This Is the Greatest Threat to Free Speech Since the Red Scare

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On Saturday, immigration agents showed up at the apartment building of Mahmoud Khalil, a leader of last year’s pro-Palestinian protests at Columbia University, and told him his student visa had been revoked and that he was being detained. Khalil is married to an American, and his lawyer, speaking to the agents by phone, informed them that he had a green card, but they said that had been revoked as well. He was taken away, and as of this writing appears to be in a detention facility in Louisiana.

In a post on Truth Social, Donald Trump made it clear that Khalil was snatched because of his activism. “This is the first arrest of many to come,” wrote Trump. “We know there are more students at Columbia and other Universities across the Country who have engaged in pro-terrorist, anti-Semitic, anti-American activity, and the Trump Administration will not tolerate it.”

Like many things done by Trump’s administration, Khalil’s arrest was shocking but not surprising. On the campaign trail, Trump repeatedly said he was going to deport anti-Israel student activists. [...]

It’s true that, under the Immigration and Nationality Act, any foreigner who “endorses or espouses” terrorist activity is considered inadmissible to the United States. But Margo Schlanger, a law professor who served as head of civil rights in the Department of Homeland Security under Barack Obama, points out that that provision is hardly ever used, especially against people already in the country, who largely have the same free speech protections as citizens.

You don’t need to take this from a liberal law scholar: During Trump’s first term, a legal analysis from Immigration and Customs Enforcement concluded the same thing. “Generally, aliens who reside within the territory of the United States stand on equal footing with U.S. citizens to assert First Amendment liberties,” it said. Khalil’s arrest, said Schlanger, “seems like an incredible overreach in light of the First Amendment concerns that even the government in the last Trump administration documented.”

During periods of nationalist hysteria, however, overreach is common. The closest analogue to this squalid moment is the Red Scare of the late 1940s and 1950s, when the right exploited widespread fear of communist infiltration to purge leftists from government and cultural institutions. [...]

For decades afterward, that era — when Senator Joseph McCarthy, the audaciously dishonest, headline-dominating demagogue, set the agenda — served as a cautionary tale, with members of both parties invoking the horrors of “McCarthyism” to denounce political witch hunts. Even though some Americans really did spy for the Soviet Union, it became clear that domestic subversives did less damage to America than the desperate, fevered campaign to root them out.

Today, pro-Palestinian campus demonstrators are widely despised, just as leftists were during the Red Scare. I wouldn’t be surprised if Khalil’s arrest proves popular, but that won’t make it any less shameful or alarming. The nearly 13 million green card holders in the United States — not to mention foreign students and professors — have been put on notice that they need to watch what they say. “Any foreign student here, I think, has to be worried if they’ve engaged in pro-Palestine protests over the past couple of years,” said Hauss. Nor can citizens rest easy; a government this willing to disregard the First Amendment is a danger to us all.

I asked Schlanger just how freaked out we should be by Khalil’s apprehension. “I teach constitutional law,” she said. “And I’m freaking out.”