

Major Assault on Free Speech in the USA | With FIRE's Sarah McLaughlin

We haven't seen a crackdown on free speech in America like this since the Red Scare. The Government admits Mahmoud Khalil has not committed any crimes. He has not even been accused of any either, yet the Trump administration has ordered him deported without charges or trial, all because of his constitutionally protected speech critical of Israel. At the same time, the government has paused federal funding to all Universities which refuse to sufficiently censor and punish criticism of Israel on their campus. At Columbia, they have ordered the Middle East studies department to be placed in a government receivership: state control of the curriculum. To discuss this unprecedented crackdown on free speech in America, independent journalist Harrison Berger is joined by the FIRE's Sarah McLaughlin

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In February, J.D. Vance traveled to Europe, where he challenged the EU for their aggressive and expansive censorship regime. Yet just a few weeks later, it seems like the United States is embracing a censorship regime of its own. FIRE is an organization that has consistently defended the free speech rights of Americans, regardless of their political affiliation. If it's constitutionally protected speech, regardless of the ideology of the person saying it, they'll defend it. Here to discuss the latest threats to free speech from the Trump administration is FIRE's Sarah McLaughlin.

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Thanks for having me.

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So let's begin with the detention and impending deportation of Columbia student and legal permanent resident of the United States, Mahmoud Khalil. The government admits that Mahmoud Khalil has not committed any crimes. He hasn't even been accused of any either. Instead, the Trump administration claims that he's a threat to the foreign policy and national security interests of the United States, and that alone justifies his arbitrary detention and deportation.

Trump tweeted that his administration would not tolerate, quote, anti-American, pro-terrorist, or anti-Semitic activity on campus and that Khalil's arrest would be the first of many to come against anyone who, quote, sympathizes with any group the administration puts on a terror list. Your organization, FIRE, immediately sent a letter to the Trump administration demanding that they provide a legal basis for Mahmoud Khalil's detention and deportation and asked whether or not

Mahmoud Khalil will be granted any due process rights. Did your group receive any response or clarity from the Trump administration?

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No, to my knowledge, we have not received a response. But I think part of the troubling and difficult aspect of this case, among the many difficult and troubling aspects, is the various justifications that the administration has put forth. And they're the ones you named. You know, President Trump suggested that any immigrant who engages in anti-American speech may be liable for punishment. And that's very concerning. I mean, there isn't really a limiting principle on what is anti-American. I couldn't tell you where that starts and when it ends.

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There was a similar case like this one that was ultimately argued before the Supreme Court in 1945, and it involved an attempt by the federal government to deport a legal resident like Mahmoud Khalil over his sympathy for and affiliation with the Communist Party and communism. The court ruled in *Bridges v. Wixon* and has affirmed really ever since that, quote, once an alien lawfully enters and resides in this country, he becomes invested with rights guaranteed by the Constitution to all people within our borders. These rights include those protected by the First and Fifth Amendments and by the Due Process Clause of the 14th Amendment, which seem to come into play with this case. Now, government defenders dispute that. They assert that the administration can arbitrarily deport and punish immigrants, permanent legal residents, without due process, not for any crimes they commit, but for their political opinions and speech. Is there any basis for their argument?

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Well, the case law has been somewhat murky, but we believe that the arguments put forth in *Bridges v. Wixon* are the right ones, that the First Amendment is for people who are legally here in the United States. And we believe it does protect Khalil, and it should protect Khalil. We hope the courts make that clear in this case, because what we don't want is immigrants who are here in the United States feeling that they're not able to freely participate in the exchange of ideas that makes America such a wonderful place.

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Well, I want to drill down on that and ask how the government is defining Mahmoud Khalil's politics and what danger that might represent to anyone with similar or even more radical views than him. Now, the government accuses Khalil of pro-Hamas activity. It promises to go after other students engaged in similar behavior. Now, even if Mahmoud was a fan of Hamas, that opinion would be

protected speech under the First Amendment. But Sarah, what pro-Hamas activity has Mahmoud Khalil even engaged in? I looked hard, and Mahmoud's critics have looked even harder than I have to find any evidence of Mahmoud Khalil's support for Hamas.

And there is none. By all accounts, Khalil is a pretty conservative voice among the Columbia protesters, and he was even trusted by the Columbia administration to be a mediator for negotiations because the administration recognized him as a good faith actor with integrity. If the government is defining Khalil's actions on campus, which amount to merely participating in protests against U.S. support for Israel, as pro-Hamas, and the government vows to go after other pro-Hamas individuals, what danger does that represent, not just for people who hold Khalil's views about U.S. support for Israel, but even more radical views than his?

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Well, you know, I can't account for everything Khalil has said. I'm not familiar with all of his political positions. But the issue here is that if the government believes that Khalil has committed a crime, it's on them to make that argument. Engaging in protected speech that the government doesn't like, to my knowledge, is still not a crime in this country. So that's the issue there. And the question of his support for Hamas or if he's aligned with Hamas, engaging in speech is a separate thing from providing material and financial support to a terrorist group recognized by the United States government. So I think there's been some murkiness created by this issue where they're suggesting that he is aligned with Hamas. But speech alone, rhetoric, propaganda, those are things that are protected by the First Amendment, even if a lot of people, including people in the federal government, don't like that speech.

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What effects are you concerned that Mahmoud's detention for his political speech, critical of Israel, might have on campus discourse generally around these important foreign policy questions?

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Well, you know, to start with, we have hundreds of thousands of international students in the United States. There are millions of immigrants in this country. And what's at risk here is that we're essentially creating two classes of people on campus: people who are citizens and who feel free to speak, and students who are legal residents but not citizens of the United States, who have very good reason to fear that if they say something that the federal government considers perhaps anti-American, they might be on the next plane out of the United States. And of course, that's going to chill speech. Hundreds of thousands of people may suddenly now be thinking, am I free to say what I think? And that is not something that we want people who are here in the United States to be experiencing. Those are things that I hear from international students from authoritarian countries about their own nations. I don't want to hear that said about the United States.

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I meant to ask you about that because you have a new piece in The Guardian. It's called "Deporting Speakers Over Supposed Propaganda is a Stock Authoritarian Move." And you say, here in the United States, I advocate for the rights of international students originating from authoritarian regimes who study on our nation's campuses and carry fear that research or political activity challenging their government will create consequences at home. Now, immigrants legally in the United States, either with a green card or a student visa, may be forced to make some of the same calculations as those who live or work in authoritarian states abroad, but about our own government. How does the current crackdown on pro-Palestinian campus speech mirror the crackdown on dissent in authoritarian countries, something that you've looked very closely at?

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I've worked with many international students, especially from China, who have very good reason to fear that because they join a protest about the Chinese government on a college campus, there might be consequences either for them or their families. Some of them have even had their parents brought in for questioning to say, what are your children doing? Why is your son holding that sign? Why did your kid post that tweet? And so to hear those same concerns from these students is, you know, now I'm concerned that the U.S. government is going to be watching what I say, is going to be trying to target me. It's very concerning. And it's, you know, the opposite of what we want students to get from coming to the United States. International students that come here, we want them to be able to fully participate in the freedom of speech that we think makes American higher ed and America as a whole so special. And I don't want this to limit that ability for these students.

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I want to ask you one more question about what's been going on at Columbia because this detention is part of a larger crackdown on anti-Semitism. In order to tackle anti-Semitism, the federal government has taken a number of measures recently, including an attempt to seemingly condition federal funding for universities based on their willingness to censor and punish certain viewpoints about Israel on campus. In a letter sent to Columbia, the Trump administration demanded that the university adopt a formal definition of anti-Semitism, strongly suggesting that they embrace the IHRA definition, a controversial definition of anti-Semitism as a basis for anti-discrimination enforcement on campus. They told the university that they must place the Middle Eastern Studies Department under a receivership, government control of the curriculum. What constitutional basis does the federal government have to do that, to impose its own curriculum and dictate the limits of acceptable debate on Columbia's campuses?

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So we're very concerned about both that letter and the process that's been undertaken with it. This is not really the way that the federal government is supposed to go about contacting and working with universities over the revocation of federal grants. As you mentioned, there are some really concerning things in that letter that went out to Columbia last week. I don't know what exactly it will look like to see an academic department put into receivership, but I have very good reason to believe there are academic freedom concerns there. The IHRA definition, as you mentioned, includes examples that, in many circumstances, would just be political speech about Israel that's protected under the First Amendment. Whether it's popular speech, whether it's fair, whether it's well-liked is a separate question from whether it's protected. That's what the First Amendment is for. It's not to protect speech that everybody likes.

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Right. And I wanted to ask you about an increasingly common obstacle that free speech advocates encounter in these political debates. I want to use this issue of anti-discrimination enforcement, this Title VI provision that we were recently talking about, as a window into these debates. I've heard of this provision many times in the past, the one that the Trump administration now wants to use to crack down on anti-Semitism on campus, Title VI. But usually, when I hear about it, it's because it's deployed against conservative students on campus who speak too harshly about trans issues or race issues.

And it's usually conservatives who complain that Title VI is being wielded in a sweeping way to silence heterodox ideas on campus, with liberals demanding Title VI be deployed for even more censorship. But now that the targets of anti-discrimination enforcement are the political left, pro-Palestine protesters, many on the right are cheering the same censorship framework they spent years denouncing. I'm not sure if you've noticed this as well. While the left denounces the censorship today, their credibility on the topic remains weak to many Americans who watched as the political left created the pretext for much of the campus censorship that is being used.

At first, it targeted conservatives, but now it's being deployed against them. Your organization, for the record, has warned about abusing the Title VI framework to punish undesirable but constitutionally protected speech for many years. FIRE has been consistent on this issue and therefore has more credibility than almost any other group to denounce it. What are the dangers presented to free speech on campus with a sweeping approach to Title VI anti-discrimination enforcement on campus? And just as I was talking about earlier, how do the political alliances defending free speech really seem to change depending on the speech in question? Why does that happen?

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So what's happening with Columbia and the Title VI issue? You know, there have been a number of very concerning things that happened at Columbia over the past couple of years, and there very well

may have been a failure on Columbia's part to appropriately respond to harassment, threats, and discrimination. But the way that this is being conducted now, there's a very good chance that many of the universities that are watching what's happening to Columbia and who are also facing potential Title VI investigations may think we have to act not just against unprotected conduct or threats, but we also have to censor speech that is protected but might make people upset. And so that's the great risk here.

Not just these investigations themselves, which are concerning in some ways, but also how they might push universities who are already inclined to sometimes over-censor and over-punish speech, it might encourage them to do so even more now related to speech about Israel and Gaza because they don't want to be the next Columbia. They don't want to be the next one with a target. And, you know, with what you said about sometimes the shoe being on the other foot, that's why FIRE thinks it's so important to be nonpartisan because we know that the alliances and the support for free speech will always shift, and there's always going to be threats emerging from new and old places. And that's why it's important to have a principled, nonpartisan position on it, so you always have those rights by your side, no matter who's in charge and no matter who is the target.

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Well, it's really great to have an organization like FIRE around, which reliably defends the free speech rights of Americans and, in this case, legal residents on American soil equally, no matter what their ideology is. And we're all the better for it. So thank you so much for everything that your organization does and for being here today to talk with me.

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Thank you.