

United States Senate

WASHINGTON, DC 20510

February 13, 2025

The Honorable Marco Rubio
Secretary
U.S. Department of State
2201 C Street NW
Washington, D.C. 20451

The Honorable Kristi Noem
Secretary
U.S. Department of Homeland Security
2707 Martin Luther King Jr Ave SE
Washington, D.C. 20528

Dear Secretary Rubio and Secretary Noem:

We write regarding Executive Orders 14161 and 14188. We believe these Orders raise grave First Amendment concerns, and, depending on how they are implemented, could violate your obligations under the Constitution.

On January 20, President Donald Trump issued Executive Order 14161, which directed you to promptly “recommend any actions necessary to protect the American people from the actions of foreign nationals” who “preach or call for ... the overthrow or replacement of the culture on which our constitutional Republic stands.” That Order also instructed you to “ensure that admitted aliens and aliens otherwise already present in the United States do not bear hostile attitudes toward its citizens, culture, government, institutions, or founding principles.”¹

Executive Order 14188, issued by President Trump on January 29, further directed you to provide guidance to institutions of higher education to help them “monitor for and report activities by alien students and staff relevant to [grounds for inadmissibility under 8 U.S.C. 1182(a)(3)].” It also ordered you to ensure that such reports yield “investigations and, if warranted, actions to remove such aliens.”² The Administration released an accompanying fact sheet, which explained that any noncitizen “who joined in the pro-jihadist protests” will be “deport[ed]” and pledged to clear out college campuses that “have been infested with radicalism like never before.”³

President Trump’s Orders purportedly advance these speech restrictions in pursuit of “combat[ting] anti-Semitism” and “protecting the United States from foreign terrorists and other national security and public safety threats.” Though commendable aims, these vaguely written Orders appear to direct you to exceed your statutory authority and, on their face, could restrict constitutionally protected speech. Through their implementation, they could sweep even further.

¹ Exec. Order No. 14161, 90 Fed. Reg. 8451 (Jan. 20, 2025).

² Exec. Order No. 14188, 90 Fed. Reg. 8847 (Jan. 29, 2025).

³ The White House, *Fact Sheet: President Donald J. Trump Takes Forceful and Unprecedented Steps to Combat Anti-Semitism* (Jan. 30, 2025) (online at <https://www.whitehouse.gov/fact-sheets/2025/01/fact-sheet-president-donald-j-trump-takes-forceful-and-unprecedented-steps-to-combat-anti-semitism/>).

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Congress has authorized the Executive Branch to protect the homeland from noncitizens who support terrorist organizations or advocate for the overthrow of the United States government.⁴ However, Congress has not authorized the Executive Branch to broadly render noncitizens deportable on the basis of lawful speech concerning something as nebulous as “the culture on which our constitutional Republic stands.” Similarly, Congress has not authorized the Executive Branch to surveil students engaged in the free expression of ideas on college campuses. Nor could it have adopted either measure without running afoul of the First Amendment.

President Trump won the 2024 election. He did not, however, win a mandate to circumvent the Constitution through executive decree.

We urge you to ensure Executive Orders 14161 and 14188 are implemented in a manner consistent with federal law and the First Amendment. We will closely monitor your implementation of these Orders, and, if necessary, vigorously exercise the oversight tools at our disposal to ensure compliance with the law and the Constitution.

Sincerely,



Peter Welch

United States Senator



Richard J. Durbin

United States Senator

⁴ 8 U.S.C. § 1182(a)(3).