



August 16, 2024

VIA EMAIL

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United States Department of Homeland Security
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Office of Inspector General
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Investigation Request: Non-enforcement of 8 U.S.C. §§ 1182, 1227, and 1372

Dear Dr. Cuffari and Mr. Richardson:

America First Legal Foundation (AFL) is a national, nonprofit legal foundation with unique institutional expertise and interest in the lawful and effective administration and enforcement of our immigration laws. You are responsible for providing independent oversight of your respective agencies' administration and enforcement of our immigration laws to promote efficiency and prevent abuse.¹ Accordingly, we write to request that you investigate the circumstances of, and legal authority for, the failure of the Departments of Homeland Security and State to properly administer and enforce 8 U.S.C. §§ 1182(a)(3)(B), 1227(a)(4)(B), and 1372 with respect to pro-Hamas aliens in the United States.

I. Background

An alien who represents a terrorist organization or a political, social, or other group that endorses or espouses terrorist activity, and/or who endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization, is ineligible for admission to, and should be removed from, the United States. 8 U.S.C. §§ 1182(a)(3)(B), 1227(a)(4)(B). The Department of State has

¹ 5a U.S.C. § 4(a)(4).

broad authority to revoke visas of aliens who violate §§ 1182(a)(3)(B) and 1227(a)(4)(B). It purports to exercise this authority whenever “information or evidence indicat[es] a visa holder may be ineligible for a U.S. visa.”²

The Department of Homeland Security, through the Student and Exchange Visitor Program (SEVP), is responsible for ensuring that educational institutions properly monitor and report on the activities of foreign students in accordance with 8 U.S.C § 1372(c).³ If an institution fails to ensure compliance, then it loses lawful authorization to enroll and collect tuition from aliens, and the visas of every alien attending such a school “shall be revoked or denied.” 8 U.S.C. § 1372(d)(2). SEVP is required to “initiate an out-of-cycle review and serve the school with a [notice of intent to withdraw]” its authorization to enroll alien students if it “has information that a school or school system may no longer be entitled to SEVP certification.” 8 C.F.R. § 214.4(b); *see also* 8 C.F.R. § 214.3(h)(3)(iii).

An alien student who participates in pro-Hamas demonstrations necessarily endorses or espouses terrorism, unquestionably violating sections 1182(a)(3) and 1227(a)(4). An alien student who serves as a representative for *inter alia*, the Muslim Brotherhood, the Palestinian Youth Movement, Within Our Lifetime, the US Palestinian Community Network, Students for Justice in Palestine, the Council on American-Islamic Relations, Samidoun, or Jewish Voices for Peace, necessarily does so to persuade others to endorse or espouse terrorist activity or to support terrorist organizations such as Hamas. Such a person, therefore, necessarily violates the terms of his or her visa and should be reported in SEVIS by the school for action by SEVP, including removal from the United States.⁴ Any institution of higher education that protects such aliens by facilitating their activities, failing to report them in SEVIS, or otherwise providing them with shelter or support is no longer entitled to SEVP certification. *All* aliens attending such an institution surrender the privilege of studying in our country and should be removed from the United States.⁵

² @marcorubio, X (Nov. 15, 2023, 7:13 PM), <https://bit.ly/3WeOwLc> (citing Letter from Naz Durakoğlu, Assistant Sec’y, Bureau of Legis. Affs., to Sen. Marco Rubio (Nov. 15, 2023), <https://bit.ly/4cf1v5x>).

³ *See generally Student and Exchange Visitor Program*, U.S. IMMIGR. AND CUSTOMS ENF’T (last visited Aug. 7, 2024), <https://bit.ly/4fBqp28>.

⁴ Letter from Sen. Tom Cotton, to the Hon. Alejandro Mayorkas, Sec’y, U.S. Dep’t Homeland Sec. (Oct. 16, 2023) (available at <https://bit.ly/3LEzCed>).

⁵ Letter from Sen. Marco Rubio et al., to the Hon. Alejandro Mayorkas, Sec’y, U.S. Dep’t Homeland Sec. (Oct. 19, 2023) (available at <https://bit.ly/3yhr5cf>) (“8 U.S.C. § 1182(a)(3) mandates that, in addition to those who engage in terrorist activity or material support thereof, anyone who ‘endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization’ is inadmissible into the United States and ineligible for a visa.”).

II. There appears to be a nonenforcement policy in place to benefit pro-Hamas aliens and the institutions of higher education that protect them

There is strong reason for concern that the Biden-Harris Administration has implemented a nonenforcement policy for sections 1182, 1227, and 1372 to benefit pro-Hamas aliens and the institutions of higher education that shelter them.

First, since October 8, 2023, pro-Hamas aliens, including alien students, have been openly violating sections 1182(a)(3)(B) and 1227(a)(4)(B) by attacking American citizens in support of terrorists⁶ in violation of numerous federal criminal and civil laws.⁷ Nonpublic information in the possession of the Department of Justice establishes that aliens are playing a significant role in pro-Hamas advocacy, violence, and vandalism in, *inter alia*, New York City; Chicago; Teaneck, New Jersey; Los Angeles; and Washington, DC. Aliens have also played a key role in illegal pro-Hamas activities on the campuses of the Massachusetts Institute of Technology (MIT), Harvard University, Northwestern University, Columbia University, and the

⁶ See, e.g., @RichieMcGinniss, X (July 24, 2024, 3:38 PM), <https://bit.ly/3LC2wKd> (“A man saves a smoldering American flag from the center of the protest and is nearly tackled amidst shouts ‘get him!’”); @libsoftiktok, X (July 24, 2024, 3:42 PM), <https://bit.ly/3Sk3jDh> (“Pro-Palestine protesters are burning the American Flag in our Nation’s Capitol.”); @MrAndyNgo, X (July 24, 2024, 3:22 PM), <https://bit.ly/3WEffSX> (“While using BLM’s ‘No justice, no peace’ chant, leftist protesters march with the Hamas terror group flag at the ‘Day of Rage’ direct action in D.C.”); @EYakoby, X (July 24, 2024, 11:27 AM), <https://bit.ly/3WnKMa6> (“Breaking: pro-Palestinian supporters chant ‘Allahu Akbar! Hamas!’ And ‘Death to the Jews’ in Washington DC. The US must take these domestic terrorists seriously.”); Noah Pollak, *The Pogrom on Pico Boulevard*, FREE PRESS (June 25, 2024), <https://bit.ly/4cy0aXW>; N.J. Burkett, *NYC Mayor Adams Slams Pro-Palestinian Demo Outside Nova Massacre Exhibit*, ABC NEWS (June 11, 2024), <https://bit.ly/45I1xkO>; Michael Lee, *GOP Senator Calls for Jan 6 Style Investigation Into DC Anti-Israel Demonstration*, FOX NEWS (June 9, 2024), <https://fxn.ws/3WD9CnR>; *Watch: Cooper Union Jewish Students Attacked by Pro-Palestinian Student Group*, JERUSALEM POST (Oct. 26, 2023), <https://bit.ly/46knRRU>; Patrick Reilly, *Jewish Students at MIT Blocked from Attending Classes by ‘Hostile’ Anti-Israel Protesters*, N.Y. POST (Nov. 10, 2023), <https://bit.ly/3RPVQfr>; *Demonstrators Brawl Outside LA’s Museum of Tolerance After Screening of Hamas Attack Video*, ASSOCIATED PRESS (Nov. 9, 2023), <https://bit.ly/47TUtlN>; Jonathon Lloyd, *75 Arrested in Protest on 110 Freeway That Stopped Traffic in Downtown LA*, NBC L.A. (Dec. 13, 2023), <https://bit.ly/477JvHA>; Josh DuBose, *Man Charged with Vandalism, Hate Crimes for Antisemitic Graffiti*, KTLA (Dec. 12, 2023), <https://bit.ly/4anthH6t>; Ben Tsujimoto, *Hate Crime by Muslim Student Against Jewish Teacher Tests Buffalo Schools’ New Code of Conduct*, BUFFALO NEWS (Dec. 17, 2023), <https://bit.ly/3v1mYyR>; Martha McHardy, *Man Arrested for Spraying Substance on Two People and Yelling ‘Gas the Jews’ Outside Synagogue*, INDEPENDENT (Dec. 18, 2023), <https://bit.ly/3Tv8KAL>; Joe Hutchinson, *Shocking Moment Jewish Teacher is Forced to Hide in Her Classroom at a Queens High School as ‘Radicalized’ Students Rampage Through Hallways While Demanding She Be Fired for Attending Pro-Israel Rally*, DAILY MAIL (Nov. 25, 2023), <https://bit.ly/4auf6pS>; Adam Kredo, *White House Protesters Vandalized Property and Clashed with Law Enforcement, But Police Say No Arrests Were Made*, FREE BEACON (June 9, 2024), <https://bit.ly/3WsuLjA>.

⁷ See generally 18 U.S.C. §§ 241, 248(a)(2) and (3), 1361, 1956, and 2339A, 42 U.S.C. § 1985(3); see also Complaint at ¶¶ 6–22, 57–65, 67, 70–82, 88–113, 127–37, 163–78, 275–313, *Frankel v. Regents of the Univ. of Cal.* (C.D. Cal, June 5, 2024) (No. 2:24-cv-4702); Complaint at ¶¶ 27–39, 42–63, 68–76, 80–100, 105–11, 115, 117–19, *Parizer v. AJP Educ. Found. Inc.* (E.D. Va, May 1, 2024) (No. 1:24-cv-724).

University of California system, among other places.⁸ However, not a single pro-Hamas alien has been deported.

Second, the evidence is that federally funded institutions of higher education are openly subverting their legal duty to report alien violators to the federal government by, *inter alia*, taking steps to grant “amnesty” to pro-Hamas aliens to protect them from the legal consequences of their terrorist advocacy.⁹ For example, on November 9, 2023, pro-Hamas groups, including many aliens, held a violent protest in violation of federal criminal and civil statutes.¹⁰ Jewish Americans and other students specifically were warned not to enter MIT’s front entrance due to a risk to their physical safety.¹¹ Sally Kornbluth, MIT’s president, subsequently stated that, to avoid “collateral consequences for the students, such as *visa issues*,” the aliens would “remain enrolled at MIT and will be able to attend academic classes and labs.”¹² MIT’s

⁸ The Massachusetts Institute of Technology (MIT) is a paradigm of the problem. A group on campus at MIT known as the MIT Coalition Against Apartheid issued a statement on October 8, 2023, stating in relevant part:

Palestine@MIT and the MIT Coalition Against Apartheid hold the Israeli regime responsible for all unfolding violence . . . We are committed to supporting decolonization efforts in Palestine, and we recognize our role to oppose Zionism from within the imperial core. For more information about Palestinian resistance against Israeli occupation, check out some resources here.

Until liberation,

MIT Coalition Against Apartheid
Palestine@MIT
Brandeis Students for Justice in Palestine
Wellesley Students for Justice in Palestine
Boston University Students for Justice in Palestine
MIT Black Graduate Student Association
MIT Reading for Revolution
MIT National Organization of Minority Architects Students
All Souls Movement

MIT Coalition Against Apartheid et al., *Joint Statement on the Current Situation in Palestine*, CAMPUS REFORM (Oct. 8, 2023) (emphasis added), <https://bit.ly/3WjB3BO>; see also Adam Sabes, *Pro-Hamas Statement Quietly Scrubbed from MIT Website as School Faces Congressional Investigation*, CAMPUS REFORM (Mar. 13, 2024), <https://bit.ly/4fk3Uyr>.

⁹ 20 U.S.C. § 1094(a)(17) (mandating compliance with federal information collections and could cause such institutions to lose Higher Education Act Title IV eligibility); see, e.g., Dep’t of Educ. Off. of Gen. Counsel, Notification of Interpretation on the Department’s Enforcement Authority for Failure to Adequately Report Under Section 117 of the Higher Education Act of 1965, as Amended, 85 Fed. Reg. 72567 (Nov. 20, 2020).

¹⁰ Andrew Lapin, *MIT Partially Suspends Students Who Occupied Building for Pro-Palestinian ‘Die-In,’* JERUSALEM POST (Nov. 14, 2023), <https://bit.ly/3WBgoL0>.

¹¹ @RetsefL, X (Nov. 10, 2023, 12:42 AM), <https://bit.ly/4dk14HY>.

¹² Sally Kornbluth, *Today’s Protest and Counterprotest*, MIT OFF. PRESIDENT (Nov. 9, 2023) (emphasis added), <https://bit.ly/4cUfLSh>.

intentional circumvention of the law has triggered SEVP's duty to investigate the university and to serve it with a notice of intent to withdraw certification. Yet no such action has been taken.

III. Requested action

To ensure the efficient administration of our immigration laws, AFL hereby requests that you exercise your statutory oversight authority and open an investigation to determine (A) whether Biden-Harris Administration political officials have mandated nonenforcement policy of sections 1182 and 1227 in place with respect to pro-Hamas aliens; and (B) whether these same political officials have mandated nonenforcement policy of section 1372 in place with respect to institutions of higher education such as MIT and Harvard that are protecting pro-Hamas aliens who commit crimes and visa violations by avoiding compliance with their statutory reporting obligations.

Thank you in advance for your cooperation.

Respectfully Submitted,

/s/ Reed D. Rubinstein

Reed D. Rubinstein

Senior Vice President

America First Legal Foundation