

By U.S. Mail and Email

May 6, 2025

Re: Universities Must Refuse Attempts by the Federal Government to Conduct Unlawful Immigration Enforcement

ACLU

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

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J. Bennett Guess
Executive Director

Dear University President,

The Trump Administration's continuing scale up of its U.S. Immigration and Customs Enforcement (ICE) operations is increasingly intruding on college and university campuses across the country. Recently, the federal government has entered into 287(g) or similar agreements with some colleges and universities to deputize their campus law enforcement officers to perform immigration enforcement functions.⁸⁵

Please be aware that your institution is under no legal obligation to enter into 287(g) or similar agreements, or to conduct immigration enforcement on behalf of the federal government. You should also be aware that much of the government's enforcement has been unlawful. It has retaliated against international students for engaging in constitutionally protected activity⁸⁶ and has undertaken efforts to unlawfully deport international students holding valid non-immigrant visas.⁸⁷

Most recently, the federal government unlawfully—without notice, cause or due process—terminated thousands of international students' records in the Student

⁸⁵ Kathleen Magramo, Florida Universities Join Statewide Push to Partner with ICE on Immigration Enforcement, CNN (Apr. 12, 2025), <https://www.cnn.com/2025/04/12/us/florida-universities-ice-immigration-crackdown/index.html#:~:text=%E2%80%9COur%20university%20police%20departments%20are,Murray%20contributed%20to%20this%20report.>

⁸⁶ Leila Fadel et al., 'Citizenship Won't Save You': Free Speech Advocates Say Student Arrests Should Worry All, NPR (Apr. 8, 2025), <https://www.npr.org/2025/04/08/nx-s1-5349472/students-protest-trump-free-speech-arrests-deportation-gaza>.

⁸⁷ Laim Knox, Student Visa Dragnet Reaches Small Colleges, Inside Higher Ed (April 8, 2025), <https://www.insidehighered.com/news/global/international-students-us/2025/04/08/trump-admin-broadens-scope-student-visa>.

Exchange and Visitor Information System (SEVIS). As a result, schools and universities informed students that they “thus lost their immigration status and must immediately leave the country.”⁸⁸ Later, the government admitted in court that “Terminating a record in SEVIS does not terminate an individual’s nonimmigrant status in the United States.”⁸⁹ But this admission came too late, as many international students had already self-deported. Sadly, as it turned out, universities and colleges had been used as unwitting tools of the federal government, which had manipulated the institutions to carry out what it itself could not legally do.⁹⁰

We write to urge your institution to assert its right to resist being commandeered as an arm of ICE and instead to protect the safety and legal rights of its international students from government overreach. Voluntarily engaging in immigration enforcement activity risks jeopardizing the integrity of your institution and eroding trust in the school community

To uphold the constitutional rights of all students, staff, and visitors on your campus, we encourage you and your legal counsel to review the attached letter from the National ACLU, which was initially sent when the federal government began engaging in retaliatory crackdowns against noncitizen students in early March for their First Amendment-protected speech and advocacy. We urge you not to enter into any form of 287(g) or similar agreement or undertake any action as an enforcement arm of ICE.

Thank you for your attention to this crucial matter.

Sincerely,



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⁸⁸ Natasha Lennard, *Universities Told Students to Leave the Country. ICE Just Said They Didn’t Actually Have to*, *The Intercept* (Apr. 17, 2025), <https://theintercept.com/2025/04/17/international-student-visas-deport-dhs-ice/>.

⁸⁹ Decl. of Andre Watson at ¶ 22, *Deore v. Noem*, No. 2:25-cv-11038 (E.D. Mich. Apr. 14, 2025), ECF No. 14-3, attached hereto as Exhibit A.

⁹⁰ See Lennard, *supra* n. 4 (“Any school that continues to disenroll (and refuses to re-enroll) students is voluntarily punishing students to align itself with the Trump administration’s agenda.”)

Exhibit A

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

CHINMAY DEORE, YOGESH JOSHI,
XIANGYUN BU, and QIU YI YANG,

Plaintiffs,

v.

KRISTI NOEM, TODD LYONS,
ROBERT LYNCH,

Defendants.

No. 2:25-CV-11038-SJM-DRG

DECLARATION OF ANDRE WATSON

I, Andre Watson, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury as follows:

1. I am the Senior Official within the National Security Division (NSD) for Homeland Security Investigations (HSI). I am a career member of the Senior Executive Service with the rank of Assistant Director. Prior to becoming the Assistant Director of NSD, I served on a detail assignment to the U.S. Department of Homeland Security in the capacity of Principal Deputy Assistant Secretary for the Countering Weapons of Mass Destruction Office. I have additionally served as the HSI Special Agent in Charge in Baltimore, M.D., Deputy Special Agent in Charge in Washington, D.C., Assistant Special Agent in Charge in Houston, T.X., and Supervisory Special Agent in Blaine, W.A. I have also previously served in Headquarters assignments such as Chief of Staff to the Deputy Director of U.S. Immigration and Customs Enforcement (ICE), Chief of Intelligence for the U.S. Department of Justice, International Organized Crime and Intelligence Operations Center, and various supervisory positions within NSD.

2. As the Senior Official within NSD, I oversee the National Security Division as well as Student and Exchange Visitor Program (SEVP) functions in support of ICE efforts to identify, disrupt and dismantle transnational criminal enterprises and terrorist organizations that threaten the security of the United States. These efforts encompass all investigations and aspects of terrorism, special interests involving state and non-state actors, human rights violators and war criminals, as well as compliance and oversight functions for over 6,900 academic institutions, 45,000 designated school officials, and over 1.2 million foreign students studying in the United States.

3. SEVP was created in the wake of the September 11, 2001, terrorist attacks to provide integrity to the immigration system by collecting, maintaining and analyzing information so only legitimate nonimmigrant students or exchange visitors can gain entry in the U.S. Through a database housing information pertaining to schools and students, called the Student and Exchange Visitor Information System (SEVIS), SEVP manages and tracks nonimmigrants in the F, M, and J categories. To eliminate vulnerabilities related to the nonimmigrant visa program, Congress first introduced statutory language mandating the development of a program to collect data and improve tracking of foreign students in the Illegal Immigration Reform and Immigrant Responsibility Act of (IIRIRA) of 1996. In 2001, Congress expanded the foreign student tracking system when it enacted PATRIOT ACT, and in 2002, Congress strengthened the tracking system yet again through the Enhanced Border Security and Visa Entry Reform Act, noting concerns with national security and emphasizing the need to carefully track student status and information. Accordingly, these laws and regulations demonstrate a clear congressional directive that ICE closely monitor foreign students and the schools in which they enroll by vigorously enforcing statutory and regulatory requirements.

4. Congress provided broad statutory authority under 8 U.S.C. § 1372 for the Government “to develop and conduct a program to collect” information regarding nonimmigrant students and exchange visitors and to “establish an electronic means to monitor and verify” certain related information. This is the statutory authority underpinning SEVIS. Inherent in that authority is SEVP’s ability to update and maintain the information in SEVIS and, as such, to terminate SEVIS records, as needed, to carry out the purposes of the program.

5. The Counter Threat Lead Development Unit (CTLTD), a component of HSI’s National Security Division, is specifically responsible for analyzing information related to alien nonimmigrant visa holders, who are lawfully admitted to the United States but violate the terms of their admission, pose a threat to national security or public safety and/or are involved in criminal activity for field referral and further investigation. CTLTD receives over one million alien violator records each year, primarily from U.S. Customs and Border Protection (CBP) Arrival and Departure Information System (ADIS), as well as from the Student and Exchange Visitor Information System (SEVIS).

6. I am aware of the above-captioned lawsuit and the motion for temporary restraining order (TRO) filed by the Plaintiffs in this matter. I provide this declaration based on my personal knowledge, reasonable inquiry, and information obtained from various records, systems, databases, other Department of Homeland Security (DHS) employees, and information portals maintained and relied upon by DHS in the regular course of business.

7. CHINMAY DEORE is a citizen and national of India, who was last admitted to the United States on September 3, 2017, as an H-4 nonimmigrant visa holder. DEORE filed a Form I-539, Application to Extend/Change Nonimmigrant Status, which was approved on May 16, 2023, to transition his nonimmigrant visa to a F-1 visa. DEORE’s information was run against criminal

databases and was a verified match to a criminal history record for an arrest on April 12, 2020, for Assault Excluding Sexual by the Canton Township Department of Public Safety. Records further show that the disposition of this charge was unknown.

8. On April 3, 2025, CTLD received communications from the Department of State, requesting that the SEVIS record be terminated.

9. Based on DEORE's criminal history, on April 4, 2025, SEVP set DEORE's SEVIS record to "terminated."

10. DEORE is not detained by ICE and is not in administrative removal proceedings.

11. YOGESH JOSHI is a citizen and national of Nepal, who was last admitted to the United States on June 10, 2023, as an F-1 nonimmigrant visa holder for duration of status. JOSHI's information was run against criminal databases and was a verified match to a criminal history record for an arrest on November 11, 2022, for Assault Excluding Sexual by the Detroit Police Department. Records further show that the disposition of the charge was unknown. On April 7, 2025, CTLD received communications from the Department of State, indicating that JOSHI's nonimmigrant visa was revoked on April 5, 2025.

12. Based on JOSHI's criminal history, on April 8, 2025, SEVP set JOSHI's SEVIS record to "terminated."

13. JOSHI is not detained by ICE and is not in administrative removal proceedings.

14. XIANGYUN BU is a citizen and national of China, who was last admitted to the United States as an F-1 nonimmigrant visa holder. BU's information was run against criminal databases, which indicated BU was encountered by U.S. Customs and Border Protection (CBP) on December 23, 2022, at a Port of Entry, seeking admission into the United States. BU was found inadmissible under Section 212 of the Immigration and Nationality Act.

15. On April 4, 2025, CTLD received communications from the Department of State, requesting that the SEVIS record be terminated.

16. Based on BU's encounter with CBP, on April 4, 2025, SEVP set BU's SEVIS record to "terminated."

17. BU is not detained by ICE and is not in administrative removal proceedings.

18. QIUYI YANG, is a citizen and national of China, who was last admitted to the United States as an F-1 nonimmigrant visa holder. YANG's information was run against criminal databases and was a verified match to a criminal history record for an arrest on May 3, 2024, for Assault – 4th Degree, in violation of WA 9A.36.041(2), a gross misdemeanor with a domestic violence enhancement by the Seattle Police Department. Records show this case was dismissed on May 3, 2024.

19. On April 3, 2025, CTLD received communications from the Department of State indicating that YANG's nonimmigrant visa was revoked. Based on YANG's criminal history, on April 4, 2025, SEVP set YANG's SEVIS record to "terminated."

20. YANG is not detained by ICE and is not in administrative removal proceedings.

21. Prudential visa revocation, absent other factors, does not make an individual amendable to removal.

22. Terminating a record in SEVIS does not terminate an individual's nonimmigrant status in the United States. The statute and regulations do not provide SEVP the authority to terminate nonimmigrant status by terminating a SEVIS record, and SEVP has never claimed that it had terminated the nonimmigrant status of DEORE, JOSHI, BU, and YANG. Furthermore, the authority to issue or revoke visas for nonimmigrant students lies with the Department of State, not SEVP. Terminating a record within SEVIS does not effectuate a visa revocation.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 14th day of April 2025.

**ANDRE R
WATSON**

Digitally signed by ANDRE R
WATSON
Date: 2025.04.14 16:56:25
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Andre Watson, Assistant Director
National Security Division
Homeland Security Investigations
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security



March 4, 2025

Open Letter to U.S. College and University Presidents:

We write on behalf of the American Civil Liberties Union, the nation’s premier defender of civil rights and civil liberties, in response to recent executive orders and other communications from the White House attempting to pressure university officials to target students, faculty, and staff who are not U.S. citizens, including holders of non-immigrant visas and lawful permanent residents or others on a path to U.S. citizenship, for exercising their First Amendment rights. We write to share a legal framework for considering these executive orders and to offer solidarity and support to universities considering the impact of the orders, and we do so through this open letter in the spirit of our common commitment to public education on the First Amendment and academic freedom.

This letter is prompted by two Executive Orders—Executive Order 14161, titled “Protecting the United States from Foreign Terrorists and other National Security and Public Safety Threats,” signed on January 20, 2025,¹ and Executive Order 14188, titled “Additional Measures to Combat Anti-Semitism,” signed on January 29, 2025²—and related communications from the White House.

Executive Order 14161 states that it is the United States’ policy to “protect its citizens” from noncitizens who “espouse hateful ideology,” and to ensure that noncitizens “do not bear hostile attitudes toward [America’s] citizens, culture, government, institutions, or founding principles, and do not advocate for, aid, or support designated foreign terrorists and other threats to our national security.” The Order directs the Secretary of State to “[r]ecommend any actions necessary to protect the American people from” noncitizens who, among other things, “preach or call for . . . the overthrow or replacement of the culture on which our constitutional Republic stands.”

Executive Order 14188 requests from the Attorney General “an inventory and analysis of all court cases . . . involving institutions of higher education alleging civil-rights violations related to or arising from post-October 7, 2023 campus anti-Semitism” and directs the Secretaries of State, Education, and Homeland Security to recommend ways to “familiariz[e] institutions of higher education with the grounds for inadmissibility under 8 U.S.C. 1182(a)(3) so that such institutions may monitor for and report activities” by noncitizen students and staff and ensure that such reports

¹ Exec. Order No. 14161, 90 Fed. Reg. 8451, *Protecting the United States from Foreign Terrorists and Other National Security and Public Safety Threats*, <https://perma.cc/82VD-C7ND> (Jan. 20, 2025).

² Exec. Order No. 14188, 90 Fed. Reg. 8847, *Additional Measures to Combat Anti-Semitism*, <https://perma.cc/QF6W-2BMT> (Jan 29, 2025).

lead “to investigations and, if warranted, actions to remove such aliens.” In a fact sheet explaining Executive Order 14188, the White House described the Order as “forceful and unprecedented,” made clear its purpose of targeting “leftist, anti-American colleges and universities,” and described it as a “promise” to “quickly cancel the student visas of all Hamas sympathizers on college campuses, which have been infested with radicalism like never before.”³

Four Guiding Principles

In combination, these orders, the accompanying fact sheet, and other communications from the Trump Administration are intended to enlist university officials in censoring and punishing non-citizen scholars and students for their speech and scholarship. As you well know, this would intrude on academic freedom and equal access to education. In the spirit of sharing legal analysis and constructive solutions as you navigate these unprecedented orders and communications from the federal government, and to educate the public and media through this open letter, we set out four key principles:

1. Colleges and universities should encourage robust discussion and exploration of ideas by students, faculty, and staff, regardless of their nationality or immigration status.

Institutions of higher learning play a key role in our democratic society. As spaces committed to academic freedom and open discourse—and which are often home to a diverse group of people with a range of different backgrounds, bringing together scholars and students from throughout the United States and all over the world—college and university campuses have been central to political expression and the development of ideas throughout the history of the United States. American campuses also enable non-citizen students and faculty to more freely express themselves—including by expressing views that might be subject to heightened repression and censorship in their countries of origin—through political demonstrations,⁴ academic debate, or research and writing.⁵

Ideologically-motivated efforts to police speech on campus—including speech critical of America’s “citizens, culture, government, institutions, or founding principles,”⁶ or of the acts of the U.S. government or foreign governments—undermine the foundation on which academic

³ *Fact Sheet: President Donald J. Trump Takes Forceful and Unprecedented Steps to Combat Anti-Semitism*, The White House, <https://perma.cc/PX45-4WHM> (Jan. 30, 2025).

⁴ Lauren Rearick, *DACA Recipients Share Their Dream Act Stories Following a Student-Led Walkout*, Teen Vogue, Nov. 14, 2017, <https://perma.cc/5ZAE-LM4Y>.

⁵ Yana Gorokhovskaia & Grady Vaughan, *Addressing Transnational Repression on Campuses in the United States*, Freedom House (2024), <https://perma.cc/MJT3-Z5PR>; Emma Goldberg, *Hong Kong Protests Spread to U.S. Colleges and a Rift Grows*, N.Y. Times, Oct. 26, 2019, <https://perma.cc/6J6F-QYTP>.

⁶ Exec. Order No. 14161, 90 Fed. Reg. 8451.



communities are built, regardless of the nationality or immigration status of speakers who are censored. Though the precise implementation of the Executive Orders remains to be seen, Executive Order 14161 articulates the Administration’s desire to target individuals who “advocate for, aid, or support designated foreign terrorists and other threats to our national security,” those who hold “hateful” views, and those who “bear hostile attitudes toward [America’s] citizens, culture, government, institutions, or founding principles.” In the fact sheet on Executive Order 14188, the White House makes clear that it believes many institutions of higher education are “leftist” and “anti-American,” and are home to “ Hamas sympathizers” and “radical[s].” The message is clear, regardless of whether the force of law will ultimately follow: immigrant students, faculty, and staff on college and university campuses should think twice before they criticize the United States or this Administration, express support for Palestinians, or condemn Israeli government policies—or indeed anything else President Trump and other federal officials might possibly find objectionable—and colleges and universities that allow such speech, debate, and protest should think twice, too.

These executive orders are at odds with the foundations of academic freedom. For public universities and colleges, the orders could require campus officials to violate the First Amendment, which obligates government entities to respect free speech rights, including those of its students, faculty, and staff who are not U.S. citizens. Schools are also obligated under federal law to protect students from discrimination, harassment, threats, and violence. But protected political speech and association alone—no matter how offensive to members of the campus community—cannot be the basis for discipline, nor should it lead to immigration consequences. Private universities, though not bound directly by the First Amendment, are also guided by similar commitments to academic freedom and free inquiry. In addition, the First Amendment safeguards against government efforts to pressure private universities to stifle their community members’ disfavored speech. *Cf. Nat’l Rifle Ass’n of America v. Vullo*, 602 U.S. 175, 180 (2024) (holding that the government may not pressure third parties into censoring speech that it could not censor directly).

Viewpoint neutrality is essential in this endeavor. Particular viewpoints—whether reprehensible or popular in the eyes of the majority of the community, or whether singled out in the Executive Orders and related communications—must not be targeted for censorship, discipline, or disproportionate punishment. Harassment directed at individuals because of their race, ethnicity, or religion is, of course, impermissible. But protected political speech cannot be the basis for punishment. As suggested by its executive orders, the Trump Administration would like to censor and punish, among other things, expressions of “from the river to the sea,” or advocacy to “replace[] the culture on which our Constitutional Republic stands,” or a course on the history of white supremacy in America. Such censorship, even of speech that is offensive to many listeners, is anathema to the First Amendment and principles of academic freedom.

To the contrary, the ability to criticize governments, their policies, and even their foundational philosophies is a critical component of our democracy. Political speech is “at the core of what the First Amendment is designed to protect.” *Morse v. Frederick*, 551 U.S. 393, 403 (2007) (quoting *Virginia v. Black*, 538 U.S. 343, 365 (2003) (plurality opinion)). It enables the “unfettered interchange of ideas for the bringing about of political and social changes desired by the people.”

Roth v. United States, 354 U.S. 476, 484 (1957). Our country has a “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open[.]” *N.Y. Times v. Sullivan*, 376 U.S. 254, 270 (1964). And that commitment extends to college and university campuses, where the First Amendment safeguards free speech and free association. In *Healy v. James*, for example, the Supreme Court affirmed that the First Amendment protects the right of student groups to associate and speak out on matters of public concern, free from censorship by public university officials, even where the student groups may be aligned with political viewpoints considered radical and unpopular. 408 U.S. 169 (1972).

Outside the classroom, including on social media, students and professors must be free to peaceably express even the most controversial political opinions without fear of discipline or censure. Inside the classroom, speech can be and always has been subject to more restrictive rules to ensure civil dialogue and a robust learning environment. But such rules have no place in a public forum like a campus green—and in any event, it is not the proper role of the White House to set those rules. Preserving physical safety on campuses is paramount; but “safety” from ideas or views that one finds offensive is anathema to the very enterprise of the university.

2. Nothing obligates universities to act as deputies in immigration law enforcement—to the contrary, universities do not and should not veer so far from their core mission for good reasons.

The Trump Administration has also indicated that it will seek to deport students who are not U.S. citizens if they engage in disfavored speech, and may seek to secure the participation of university officials and staff through coercive means such as threatening withdrawal of federal funding. The federal government cannot force state or local institutions, including universities and colleges, to participate in certain types of immigration enforcement. Federal courts have consistently upheld the right of state and local authorities to limit their collaboration with federal immigration enforcement. *See United States v. California*, 921 F.3d 865 (9th Cir. 2019) (holding anticommandeering doctrine prohibits the federal government from requiring states to participate in certain immigration enforcement actions); *City of El Cenizo v. Texas*, 890 F.3d 164, 178 (5th Cir. 2018) (citing *Printz v. United States*, 521 U.S. 898 (1997)) (“Tenth Amendment prevents Congress from compelling . . . municipalities to cooperate in immigration enforcement”). The federal government additionally cannot coerce state and local authorities into enforcing federal immigration laws by improperly withholding funding. *See City of Chicago v. Sessions*, 888 F.3d 272, 277 (7th Cir. 2018) (holding that the government cannot use the “sword of federal funding to conscript state and local authorities to aid in federal civil immigration enforcement”); *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012) (holding federal funding conditions of regulatory policies cannot be unduly coercive). Public universities and colleges are thus not obligated to act as deputies in immigration enforcement.

Indeed, if university officials acquiesced to such demands to participate in immigration enforcement, there would be harmful consequences for the primary mission of the university. Students and faculty from other countries are crucial members of university communities. They contribute to the advancement of higher education, offering diverse experiences and global

understanding, driving innovation and research, enabling economic and social growth for their institutions and communities, and adding to the richness of university life. Immigrant populations, including visa holders, lawful permanent residents, and undocumented immigrants, account for a significant proportion of U.S. colleges and universities. The U.S. hosted more than 1.1 million international students in 2024, comprising more than 5 percent of all students in higher education and about 27 percent of students at the graduate level.⁷ In recent years, immigrant-origin students, including first-generation immigrants born abroad and U.S.-citizen students with one or more immigrant parents, have broadly accounted for 32 percent of the student population in higher education, with more than 80 percent being people of color.⁸

If universities were to participate in viewpoint-based immigration enforcement against students and faculty and the curtailment of their constitutional rights, it could lead to dire consequences for them personally. It could also damage institutions of higher learning by sowing distrust, reducing the major contributions immigrants provide to universities,⁹ and undermining recruitment efforts. Engaging in such enforcement will represent a breakdown of the principles upon which our higher education systems are built.

3. Schools must protect the privacy of all students, including immigrant and international students.

University officials are responsible for ensuring the integrity and the confidentiality of student records. The Family Educational Rights and Privacy Act (FERPA) requires universities to protect the confidentiality of personally identifiable student information, including of all noncitizen students (whether on immigrant or non-immigrant visas or otherwise), against unwarranted disclosure to the government or private parties.¹⁰

When federally funded colleges and universities collect information from students, FERPA requires the school to define what it designates as “directory information”—meaning it can be subject to release without a student’s prior written consent¹¹—and inform students of their right to object to such designation.¹² Only information that “would not generally be considered harmful or

⁷ Open Doors, U.S. Dept. of State, *Report on International Educational Exchange* (2024), <https://perma.cc/8AW6-KA38>; Higher Ed Immigration Portal, *Immigrant and International Students in Higher Education* (2024), <https://perma.cc/8QF7-S85H>.

⁸ *Id.*

⁹ Higher Ed Immigration Portal; *Economic Contributions of International Students in the State*, available at <https://perma.cc/LG24-66E5>.

¹⁰ 20 U.S.C. § 1232g(b)(1)(A); 34 C.F.R. pt. 99.

¹¹ 34 C.F.R. § 99.1; 34 CFR § 99.31(a)(11).

¹² *See* 20 U.S.C. § 1232g(e).

an invasion of privacy if disclosed” may be deemed “directory information.”¹³ Releasing such information to outside sources, including to government officials and agencies in connection with immigration enforcement, will violate FERPA if public notice and other conditions are not met.¹⁴ Similarly, information that would “generally be considered harmful” if disclosed such as a student’s sex, ethnicity, or race may not be released as “directory information.”¹⁵

That includes disclosures to law enforcement. Unless a law enforcement officer has a valid court order or a lawfully issued subpoena, universities cannot release personally identifiable information without the student’s permission, absent another exception to FERPA.¹⁶ Mere requests do not qualify. Likewise, administrative warrants, which are commonly used by U.S. Immigration and Customs Enforcement (ICE), are not enforceable on their own, absent a separate judicial order or legal proceeding to enforce the subpoena.¹⁷ Any subpoena presented by immigration agents should be reviewed carefully by legal counsel before any information is produced. Further, a reasonable effort must generally be made to alert students to the subpoena before information is produced.¹⁸

4. Schools must abide by the Fourteenth Amendment and Title VI of the Civil Rights Act.

Public universities are bound by the Fourteenth Amendment’s guarantee of equal protection,¹⁹ and both public and private universities are bound by Title VI of the Civil Rights Act, which prohibits discrimination by recipients of federal financial assistance on the basis of “race, color, or national origin.”²⁰ Title VI specifically prohibits schools from “utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.”²¹ In this context, those obligations are particularly relevant in two ways.

¹³ 34 C.F.R. § 99.3 (definition of “directory information”).

¹⁴ 34 C.F.R. § 99.37; *see also*, 20 U.S.C. § 1232g(a)(5)(b).

¹⁵ Kala Shah Surprenant, Acting Director, *Student Privacy Policy Office, 2020 Census and FERPA 3* (2020).

¹⁶ 34 C.F.R. 99.31(a)(9)(i).

¹⁷ *See* National Immigration Law Center, *Warrants and Subpoenas: What to Look Out For and How to Respond*, 4-6 (2025), <https://perma.cc/9JB4-UEJZ>.

¹⁸ 34 C.F.R. 99.31(a)(9)(ii).

¹⁹ *See* U.S. Const. amend. XIV, § 1.

²⁰ 42 U.S.C. § 2000d.

²¹ 28 C.F.R. § 42.104(b)(2); 34 C.F.R. § 100.3(b)(2).



First, if universities were to fulfill immigration law enforcement requests that single out immigrant students or faculty for punishment for their exercise of free speech, they would run the risk of creating an environment that discriminates against students and faculty based on national origin or that substantially impairs their ability to participate equally in university programming—both of which are illegal under Title VI.

Second, these obligations also mean that universities can, and indeed must, protect students from discriminatory harassment, including on the basis of “shared ancestry or ethnic characteristics,” or “citizenship or residency in a country with a dominant religion or distinct religious identity.”²² While offensive and even racist or xenophobic speech is constitutionally protected, shouting an epithet at a particular student or pinning an offensive sign to their dorm room door can constitute impermissible harassment. Antisemitic, anti-Palestinian, or anti-immigrant speech targeted at individuals because of their ethnicity or national origin constitutes invidious discrimination, and cannot be tolerated. Physically intimidating students by blocking their movements or pursuing them aggressively is unprotected conduct, not protected speech. It should go without saying that violence is never an acceptable protest tactic.

Speech that is not targeted at an individual or individuals because of their ethnicity or national origin but merely expresses impassioned views about Israel, Palestine, immigration policy, or any other subject the White House may find objectionable is not discrimination and should be protected. The only exception for such untargeted speech is where it is so severe or pervasive that it denies students equal access to an education — an extremely demanding standard that is rarely, if ever, met by pure speech. Federal government officials cannot coerce university officials into taking actions inconsistent with this settled First Amendment law.

* * *

We stand ready to assist American universities and colleges in holding fast to our country’s best traditions, defending your institution’s core mission of fostering debate and diversity, and rejecting baseless calls to investigate or punish international and immigrant communities for exercising their fundamental rights.

Sincerely,

Anthony D. Romero
Executive Director

Cecillia D. Wang
National Legal Director

²² U.S. Dep’t. of Educ., *Discrimination Based on Shared Ancestry or Ethnic Characteristics* (Jan. 10, 2025), <https://perma.cc/VLQ2-2LUL>.