayte*, 470 U.S. at 608.

70. Jake Offenhartz, *Facing Trump’s Threats, Columbia Investigates Students Critical of Israel*, AP NEWS (Mar. 6, 2025), <https://apnews.com/article/columbia-university-campus-protests-trump-congress-ba0eddec4679d70287202831c52ebd6>.

71. *Am. Ass’n of Univ. Professors v. Rubio*, No. 1:25-cv-10685 slip op. at 12-15 (D. Mass. Sept. 30, 2025) (detailing public statements of executive officials).

72. *Yick Wo v. Hopkins*, 118 U.S. 356, 373 (1886).

73. *Id.* at 374.

74. *See* Memorandum from Sirce E. Owen, Acting Dir., Exec. Office for Immigration Review, to All EOIR Adjudicators, *Consideration of Constitutional Arguments in Agency Adjudications* (Sept. 5, 2025) (Policy Memorandum 25-45), <https://www.aila.org/library/eoir-pm-on-consideration-of-constitutional-arguments-in-agency-adjudications>. This memorandum directs EOIR adjudicators to resolve constitutional challenges in the first instance, a move that critics argue is designed to insulate executive actions from Article III review. By forcing noncitizens to exhaust these administrative proceedings, the “Owen Memo” effectively delays access to federal district courts. *See also* *Khalil v. President of the United States*, Nos. 25-2162 & 25-2357, slip op. (3d Cir. Jan. 15, 2026) (challenging the use of PM 25-45 to block immediate federal judicial intervention in First Amendment retaliation claims).

75. *INS v. Chadha*, 462 U.S. 919, 941 (1983).

76. *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring).

77. *See* *Trump v. Hawaii*, 585 U.S. 667 (2018) (discussing the “Muslim Ban” and the limits of executive authority).

78. *Am. Ass’n of Univ. Professors v. Rubio v. Rubio*, No. 1:25-cv-10685, slip op. at 1 (D. Mass. Sept. 30, 2025).

79. Erik Uebelacker, *Judge Slams Government for Conspiring to Chill Free Speech of Pro-Palestine Students*, COURTHOUSE NEWS SERVS. (Jan. 15, 2026), www.courthousenews.com/judge-slams-government-for-conspiring-to-chill-free-speech-of-pro-palestine-students.

80. *Am. Ass’n of Univ. Professors*, No. 1:25-cv-10685, slip op. at 161 (concluding that where a jury sits, there burns the lamp of liberty).

81. *Id.* (quoting the “lamp of liberty” aphorism regarding the jury’s role in the American constitutional order).