

Anti-Racism as a National Security Imperative: The Safeguarding of Core Democratic Values

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I. INTRODUCTION

In early 2024, campus protests erupted nationwide over the Israel-Hamas war.¹ The protests pitted supporters of Palestinians in Gaza against those that supported the Israeli invasion of Gaza after Hamas, a U.S.-designated foreign terrorist organization, conducted a violent attack on Israeli citizens on October 7, 2023.² While campaigning for the presidency in 2024, Donald Trump promised to deport “violent radicals” enrolled in U.S. colleges, explaining: “If you come here from another

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1. See Nadine El-Bawab, *How Pro-Palestinian Protests Unfolded on College Campuses Across the U.S.: A Timeline*, ABC NEWS (May 4, 2024), <https://perma.cc/9B8Y-ZMRX>.

2. See *id.*; see also Sam Cabral & Ana Faguy, *What Do Pro-Palestinian Protesters at U.S. Universities Want?*, BBC NEWS (May 3, 2024), <https://perma.cc/2J5E-26NU>.

country and try to bring jihadism or anti-Americanism or antisemitism to our campuses, we will immediately deport you.”³ On the day of his inauguration to start his second term, President Trump issued an executive order titled, “Protecting the United States from Foreign Terrorists and Other National Security and Public Safety Threats,” which directs the Secretary of State to promptly “vet and screen” all noncitizens “to the maximum degree possible.”⁴ Soon after, President Trump signed another executive order, titled “Additional Measures to Combat Anti-Semitism,” which states that it is the policy of the United States “to prosecute, remove, or otherwise hold to account the perpetrators of unlawful anti-Semitic harassment and violence.”⁵ Federal agencies, pursuant to the executive orders, began a nationwide campaign of vetting and revoking student visas, and arresting and deporting noncitizen students whose presence the Secretary of State has determined would have “adverse foreign policy consequences.”⁶

As of August 2025, over 6,000 student visas have been revoked, the majority of which—according to the U.S. State Department—were for visa overstays, violations of law and without elaborating, “support for terrorism.”⁷ Moreover, across the United States, many noncitizen university students (including lawful permanent residents) who expressed pro-Palestinian views or participated in pro-Palestinian protests have been targeted for deportation.⁸ For instance, noncitizen students have been arrested and detained for writing an opinion essay in

3. Simone Weichselbaum, *Trump’s Plan to Quell Protests: ‘Deport Pro-Hamas Radicals’*, NBC NEWS (Aug. 13, 2024, at 12:19 ET), <https://perma.cc/6VAE-8HZR>.

4. Exec. Order No. 14161, 90 Fed. Reg. 8451 (Jan. 30, 2025). The Order states that it is the policy of the U.S. “to protect its citizens from aliens who intend to commit terrorist acts, threaten our national security, espouse hateful ideology” and ensure that admitted aliens and aliens present in the U.S. “do not bear hostile attitudes towards its 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.” *Id.*

5. Exec. Order No. 14188, 90 Fed. Reg. 8847 (Feb. 3, 2025). The President claimed that the “[Hamas terrorist] attacks unleashed an unprecedented wave of vile anti-Semitic discrimination, vandalism, and violence against our citizens, especially in our schools and on our campuses[.]” *Id.* The Order also directs federal agencies to submit a report to the President that identifies “all civil and criminal authorities . . . that might be used to curb or combat anti-Semitism,” including a report on all administrative complaints “involving institutions of higher education” related to civil rights violations stemming from “post-October 7, 2023, campus anti-Semitism.” *Id.*

6. See 8 U.S.C. § 1227(a)(4)(C); Charlie Savage, *Congress Wrote a Deportation Law to Be Used ‘Sparingly.’ Trump Has Other Ideas.*, N.Y. TIMES (Apr. 1, 2025), <https://perma.cc/3UPR-YC2E>.

7. See Frances Vinall, *Over 6000 Student Visas Revoked for Crimes and Overstays*, U.S. SAYS, WASH. POST (Aug. 19, 2025), <https://perma.cc/V5BR-CFJP>.

8. See Peter Charalambous, Kerem Inal & Laura Romero, *Some Foreign College Students Are Being Targeted for Deportation. What Rights Do They Have?*, ABC NEWS (Mar. 31, 2025, at 16:23 ET), <https://perma.cc/2XQP-254E>.

a university newspaper critical of Israel,⁹ participating in a pro-Palestinian campus sit-in,¹⁰ or leading campus demonstrations in support of Palestinians—such as the case of Mahmoud Khalil.¹¹ The Trump administration asserts that it has authority to remove these noncitizen students under section 237 of the Immigration and Nationality Act (INA).¹² Specifically, if the Secretary of State makes the determination that a noncitizen is deportable based on the noncitizen’s “beliefs, statements or associations that are otherwise lawful,” then the Secretary of State must make a personal determination that the noncitizen’s presence “would compromise a *compelling United States foreign policy interest*.”¹³ Yet a compelling foreign policy interest is one that is intimately tied to *national security*,¹⁴ and public officials in the Trump administration have construed the deportation policies targeting noncitizen student protesters for alleged antisemitism as a national security matter.

In addition to executive orders invoking national security,¹⁵ administration officials have tied the arrests of student protesters (such as Mahmoud Khalil) to the enforcement of orders prohibiting antisemitism and “protecting U.S. national security.”¹⁶ During an interview on Fox, Vice President J.D. Vance, in reference to noncitizen student deportations of pro-Palestinian protesters, stated: “American citizens have different rights . . . from people who have student visas. And to me, yes, it’s about national security, but it’s also, more importantly, about

9. See Vima Patel, *Detained Tufts Student Must be Moved to Vermont, Court Rules*, N.Y. TIMES (May 7, 2025), <https://perma.cc/9CWb-3Znk>; Anemona Hartocollis & Jonah E. Bromwich, *Tufts Student Arrested by ICE is Released from Detention*, N.Y. TIMES (May 9, 2025), <https://perma.cc/WS2X-WQMG>.

10. See Jonah R. Bromwich & Hamed Aleaziz, *Columbia Student Hunted by ICE Sues to Prevent Deportation*, N.Y. TIMES (Mar. 24, 2025), <https://perma.cc/6UT5-4Dns>.

11. See Jake Offenhartz, *Immigration Agents Arrest Palestinian Who Helped Lead Columbia University Protests*, AP NEWS (Mar. 9, 2025, at 23:37 ET), <https://perma.cc/5AMJ-YUEU>.

12. Codified under 8 U.S.C. § 1227(a)(4)(C).

13. 8 U.S.C. § 1182(a)(3)(C)(iii) (emphasis added); see 8 U.S.C. § 1227(a)(4)(C) (integrating the language of 8 U.S.C. § 1182(a)(3)(C) by reference). The clauses under 8 U.S.C. § 1182(a)(3)(C) apply to deportability in the same manner as they apply to inadmissibility under § 1182(a)(3)(C).

14. See MARY L. DUDZIAK, *COLD WAR CIVIL RIGHTS: RACE AND THE IMAGE OF AMERICAN DEMOCRACY* 104 (2000). See generally MELVYN P. LEFFLER, *SAFEGUARDING DEMOCRATIC CAPITALISM: U.S. FOREIGN POLICY AND NATIONAL SECURITY, 1920–2015* (2017) [hereinafter LEFFLER, *SAFEGUARDING DEMOCRATIC CAPITALISM*]; Melvyn P. Leffler, *National Security*, 77 J. AM. HIST. 143 (1990), <https://perma.cc/BZE8-RNLW> [hereinafter Leffler, *National Security*]; Daniel W. Drezner, *How Everything Became National Security*, 103 FOREIGN AFF. 122 (2024), <https://perma.cc/YY7E-AHP6>. See also *infra* notes 74–100 and accompanying text.

15. See Exec. Order No. 14161, *supra* note 4.

16. See Department of Homeland Security (@DHSgov), X (Mar. 29, 2025, at 20:29 CT), <https://perma.cc/QEH6-9CL4>.

who do we as an American public decide who gets to join our national community.”¹⁷ Explaining the justification for the student arrests and visa revocations, Secretary of State Marco Rubio argued:

[I]t’s not in our foreign policy interest, it’s not in our national security interest, to invite people onto our university campuses . . . who are also going to go there to foment movements that support and excuse foreign terrorist organizations So we have a right to deny visas before you get here, and we have a right to revoke them if we believe your presence in our country undermines our national interest, our national security, and our foreign policy.¹⁸

The executive branch has claimed that their recent actions to address antisemitism and racial injustice were pursuant to a compelling foreign policy interest, without offering a strong link as to how the campus protests adversely affect that interest.¹⁹ In *American Association of American Professors v. Rubio*, a federal court recently held that the Trump administration’s policy of arresting noncitizen protestors under the INA was in furtherance of chilling disfavored political speech.²⁰ The court noted that federal officials intended to target a select few protestors “and then use the full rigor of the Immigration and Nationality Act . . . to have them publicly deported with the goal of tamping down pro-Palestinian student protests . . . because their views were unwelcome.”²¹

Yet the implementation of these policies also raises the specter of future executive action under the guise of anti-racism and national

17. See Ingraham Angle, *JD Vance Reveals Whether More Deportations of Green Card Holders Are Coming*, FOX NEWS (Mar. 13, 2025), <https://perma.cc/NVT4-BCU7>.

18. See *Secretary of State Marco Rubio with Ben Shapiro on the Ben Shapiro Show*, U.S. DEP’T STATE (Apr. 17, 2025), <https://perma.cc/8P6X-PBXQ>.

19. See *Am. Ass’n of Univ. Professors v. Rubio*, 802 F. Supp. 3d 120, 143 (D. Mass. 2025) (citing Memorandum from Secretary of State Marco Rubio to Secretary of Homeland Security Kristi Noem (Mar. 8, 2025)). In the memorandum cited by the court, Secretary Rubio discusses the alleged antisemitic campus protests, *see id.*:

[It] undermines U.S. policy to combat anti-Semitism around the world and in the United States, in addition to efforts to protect Jewish students from harassment and violence in the United States . . . the foreign policy of the United States champions core American interests and American citizens and condoning anti-Semitic conduct and disruptive protests in the United States would severely undermine that significant foreign policy objective.

Id.; *see also* *Khalil v. Trump*, 784 F. Supp. 3d 705, 730 (D.N.J. 2025) (underscoring the distinction between foreign and domestic objectives):

[P]rotecting students “in the United States” is a domestic concern, not a “foreign policy” concern. And foreign and domestic are understood to be distinct. Therefore, to an ordinary person, giving the Secretary power over a “foreign policy” impact is not the same as *also* giving the Secretary power over domestic conduct to the extent it had only a domestic impact.

Id. (emphasis altered).

20. See 802 F. Supp. 3d 120, 172–73 (D. Mass. 2025).

21. *Id.* at 173.

security to silence dissent or to deny other civil liberties. Furthermore, courts have often afforded a high degree of deference to government policies premised on national security interests, prompting concerns of the abuse of the national security rationale to enact policies that are mere pretext for political expediency or retaliation. This Article attempts to address the question: What makes anti-racism an issue of national security? It embarks on a modest exercise in contextualizing the issue of race and national security and makes the case that the government's legitimate commitment to anti-racism is a national security imperative. This Article begins in Part II with a short historical review of the judicial deference afforded to the security decisions of the government, especially the executive branch—even when national security arguments demanded race discrimination and the denial of other liberties—due to separation of powers concerns. Part III offers an examination of how the government officials, the courts, and scholars, have recognized that national security is not only tied to the protection of sovereignty but is intimately tied to foreign affairs and the protection of core democratic values. Part IV examines how the issue of racial injustice and the unrealized core values affected foreign policy during the previous era of great power competition (in essence, the Cold War). Furthermore, it argues that the commitment to anti-racism—in today's era of great power competition—must also be perceived as a genuine duty to uphold core democratic values in order to enhance national security.

II. THE NATIONAL SECURITY REALM AND JUDICIAL DEFERENCE

U.S. courts often afford a high degree of deference to government actions pursuant to national security, especially during times of international crisis.²² David Rudenstine contends that following World War II (WWII), the U.S. Supreme Court has been exceedingly deferential to the executive branch in legal disputes where claims of

22. See generally DAVID RUDENSTINE, *THE AGE OF DEFERENCE: THE SUPREME COURT, NATIONAL SECURITY AND THE CONSTITUTIONAL ORDER* (2016); Thomas W. Joo, *Presumed Disloyal: Executive Power, Judicial Deference, and the Construction of Race Before and After September 11*, 34 COLUM. HUM. RTS. L. REV. 1 (2002); Floyd Abrams, *The First Amendment and the War Against Terrorism*, 5 U. PA. J. CONST. L. 1 (2002); Lecture Series, Anthony Lewis, *Civil Liberties in a Time of Terror*, in 2003 WIS. L. REV. 257 (2003); HAROLD HONGJU KOH, *THE NATIONAL SECURITY CONSTITUTION IN THE 21ST CENTURY* (2024). See also *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 320 (1936) (regarding the deference to the executive branch, the Supreme Court highlighted the “plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations”). But see Lee Epstein et al., *The Supreme Court During Crisis: How War Affects Only Non-War Cases*, 80 N.Y.U. L. REV. 1, 9 (2005) (asserting that this tendency for judicial deference is particularly pronounced with cases unrelated to war, as opposed to cases directly related to war).

national security are invoked.²³ This tendency in American jurisprudence coincided with the rise of the United States as a global power with expansive national security interests during the Cold War.²⁴ Rudenstine notes that decades of judicial deference since WWII have bolstered executive unilateralism and “permitted if not encouraged unlawful conduct by executive officials, and undermined the rule of law and the constitutional order.”²⁵ Harold Hongju Koh asserts that the constitutional vision of shared national security policymaking power has been disrupted by a combination of presidential initiative, congressional acquiescence, and judicial tolerance of executive action.²⁶

In foreign affairs, the president often wins in the courts “because the federal courts have usually tolerated the president’s acts, either by refusing to hear challenges to those acts or by hearing those challenges, but then affirming the president’s authority on the merits.”²⁷ This tendency for judicial deference has been influenced by the broader ideological context defining the idea of security during the New Deal, and epitomized by the passage of the National Security Act of 1947.²⁸ Aziz Rana notes that national security framework was “built on expertise, centralization, military influence and institutional secrecy” and took for granted that crisis “was a constant element of international politics.”²⁹ Rana argues that jurists internalized the logic of this national security framework and accepted the need for deference to the government’s security decisions particularly with questions involving international crisis.³⁰

Two early prominent examples of judicial deference to government security decisions under this new national security framework include *Hirabayashi v. United States*³¹ and *Korematsu v. United States*.³² *Hirabayashi* involved a constitutional challenge to a daily curfew order—authorized by the President Roosevelt’s Executive Order 9066 after the Japanese attack on Pearl Harbor—which was imposed on *all* persons of Japanese ancestry (both citizens and noncitizens) along the Pacific Coast.³³ Plaintiff George Hirabayashi was criminally convicted

23. See RUDENSTINE, *supra* note 22, at 26–29.

24. See *id.*

25. *Id.* at 9.

26. See KOH, *supra* note 22, at 92–123.

27. *Id.* at 92.

28. See Azis Rana, *Who Decides on Security?*, 44 CONN. L. REV. 1417, 1451–69 (2012).

29. *Id.* at 1465.

30. See *id.* at 1469.

31. See generally 320 U.S. 81 (1943).

32. See generally 323 U.S. 214 (1944).

33. See 320 U.S. at 83–89. In addition to the order’s application to all persons of Japanese ancestry, German and Italian aliens were also subject to the order; however, the

for defying the curfew order and for refusing to register for an exclusion order.³⁴ Congressional and military authorities defended the constitutionality and the justification for the order, arguing that social, economic and political conditions prevented Japanese Americans from assimilating, and speculated that such conditions increased their attachments to Japan.³⁵ As a result, the government argued that “there were disloyal members of that population, whose number and strength could not be precisely and quickly ascertained.”³⁶ After accepting the government’s fact-finding and the measures adopted, the Court affirmed *Hirabayashi*’s conviction, and explained that in times of crisis, Congress and the Executive are afforded significant deference to their national security decisions: “In this case it is enough that circumstances within the knowledge of those charged with the responsibility for maintaining the national defense afforded a rational basis for the decision which they made.”³⁷

Eighteen months after the *Hirabayashi* decision, the Court affirmed Fred Korematsu’s conviction for refusing to obey an exclusion order, upholding the mass removal of Japanese Americans (both citizens and noncitizens) from the west coast.³⁸ Relying on conclusions set forth in *Hirabayashi*, the Court again showed extreme deference to the findings of government authorities, accepting, with little interrogation, the government’s judgment that the “exclusion of the whole group was for the same reason a military imperative,” due to fears of sabotage and espionage stemming from “an unascertained number of disloyal members of the group.”³⁹ In dissent, Justice Robert Jackson pointed to the majority’s rubber-stamping of the government’s findings by “distort[ing] the Constitution to approve all that the military may deem expedient . . . we may as well say that any military order will be

curfew was not imposed on German and Italian Americans. See Proclamation No. 3, 7 Fed. Reg. 2543 (Mar. 24, 1942).

34. See 320 U.S. at 83–84.

35. In *Hirabayashi*, the government argued that the loyalties of Japanese Americans could be questioned. See 320 U.S. at 96–99:

[L]arge numbers of children of Japanese parentage are sent to Japanese language schools . . . Children born in the United States of Japanese alien parents, especially those children born before December 1, 2024, are under many circumstances deemed, by Japanese law, to be citizens of Japan . . . The association of influential Japanese residents with Japanese Consulates has been deemed a ready means for the dissemination of propaganda and for the maintenance of the influence of the Japanese Government with the Japanese population in this country.

Id. (footnotes omitted).

36. *Id.* at 99.

37. *Id.* at 102; see *id.* at 100–02.

38. See *Korematsu v. United States*, 323 U.S. 214, 217–18 (1944).

39. *Id.* at 218–19.

constitutional and have done with it.”⁴⁰ Decades later, research by Peter Irons revealed that the government engaged in “a deliberate campaign to present tainted records to the Supreme Court” to inflate the threats to national security—including the concealment of crucial information that could have swayed the majority to find the exclusion orders unconstitutional.⁴¹

Yet in *Youngstown Sheet & Tube Co. v. Sawyer*,⁴² the Supreme Court reaffirmed limits on exclusive executive powers in foreign affairs. The Court held that President Truman’s executive order to seize private steel companies to prevent a union-led work stoppage—during a time of international crisis—was unconstitutional.⁴³ With the U.S. military engaged in the Korean War, President Truman cited the “indispensability of steel” to the country’s national defense and argued that the president’s authority to seize private steel companies is “implied from the aggregate” of executive powers under the Constitution.⁴⁴ The Court rejected his constitutional claims, holding that such executive action was tantamount to lawmaking—a constitutional power reserved for Congress.⁴⁵ Justice Jackson’s oft cited concurrence in *Youngstown* “reaffirmed the centrality of ‘the equilibrium established by our constitutional system’”⁴⁶ and “embraced the principle of balanced institutional participation in foreign affairs[.]”⁴⁷ However, this *Youngstown* vision of shared powers subsequently gave way to a theory of presidential dominance in foreign affairs, where, as Harold Hongju Koh notes, the Supreme Court has consistently deferred to the foreign-policy-making power of the executive when executive actions in foreign affairs has been legally challenged.⁴⁸

Moreover, since 9/11, there has been an increasing judicial propensity to defer to government determinations of national security

40. *Id.* at 244–45 (Jackson, J., dissenting).

41. See PETER IRONS, JUSTICE AT WAR: THE STORY OF THE JAPANESE AMERICAN INTERNMENT CASES viii (1983) (noting that Irons’ research later informed a federal district court’s grant of Korematsu’s writ of *coram nobis* in 1984, which overturned his conviction after finding that the government deliberately concealed relevant information and misled the court about the threats to national security); see also *Korematsu v. United States*, 584 F. Supp. 1406, 1417–1419 (N.D. Cal. 1984).

42. See generally 343 U.S. 579 (1952).

43. See *id.*

44. *Id.* at 583–87.

45. See *id.* at 588–89.

46. See KOH, *supra* note 22, at 55 (citing *Youngstown*, 343 U.S. at 638 (Jackson, J., concurring)).

47. *Id.* at 56.

48. See *id.* at 110 (arguing that judicial tolerance for executive actions in foreign affairs is a result of a revival of the unitary executive theory captured in *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936)).

threats.⁴⁹ This tendency in the jurisprudence of the U.S. Supreme Court is especially striking when the government’s proffered national security interests collide with fundamental civil liberties, including rights under the First Amendment.⁵⁰ As Erwin Chemerinsky notes, the institutional interests of the government have trumped the First Amendment under the Roberts Court: “You see this deference to the government as government when national security is at stake.”⁵¹ For instance, in *Holder v. Humanitarian Law Project*,⁵² the Supreme Court examined a federal law that made it a crime to “knowingly” provide “material support . . . to a foreign terrorist organization” after plaintiffs—U.S. citizens and domestic organizations—challenged the constitutionality of the statute.⁵³ The Humanitarian Law Project (HLP) wanted to offer support to two foreign organizations on how to use international law to resolve disputes, and to petition for humanitarian aid from bodies like the United Nations.⁵⁴ However, the U.S. State Department designated the two organizations as “foreign terrorist organizations,”⁵⁵ and the Court held that the HLP’s speech activities could be punished under the material-support statute.⁵⁶ Against the HLP’s First Amendment challenge, the Court upheld the statute after deferring to the government’s conclusions regarding concerns over national security and foreign policy.⁵⁷ The Court reasoned that deference in this area is owed because “conclusions must often be based on informed judgment rather than concrete evidence”⁵⁸

49. See Shirin Sinnar, *A Label Covering a “Multitude of Sins”: The Harm of National Security Deference*, 136 HARV. L. REV. F. 59, 69 (2022); Robert Chesney, Comment, *No Appetite for Change: The Supreme Court Buttresses the State Secrets Privilege, Twice*, 136 HARV. L. REV. 170, 171–72 (2022); see, e.g., *Holder v. Humanitarian L. Project*, 561 U.S. 1, 33–34 (2010); *Trump v. Hawaii*, 585 U.S. 667, 701–02 (2018), *TikTok Inc. v. Garland*, 604 U.S. 56, 65–67 (2025).

50. See e.g., *Holder*, 561 U.S. at 33–34; *Garland*, 604 U.S. 56, 65–67 (2025); see also Erwin Chemerinsky, *The First Amendment in the Era of President Trump*, 94 DENV. L. REV. 553, 560 (2017). See generally Michael K. Park, *A Fear of Ideas? Social Media, Foreign Influence, and National Security in a New Era of Great Power Competition*, 35 FORDHAM INTELL. PROP. MEDIA & ENT. L. J. 244 (2025).

51. See Chemerinsky, *supra* note 50, at 558–60.

52. See generally 561 U.S. 1 (2010).

53. *Id.* at 8 (quoting 18 U.S.C. § 2339B).

54. See *id.* at 21–22. Specifically, plaintiffs wanted to provide support in form of legal training, political advocacy, and monetary contributions. See *id.*

55. See *id.* at 9–10.

56. See *id.* at 39.

57. See *id.* at 34–39.

58. *Id.* at 34–35; see *id.* at 35 (“The Government, when seeking to prevent imminent harms in the context of international affairs and national security, is not required to conclusively link all the pieces in the puzzle before we grant weight to its empirical conclusions.”).

In *Trump v. Hawaii*,⁵⁹ plaintiffs—the State of Hawaii, the Muslim Association of Hawaii and three individuals—brought, in part, a First Amendment Establishment Clause challenge against the executive branch for the President’s Proclamation that banned entry of nationals from six predominantly Muslim countries.⁶⁰ The plaintiffs argued that the motivation behind the Proclamation stemmed from “religious animus” and justifications centered on national security and vetting procedures were but pretexts for religious discrimination.⁶¹ Applying a deferential standard of review (in essence, rational basis), the Court expressed reluctance to inquire into the “national-security realm” due to separation of powers concerns regarding the President’s responsibilities: “‘Any rule of constitutional law that would inhibit the flexibility’ of the President ‘to respond to changing world conditions should be adopted only with the greatest caution,’ and our inquiry into matters of entry and national security is highly constrained.”⁶² Ultimately, the Court deferred to the President’s “predictive judgments” on national security matters, and held that the Proclamation did not violate the Establishment Clause under a rational basis standard.⁶³

Recently, in *TikTok v. Garland*,⁶⁴ the popular social media platform, TikTok, and its users, challenged the constitutionality of the Protecting Americans from Foreign Adversary Controlled Applications Act (the “Act”)—which requires a qualified divestiture of the platform from its Chinese parent company (ByteDance).⁶⁵ The Act targets online speech platforms that are controlled by a “foreign adversary” and specifically applied to TikTok over national security concerns related to data privacy and content control.⁶⁶ Although the Act arises in a context without evidence of data collection or covert content manipulation by TikTok, the Court, citing *Humanitarian Law Project*, acknowledged that national security concerns can arise “where information can be difficult to obtain

59. See generally 585 U.S. 667 (2018).

60. See *id.* at 667–68. The plaintiffs also argued that the Proclamation violates the Immigration and Nationality Act. See *id.*

61. *Id.* at 699.

62. *Id.* at 704 (quoting *Mathews v. Diaz*, 426 U.S. 67, 81–82 (1976)). With the Court refusing to “define the precise contours of that inquiry in this case,” the limits of judicial inquiry into matters of national security remain unclear. *Id.* at 670.

63. *Id.* at 708–10 (“But we cannot substitute our own assessment for the Executive’s predictive judgments on such matters, all of which ‘are delicate, complex, and involve large elements of prophecy.’” (quoting *Chi. & S. Air Lines, Inc. v. Waterman S.S. Corp.*, 333 U.S. 103, 111 (1948))).

64. See generally 604 U.S. 56 (2025).

65. See *id.* at 62.

66. See Protecting Americans from Foreign Adversary Controlled Applications Act, Pub. L. 118-50, § 2(g)(3)(A), 138 Stat. 955, 958–59 (2024) (introduced as H.R. 7521, 118th Cong. (2024)).

and the impact of certain conduct difficult to assess.”⁶⁷ Thus, according to the Court, it affords the government substantial deference to its “informed judgment.”⁶⁸ Ultimately, the Court found that the government’s data collection justification sufficient to sustain the challenged provisions without violating the First Amendment.⁶⁹

In sum, the government has generally been afforded wide judicial tolerance on matters implicating national security. Cases such as *Hirabayashi* and *Korematsu* offer egregious examples of judicial affordance of speculative national security considerations that demanded race discrimination. As Mary Dudziak notes, in a time of war, “national security had required the denial of a right,” but in the postwar years (as addressed below), national security “served as the basis for its protection.”⁷⁰ When the government’s incantation of “national security” is pitted against the alleged infringement of fundamental civil liberties, Rudenstine contends that “judges will, in cases implicating national security, allow speculative security considerations to trump protected individual rights.”⁷¹ As the D.C. Circuit Court of Appeals has asserted, “the judiciary is in an extremely poor position to second-guess the executive’s judgment in this area of national security.”⁷² Rudenstine argues that the courts’ failure “to exercise the most minimal degree of review” of national security claims is the result of an amorphous concept of national security.⁷³ Thus, the denial of fundamental civil liberties are often judicially tolerated when the government invokes national security—even when courts are skeptical about the merits of the government’s case. This raises the question: What encompasses the government’s incantation of “national security?”

III. THE SCOPE OF NATIONAL SECURITY: ADDRESSING CORE DEMOCRATIC VALUES AND FOREIGN POLICY IMPLICATIONS

Although the concept of national security is a deeply contested one,⁷⁴ the term first took on great prominence in U.S. politics at the start

67. See *TikTok*, 604 U.S. at 75 (citing *Holder v. Humanitarian L. Project*, 561 U.S. 1, 34 (2010)).

68. *Id.*

69. See *id.* at 72.

70. See DUDZIAK, *supra* note 14, at 104.

71. See RUDENSTINE, *supra* note 22, at 345.

72. *Ctr. for Nat’l. Sec. Stud. v. U.S. Dep’t of Just.*, 331 F.3d 918, 928 (D.C. Cir. 2003).

73. RUDENSTINE, *supra* note 22, at 345.

74. See generally J. Benton Heath, *Making Sense of Security*, 116 AM. J. INT’L. L. 289 (2022); David A. Baldwin, *The Concept of Security*, 23 REV. INT’L. STUDS. 5 (1997), <https://perma.cc/B3C6-XEFY>; Laura K. Donohue, *The Limits of National Security*, 48 AM. CRIM. L. REV. 1573 (2011); Arnold Wolfers, “National Security” as an Ambiguous

of the Cold War.⁷⁵ Pendleton Herring, one of the primary authors of 1947's National Security Act, invoked the novel phrase "national security" to argue that similar to how economic security was the dominant domestic objective post-WWII, "the protection of the state and the way of life associated with it[,] should be understood as the dominant global objective."⁷⁶ Yet the National Security Act, which refers to "national security" over a hundred times, does not define the term.⁷⁷ Neither does the 2001 USA PATRIOT Act define "national security" even though it references it more than two dozen times.⁷⁸ However, as discussed below, national security appears to encompass not only security of the state and its territory, but also foreign relations, U.S. influence abroad, and the realization of core democratic values.

Under the Classified Information Procedures Act, "national security," is defined broadly as "the national defense and *foreign relations* of the United States."⁷⁹ The U.S. Department of Justice provides a definition of national security, but it is fairly wide-ranging: "National security encompasses the national defense, foreign intelligence, and counterintelligence, *international and internal security, and foreign relations.*"⁸⁰ National security also encompasses a broad range of interests in presidential articulations on national security strategy. President Donald Trump's America First National Security Strategy (AFNSS), did not formally define "national security," but it broadly outlined four "vital national interests" that must be protected under the AFNSS: (1) protecting the American people, the homeland, the American way of life (2) protecting American prosperity (3) preserving peace through strength and (4) *advancing American influence abroad.*⁸¹ Like the AFNSS, the Biden Administration's National Security Strategy

Symbol, 67 POL. SCI. Q. 481 (1952), <https://perma.cc/6B95-CPT3>; RACE AND NATIONAL SECURITY (Matiangai V.S. Sirleaf ed., 2023).

75. See Melvyn P. Leffler, *The American Conception of National Security and the Beginnings of the Cold War, 1945–48*, 89 AM. HIST. REV. 346, 347–48 (1984), <https://perma.cc/QS7Y-KELR>. But see Donohue, *supra* note 74, at 1578–79 (noting that usage of the term "national security" began earlier, including during the Constitutional Convention and during the Civil War).

76. Aziz Rana, *Who Decides on Security?*, 44 CONN. L. REV. 1417, 1463 (2012).

77. See Donohue, *supra* note 74, at 1579 (citing National Security Act of 1947, Pub. L. No. 80-235, 61 Stat. 495 (current version at 50 U.S.C. § 3002)).

78. See *id.* (citing Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, § 412, 115 Stat. 272, 350–52 (codified at 8 U.S.C. § 1226(a))).

79. Classified Information Procedures Act of 1980, Pub. L. 96-456, § 1(b), 94 Stat. 2025, 2025 (codified at 18 U.S.C. app. 3 § 1 (2025)) (emphasis added).

80. U.S. Dep't of Just., Just. Manual § 9-90.010 (2018) (emphasis added).

81. PRESIDENT OF THE UNITED STATES [DONALD J. TRUMP], NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA 3–4 (2017), <https://perma.cc/2ADT-ACHB>.

(NSS) also outlined a broad strategy rooted in national interests, including: “[T]o protect the security of the American people; to expand economic prosperity . . . ; and to *realize and defend the democratic values* at the heart of the American way of life.”⁸² Although the Biden Administration’s NSS refers to “national security” over twenty times, it offers no precise meaning of the term.⁸³

General Maxwell Taylor, former Chairman of the Joints Chiefs of Staff, argues that the concept of national security has moved beyond a narrow view of security as synonymous with military defense of the nation against a foreign adversary.⁸⁴ Taylor notes the “ample evidence” from WWII and the cold war of the various nonmilitary means used by foreign states that pose national security threats: “[D]iplomatic machinations, economic and psychological warfare, political subversion, defamatory propaganda, terrorism, and paramilitary violence.”⁸⁵ Arnold Wolfers, in his seminal article on national security, notes that the term “security” covers a wide range of goals, allowing for highly divergent policies to be interpreted as matters of security.⁸⁶ Yet for Wolfers, the concept of national security “points to some degree of protection of values previously acquired.”⁸⁷

Moreover, while the concept of “national security” lacks definitional consensus, a recognition of national security tied to core democratic values has been recognized by the judiciary, including the Supreme Court. In *United States v. Robel*,⁸⁸ the Court reviewed the constitutionality of a section of the Subversive Activities Control Act of 1950, which prohibited members of the Communist Party to be employed in any “defense facility” as designated by the Secretary of Defense.⁸⁹ A machinist, and member of the Communist Party, was indicted for working at a designated defense facility, and the government asserted that the law reflected executive and legislative concerns over “internal subversion in plants on which the national defense depends.”⁹⁰ However, the Court held that the government’s conception of “national defense” does not exclusively rest on military or homeland defense:

82. PRESIDENT OF THE UNITED STATES [JOSEPH R. BIDEN, JR.], NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA 7 (2022), <https://perma.cc/FE4Z-83SZ> (emphasis added).

83. *See generally id.*

84. *See generally* MAXWELL D. TAYLOR, PRECARIOUS SECURITY (1976).

85. *See id.* at 3.

86. *See* Wolfers, *supra* note 74, at 484.

87. *Id.*

88. *See generally* 389 U.S. 258 (1967).

89. *Id.* at 259 (citing 50 U.S.C. § 784(a)(1)(D) (repealed 1993)).

90. *Id.* at 264.

*Implicit in the term “national defense” is the notion of defending those values and ideals which set this Nation apart It would indeed be ironic if, in the name of national defense, we would sanction the subversion of one of those liberties—the freedom of association—which makes the defense of the Nation worthwhile.*⁹¹

In *United States v. New York Times Co.*,⁹² also known as the “Pentagon Papers” case, the Nixon administration—invoking national security—attempted to secure a preliminary injunction against the New York Times to prevent further publication of a Pentagon study related to the war in Vietnam.⁹³ Yet the district court judge articulated that national security encompasses more than just the defense of sovereignty against an external threat: “The security of the Nation is not at the ramparts alone. Security also lies in the *value of our free institutions*.”⁹⁴ As David Rudenstine explains, this is the recognition that national security “encompasses many factors that give the nation its character and enhance its standing in the world, such as the strength of American private and public institutions, the scope of individual liberties, and the commitment to the rule of law.”⁹⁵

Similarly, scholars Morton Berkowitz and P.G. Bock define national security as “the ability of a nation to protect its internal values from external threats.”⁹⁶ According to Berkowitz and Bock, nations possess security when it can preserve core values and envisages “both domestic and international policy as designed to protect the same set of values[.]”⁹⁷ In other words, national security policy requires an analysis of “the foreign as well as domestic factors shaping policy.”⁹⁸ Melvyn Leffler notes that core values “are the objectives that merge ideological precepts and cultural symbols such as democracy, self-determination, honor, and race consciousness with concrete interests such as access to

91. *Id.* (emphasis added).

92. *See generally* 328 F. Supp. 324 (S.D.N.Y. 1971).

93. *See id.* at 326. In *N.Y. Times*, the government argued that the publication of the study would compromise national security, *see id.*:

The Government on the other hand contends that by reference to the totality of the studies an enemy might learn something about United States methods which he does not know, that references to past relationships with foreign governments might affect the conduct of our relations in the future and that the duty of public officials to advise their superiors frankly and freely in the decision-making process would be impeded if it was believed that newspapers could with impunity publish such private information.

Id. at 326–27.

94. *Id.* at 331 (emphasis added).

95. *See* RUDENSTINE, *supra* note 22, at 33.

96. AMERICAN NATIONAL SECURITY: A READER IN THEORY AND POLICY x (Morton Berkowitz & P.G. Bock eds., 1965).

97. *Id.* at x–xi.

98. Leffler, *National Security*, *supra* note 14.

markets and raw materials . . . core values are the goals worth fighting for.”⁹⁹ Charles Hermann builds on this conception of national security and adds that a multitude of domestic factors can have a major effect on our ability to respond to threats to core values; for instance, disruptions and inadequate attention to racial injustice, education, employment and the ecological, can adversely affect national security.¹⁰⁰

Although there is no consensus as to what interests fall under national security, federal officials, the judiciary and scholars, have recognized that national security is not just synonymous with the protection of the state and its territory. It also encompasses foreign relations and American influence abroad, as well as the protection of core democratic values—values that need to be realized and preserved.

IV. RACIAL INJUSTICE AND THE THREATS TO NATIONAL SECURITY

This Part will first address how racial intolerance in the U.S. affected foreign policy and the pursuit of a U.S.-led international order during the post-war years. Section IV.A. highlights how the American record on civil rights posed a severe handicap on foreign relations, leading to national security interests becoming a dominant rationale for civil rights reforms. Section IV.B. makes the case that to enhance national security, the government’s commitment to anti-racism—in today’s era of great power competition—must be perceived as a genuine duty to uphold core democratic values and not a pretext for actions motivated by political gain.

A. *The Impact of Inequality on Foreign Policy During the Cold War*

If a core democratic value is tied to equality, including racial equality, then the government’s failure to adequately address racial injustice can undermine the legitimacy of the U.S. democratic system. In 1950, Harold Lasswell noted that U.S. national security is not only affected by both the foreign and domestic impact of policies pursuant to foreign policy, but that “policies primarily aimed at internal conditions” also affect our national security at home and abroad.¹⁰¹ Lasswell argued that one of the “chief points of attack against the United States in foreign countries” include “the prevalence of discrimination against colored peoples.”¹⁰² Lasswell’s analysis points to how race played a critical role in foreign policy during the great power rivalry between the United States and the former Soviet Union.

99. See LEFFLER, SAFEGUARDING DEMOCRATIC CAPITALISM, *supra* note 14, at 324.

100. See *id.* at 20.

101. HAROLD D. LASSWELL, NATIONAL SECURITY AND INDIVIDUAL FREEDOM 55 (1950), <https://perma.cc/SG5C-35V8>.

102. *Id.*

With a foreign policy centered on expanding American influence abroad amid a global ideological battle between democracy and communism, the United States's response to racial intolerance became a critical social and political issue to compare the two competing visions of international order. The global projection of American power in the postwar years attracted unprecedented international media attention of U.S. society, including the issue of race discrimination.¹⁰³ With the world watching, government officials became concerned about the impact of racial intolerance on the country's prestige abroad and its effect on foreign relations.¹⁰⁴ Mary Dudziak notes, "[a]s the United States held itself out as the leader of the free world, the nation opened itself up to criticism when its domestic practices seemed to violate the nation's principles."¹⁰⁵

In 1947, President Truman's Committee on Civil Rights released a report titled *To Secure These Rights*, that outlined the impact of racial intolerance on foreign affairs.¹⁰⁶ The report offered several reasons why it was a national imperative to address race discrimination: a moral, economic, and an international reason.¹⁰⁷ With regard to foreign relations, the report highlighted how the U.S. record on civil rights had an adverse effect on foreign politics, and cited a letter from then-foreign policy advisor (and later Secretary of State) Dean Acheson:

An atmosphere of suspicion and resentment in a country over the way a minority is being treated in the United States is a formidable obstacle to the development of mutual understanding and trust between the two countries . . . *I think it is quite obvious that the existence of discrimination against minority groups in the United States is a handicap in our relations with other countries.*¹⁰⁸

103. See THOMAS BORSTELMANN, *THE COLD WAR AND THE COLOR LINE* 74 (2001); see also DUDZIAK, *supra* note 14, at 26–29.

104. See DUDZIAK, *supra* note 14, at 6, 31–46; Thomas Borstelmann notes that the United States needed to convince newly independent nations that the United States was committed to the ideals of racial equality. See BORSTELMANN, *supra* note 103, at 268:

Confronted with the erosion of European colonial control of Asia and Africa, U.S. policy makers sought to contain the expansion of Soviet influence by building a multiracial, anti-Communist alliance of the West and the Third World. In pursuit of their goal of a capitalist and preferably democratic world order, American leaders worked to convince newly independent nonwhite nations of the superiority of American institutions and ideals to those of the Soviet Union.

Id.

105. See DUDZIAK, *supra* note 14, at 29.

106. See *TO SECURE THESE RIGHTS: THE REPORT OF THE PRESIDENT'S COMMITTEE ON CIVIL RIGHTS* 137 (1947), <https://perma.cc/F6YL-SDZC>.

107. See *id.* at 139–50.

108. *Id.* (quoting Letter from Dean Acheson, Secretary of State, to Fair Employment Practice Committee (May 8, 1946)) (emphasis added); see also John David

Michael Sherry notes that many civil rights leaders and President Truman at times, “did not invoke morality and justice, but national security was the dominant rationale” for civil rights initiatives.¹⁰⁹ For instance, the Truman administration’s participation in landmark desegregation cases that led up to the seminal *Brown v. Board of Education of Topeka* decision, stressed the foreign policy implications of American racial intolerance.¹¹⁰

International attention to racial oppression in the United States was exacerbated by the discriminatory treatment that many foreign diplomats and visitors experienced in the nation’s capital of Washington, D.C.¹¹¹ Non-white foreign dignitaries—especially those from African nations—were refused service in Washington’s restaurants and hotels, which “seemed to trumpet to the world American hypocrisy about freedom.”¹¹² The U.S. government’s amicus brief in support of desegregation in *Brown v. Board of Education* even highlighted how racial intolerance “is particularly acute in the District of Columbia,” where foreign officials “naturally judge this country and our people by their experiences and observations in the nation’s capital.”¹¹³ Notably, the amicus brief placed heavy emphasis on the impact of racial intolerance on foreign affairs through the lens of great power competition: “It is in the context of the present world struggle between freedom and tyranny that the problem of racial discrimination must be viewed. The United States is trying to prove . . . that a free democracy is the most civilized and more secure

Skrentny, *The Effect of the Cold War on African-American Civil Rights: America and the World Audience, 1945–1968*, 27 THEORY & SOC’Y 237, 254 (1998), <https://perma.cc/FNR8-4PGP> (noting that the report evinces the government’s emphasis “placed on the world audience of American racial oppression. Minutes from the committee’s meetings show a concern for American legitimacy before the world from the beginning”).

109. See MICHAEL S. SHERRY, *IN THE SHADOW OF WAR: THE UNITED STATES SINCE THE 1930s* 147 (1995).

110. See DUDZIAK, *supra* note 14, at 90–93 (highlighting early desegregation cases where the Truman administration participated as amicus curiae, including *Shelley v. Kraemer*, 334 U.S. 1 (1948), and *Henderson v. United States*, 339 U.S. 816 (1950)); see also *infra* notes 111–15 and accompanying discussion.

111. See Skrentny, *supra* note 108, at 254–55.

112. See BORSTELMANN, *supra* note 103, at 91. Mary Dudziak notes that racial discrimination in the nation’s capital was especially embarrassing. See DUDZIAK, *supra* note 14, at 96:

If segregation only existed in particular areas of the country, it would have been easier for the federal government to characterize it as a regional phenomenon, as something at odds with generally accepted American practices. As long as the seat of the federal government was segregated, however, any claims that segregation was not a widespread national practice seemed hollow.

Id.

113. Brief for the United States as Amicus Curiae at 4, *Brown v. Board of Education*, 347 U.S. 483 (1954), 1952 WL 82045, at *4.

form of government.¹¹⁴ Dudziak notes that the *Brown* decision and its projection of American democracy were “of the utmost importance in a world torn by Cold War animosities. Any threat to that image was a threat to U.S. national security.”¹¹⁵

Thus, within the context of great power competition, and a global audience tuned-in to American civil rights conflicts, racial injustice at home jeopardized American influence abroad and foreign relations by delegitimizing the country’s core values. After visiting several Radio Free Europe installations in cities including Berlin, Munich and Paris, Vivian Mason of the National Council of Negro Women wrote a letter to President Eisenhower in 1957 describing European reactions to the “Little Rock Nine”¹¹⁶ school integration crisis:

Part of their resentment stemmed from disillusionment, for many people look to America as a country where democracy really works and when something happens to destroy that ideal there is grief as well as disappointment. The injury to our prestige must be a tangible reminder for a long time of how far-reaching our misdeeds are in a world that is in mortal combat over conflicting ideas and ideals.¹¹⁷

As the Republican presidential candidate in 1960, Richard Nixon also invoked the global audience and foreign affairs as justification to address racial discrimination at home.¹¹⁸ Nixon asserted, “I know of nothing that does more harm to United States foreign policy abroad” than

114. The Truman administration’s amicus brief also underscored the importance of the U.S. as a model for democracy. *See id.* at *6:

We must set an example for others by showing firm determination to remove existing flaws in our democracy. The existence of discrimination against minority groups in the United States has an adverse effect upon our relations with other countries. Racial discrimination furnishes grist for the Communist propaganda mills, and it raises doubts even among friendly nations as to the intensity of our devotion to the democratic faith.

Id.

115. *See* DUDZIAK, *supra* note 14, at 113.

116. As a result of the Supreme Court’s ruling in *Brown v. Board of Education*, nine Black students enrolled in Central High School in Little Rock, Arkansas, in 1957. A crisis developed—and attracted global attention—after the governor of Arkansas ordered the Arkansas National Guard to surround the high school and prevent the Black students from attending classes. In response to the governor’s actions, President Eisenhower ordered the 101st Airborne Division into Little Rock to ensure that the Black students could safely attend their classes. *See Civil Rights: The Little Rock School Integration Crisis*, DWIGHT D. EISENHOWER PRES. LIBR., <https://perma.cc/EE2V-GTSY> (last visited Jan. 4, 2026).

117. Letter from Vivian Mason to President Dwight D. Eisenhower (Oct. 25, 1957), in PAPERS OF DWIGHT D. EISENHOWER, DWIGHT D. EISENHOWER PRES. LIBR., Folder: Race Issue, 1957.

118. *See* Skrentny, *supra* note 108, at 261.

discrimination at home, and he declared that progress in civil rights was critical to countering propaganda attacks from the Soviet Union.¹¹⁹

Russia, the ideological and political center of communism for most of the twentieth century, has a long history of exploiting American racism to critique the United States's democratic and capitalist system.¹²⁰ In the late 1920s, the Soviet Union launched a global propaganda campaign to convince other nations of the superiority of the Communist system, and "saw racial inequality as a potentially important weapon in the struggle against capitalism and imperialism."¹²¹ The political exploitation of American racism continued in the postwar years, and John Skrentny points out that several presidential administrations and U.S. State Department officials during the Cold War years understood that the elimination of domestic racial bigotry was "a way to lead new nations away from the threat of Communism."¹²² Yet racial events that captured widespread media attention supplied the Soviet Union with damaging anti-American propaganda and reinforced anxieties that such racist scenes "redounded to the benefit of America's opponents in the battle for the hearts and minds of peoples around the world."¹²³

While systemic racial inequality has been used to furnish foreign governments with anti-American propaganda, a report from the London School of Economics notes that propaganda rarely is designed to offer its audience new information: "Rather, it seeks to connect an actor in the world to something they already know, so that the associated emotions can be harnessed to political ends."¹²⁴ Thus, the propaganda that underscored American racial prejudice touched on genuine issues of racial inequity, which in turn, adversely affected foreign relations and the United States's standing as it led the postwar international order. The sobering truth about Soviet propaganda addressing American racism was that it often included content sourced from credible American news sources, including stories about lynching and black labor in the South.¹²⁵ Furthermore, Soviet propaganda was also designed to exploit internal

119. *Id.*

120. See MEREDITH L. ROMAN, *OPPOSING JIM CROW: AFRICAN AMERICANS AND THE SOVIET INDICTMENT OF U.S. RACISM, 1928–1937*, at 6–8 (2012).

121. Barbara Keys, *An African-American Worker in Stalin's Soviet Union: Race and the Soviet Experiment in International Perspective*, 71 *HISTORIAN* 31, 35 (2009), <https://perma.cc/9QBY-X5US>.

122. Skrentny, *supra* note 108, at 269.

123. DUDZIAK, *supra* note 14, at 121.

124. Nicholas J. Cull et al., *Soviet Subversion, Disinformation and Propaganda: How the West Fought Against it—An Analytic History, with Lessons for the Present*, LSE CONSULTING, Oct. 2017, at 73, <https://perma.cc/CSY4-SVZK>.

125. See DUDZIAK, *supra* note 14, at 88.

strife and sow civil discord.¹²⁶ Fears of foreign adversaries exploiting internal discord go back to the founding era: “[T]he greatest fear among American statesman was the possibility that old world powers would exploit internal divisions by allying sections or factions of the union, thus fusing internal and external threats[.]”¹²⁷ During the Cold War, U.S. political leaders understood that racial injustice could lead to social discontent, and there were concerns that American minorities would reject American democracy.¹²⁸ In other words, “[e]quality was a safeguard against domestic subversion.”¹²⁹

B. The Return of Great-Power Competition and the Commitment to Core Democratic Values

In today’s renewed era of great power competition, U.S. foreign adversaries have utilized the same strategies—centered on internal divisions—that were applied in the Cold War. For example, during the 2016 presidential election, mass produced fake social media accounts—many created by Russia’s Internet Research Agency (IRA)—shared and amplified legitimate news sources during the 2016 election for the purposes of sowing civil division.¹³⁰ In fact, some of the top news sources shared included the *Washington Post*, *San Francisco Chronicle*, *The Hill*, *Fox News*, and *Reuters*.¹³¹ Russian agents even mimicked the Black Lives Matter movement as part of a sustained campaign to engage with “opposing, ideologically engaged networks”—in order to sow division by pitting multiple groups against each other.¹³²

The Chinese Communist Party (CCP) has also adopted similar propaganda strategies employed by Russian operatives.¹³³ China is not only the United States’s geopolitical rival on issues such as technology and global governance,¹³⁴ but a preeminent rival over the shaping of

126. See Harold D. Lasswell, *The Strategy of Soviet Propaganda*, 24 PROCS. ACAD. POL. SCI. 66, 76 (1951), <https://perma.cc/UQW7-A2GE>.

127. See LEFFLER, SAFEGUARDING DEMOCRATIC CAPITALISM, *supra* note 14, at 326.

128. See DUDZIAK, *supra* note 14, at 94.

129. *Id.*

130. See Jonathan Albright, *Trolls on Twitter: How Mainstream and Local News Outlets Were Used to Drive a Polarized News Agenda*, BERKMAN KLEIN CTR. COLL. (Feb. 15, 2018), <https://perma.cc/AWW8-PD7E>; see also Darren L. Linvill & Patrick L. Warren, *Troll Factories: Manufacturing Specialized Disinformation on Twitter*, 37 POL. COMMUN. 447, 452 (2020), <https://perma.cc/SN9Q-668P>.

131. See Albright, *supra* note 130.

132. See Linvill & Warren, *supra* note 130, at 463.

133. See CHRISTOPHER CAROTHERS, UNDERSTANDING THE CHINESE GOVERNMENT’S GROWING USE OF ANTI-AMERICAN PROPAGANDA, in 2023–24 WILSON CTR. CHINA FELLOWSHIP 29, 43 (2024), <https://perma.cc/PZF6-MRRF>.

134. See Peter Martin & Josh Wingrove, *With Putin Behind Him, Biden Shifts to China’s Xi*, BLOOMBERG (June 17, 2021, 19:02 ET), <https://perma.cc/JHJ5-BUNX>; see

global public opinion.¹³⁵ Current research reveals that the CCP's anti-American propaganda has escalated since 2018, with the deterioration of American-Chinese relations under the first Trump administration.¹³⁶ One of the prominent narratives of CCP propaganda centers on "America's poor moral and social values" including racial inequality.¹³⁷ According to Christopher Carothers, "[t]he racism embedded in American politics and culture has been a perennial point of attack—a tradition originating in Soviet anti-Americanism."¹³⁸ As a case in point, the CCP exploited scenes from the George Floyd protests in 2020 to produce propaganda criticizing the United States for its failure to address race discrimination.¹³⁹

China media expert Aynne Kokas notes that propaganda depicting American civil turmoil is "an incredibly effective tactic" that shapes how American society and its government is viewed.¹⁴⁰ Similar to the propaganda content distributed by the former Soviet Union, CCP propaganda centered on "bad moral and social values" of the United States—or not living up to its core values—plays into the narrative that the American democratic system is inferior to the Chinese system of governance.¹⁴¹ Research on Chinese state media coverage of U.S. racial hate crimes against Asian Americans during the COVID-19 pandemic revealed that one of the top themes found in the coverage centered on the root causes of anti-Asian xenophobia.¹⁴² Racial inequality is described as a fundamental feature of American society, and according to Chinese state media, "hate crimes are sustained by the ineffectiveness of the U.S.

also Biden Says U.S. Ready to Work with China When It Is in America's Interest, REUTERS (Feb. 24, 2021, at 15:17 ET), <https://perma.cc/K79D-CJ9N>.

135. See Michael K. Park, *The Art of War: Global Speech Diktats and the Regulatory Challenges to Address Foreign Political Censorship*, 2 FLA. ENT. & SPORTS L. REV. 41, 47 (2022), <https://perma.cc/9BXD-N92N>.

136. See CAROTHERS, *supra* note 133, at 38–41.

137. *Id.* at 43.

138. *Id.* According to Carothers, the focus on African Americans "follows a Soviet propaganda tradition that served to counter American criticism of the USSR's repression of minorities." *Id.*

139. See John Ruwitch, *In George Floyd Protests, China Sees a Powerful Propaganda Opportunity*, NPR (June 3, 2020, 16:50 ET), <https://perma.cc/N9RB-UBMH>.

140. *Id.*

141. See CAROTHERS, *supra* note 133, at 46.

142. See Elena Soboleva, Svetlana Krivokhizh & Karina Mavliashina, *Explaining Anti-Asian Xenophobia to Chinese Audience: Coverage of Hate Incidents During the COVID-19 Pandemic in the PRC Press*, 59 CHINA REP. 275, 280 (2023), <https://perma.cc/V372-ZYDD>. The authors analyzed a dataset of two major Chinese newspapers—*People's Daily* and *Global Times*—published from January 1, 2021, to December 31, 2021, a timeframe where the number of anti-Asian hate incidents dramatically increased.

political system.”¹⁴³ Moreover, such propaganda is not just intended for a domestic audience; Carothers notes that “the CCP promotes the same anti-American narratives abroad that it does domestically to influence foreign governments and publics.”¹⁴⁴ The fact that China and Russia continue to exploit racial issues in the United States, mimicking Soviet propaganda strategies of the past, perhaps evince its potential impact on domestic civil cohesion, foreign policy, and U.S. influence abroad.

If the past is prologue, then racial divisions and the failure to uphold the core democratic value of equality can have a detrimental impact on foreign policy and national security. Yet government officials’ claims of racial violence and harassment adversely affecting a compelling U.S. foreign policy should be tied to a cognizable effect or harm to a foreign policy or security interest.¹⁴⁵ Although courts have afforded a high degree of tolerance to government claims of security,¹⁴⁶ limited judicial scrutiny should not translate to judicial “rubber-stamping” (in essence, accepting the government’s claims at face value), when civil liberties are at stake. It is not difficult to imagine the executive branch and other public officials invoking national security as a pretext for actions that are motivated by political expediency.

Moreover, if the United States’s international influence and foreign policy can be impacted by widespread racial injustice—and the government’s response to it—then the response must also be perceived as a genuine commitment to combat racial injustice and uphold core democratic values. During the first Trump administration, anti-Asian harassment and violence spiked at the start of the COVID-19 pandemic.¹⁴⁷ Yet President Trump’s own racialized language on social media—including the use of phrases such as “kung flu” or “Chinese virus”¹⁴⁸—sparked an increase in anti-Asian sentiment on social media,¹⁴⁹ and coincided with a 145% increase in anti-Asian hate crimes

143. *Id.*; *see id.* (“The US government is accused of inactivity, lacking an effective strategy to fight hate crimes, and [an] inability to provide justice for victims of anti-Asian hate crimes.”).

144. *See* CAROTHERS, *supra* note 133, at 51.

145. The lack of critical examination to policies and executive actions pursuant to the government’s incantation of national security can have severe consequences to individual civil liberties, as demonstrated in *Hirabayashi* and *Korematsu*. *See supra* notes 31–41 and accompanying text.

146. *See supra* notes 22–73 and accompanying text.

147. *See* U.S. COMMISSION ON CIVIL RIGHTS, THE FEDERAL RESPONSE TO ANTI-ASIAN RACISM IN THE UNITED STATES 80 (2023). *See generally* Jennifer Zheng & Joseph P. Zompetti, *I’m Not a Virus’: Asian Hate in Donald Trump’s Rhetoric*, 33 ASIAN J. COMMUN 470 (2023), <https://perma.cc/SCJ4-DVA4>.

148. *See* Zheng & Zompetti, *supra* note 147, at 473.

149. *See* Yulin Hswen et al., *Association of “#covid19” Versus “#chinesevirus” With Anti-Asian Sentiments on Twitter: March 9–23, 2020*, 111 AM. J. PUB. HEALTH 956, 961 (2021), <https://perma.cc/3DMS-46DQ>.

in sixteen of the largest U.S. cities in 2020.¹⁵⁰ However, President Trump never issued any executive orders, nor was any federal task force created, to combat anti-Asian violence and harassment. The selective enforcement of federal laws and disparate treatment of similarly situated Americans facing racial violence undermines the credibility of the federal government's commitment to the core value of racial equality.

Regarding the recent pro-Palestinian campus protests, no evidence or information was proffered by government officials to show that the student protestors' expression of political views—broadly interpreted by federal officials as antisemitic—jeopardized foreign policy and national security. Instead of international opprobrium over alleged widespread acts of racial harassment on American campuses, the political protests over Gaza sparked global campus protests around the world.¹⁵¹ Antisemitism, without question, is a serious problem, but a recent study shows that antisemitic ideas are not widespread among U.S. college students and faculty¹⁵²—which further raises doubts as to the government's narrative that the protests affect compelling foreign policy interests.

Although presidential executive orders and federal officials have framed the arrest of pro-Palestinian student protestors as part of a national campaign to combat antisemitism and racism, court rulings thus far evince a motive to chill disfavored political speech¹⁵³—undermining the legitimacy of government action to address racial intolerance and safeguard core values. In *American Association of University Professors v. Rubio*, the district court recently ruled that federal officials' policy of targeting and deporting noncitizens for their pro-Palestinian and alleged antisemitic speech violated both the First Amendment and the Administrative Procedure Act.¹⁵⁴ As the federal judge explained, although the executive branch orders are “couched in a concern for hateful ideologies, antisemitism, and antisemitic harassment,” they were

150. See Zheng & Zompetti, *supra* note 147, at 472.

151. See Alexandra Sharp, *Pro-Palestinian Campus Protests Go Global*, FOREIGN POL'Y (May 3, 2024), <https://perma.cc/AP83-QTR4>; Willem Marx, *Campus Protests Over the War in Gaza Have Gone International*, NPR (May 3, 2024), <https://perma.cc/R2PZ-ZN6U>.

152. See Graham Wright, *Antisemitism on Campus is a Real Problem—But Headlines and Government-Proposed Solutions Don't Match the Experience of Most Jewish Students*, CONVERSATION (Sep. 19, 2025, at 08:39 ET), <https://perma.cc/R7LJ-PG6K>; see also Graham Wright et al., *Antisemitism on Campus: Understanding Hostility to Jews and Israel*, COHEN CTR. FOR MOD. JEWISH STUD. REP. (2024), <https://perma.cc/CJL4-BREV>.

153. See generally *Am. Ass'n of Univ. Professors v. Rubio*, 802 F. Supp. 3d 120 (D. Mass. 2025); *President & Fellows of Harv. Coll. v. U.S. Dep't of Homeland Sec.*, 788 F. Supp. 3d 182 (D. Mass. 2025).

154. See *Am. Ass'n of Univ. Professors*, 802 F.3d at 175–76.

implemented by “intentionally discriminatory enforcement procedures . . . [which] led to the singling out of pro-Palestine and anti-Israel speech for a campaign of speech-chilling retribution.”¹⁵⁵ In sum, while the failure to adequately address racial injustice undermines core democratic values, American foreign influence, and exposes the United States to propaganda attacks, national security also demands that the government’s anti-racist efforts be perceived as a legitimate commitment to the core value of equality.

V. CONCLUSION

Former Secretary of State Henry Kissinger argued that the vitality of an international order depends upon the balance of hard power and legitimacy,¹⁵⁶ but as Joseph Nye adds, “legitimacy depends on values.”¹⁵⁷ Racial injustice, and the failure to properly address it, strike at the heart of a core democratic value centered on equality—a value that serves as an important feature of U.S. foreign policy and American influence abroad. Previous presidential administrations, particularly in the postwar years, were concerned that American racial inequality—and the propaganda it enabled—would undermine U.S. credibility and national security at a time when the United States was dissuading other nations from adopting communist doctrine. Pursuant to a global competition of ideas and to control the narrative about race, American political leadership pursued anti-racist policies as a national security matter.

In today’s era of great-power competition, the United States’s foreign adversaries recognize that internal divisions, and the degradation of social cohesion, can undermine democratic institutions and U.S. influence abroad. Adopting the Soviet propaganda strategies of the past, both Russia and China have shown a propensity to exploit racial divisions to amplify mistrust, sow civil unrest, weaken U.S. foreign influence, and—in the case of the CCP—portray the U.S. democratic system as inferior to the communist system of governance. Moreover, while this article submits that anti-racism is a national security imperative, recent executive actions raise the specter that the government’s invocation of national security to pursue anti-racist policies are but a pretext for political retribution and expediency. What is needed is greater—not less—judicial scrutiny that demands strong linkages between compelling foreign policy or national security interests and purported government actions pursuant to those interests. Finally,

155. *Id.* at 184.

156. See HENRY KISSINGER, *WORLD ORDER: REFLECTIONS ON THE CHARACTER OF NATIONS AND THE COURSE OF HISTORY* 66 (2014).

157. JOSEPH S. NYE, JR., *DO MORALS MATTER? PRESIDENTS AND FOREIGN POLICY FROM FDR TO TRUMP* 181 (2020).

anti-racist government policies must also be perceived as a legitimate commitment in upholding core democratic values. Otherwise, the credibility of government anti-racist policies is undermined, both internally and abroad, adversely affecting American security interests. In other words, the United States must not only espouse liberal democratic values but prove it lives up to them.