

Article

Securitizing the University

Maryam Jamshidi[†]

Since October 7, 2023, public and private actors have doubled down on efforts to securitize the American university. In large part, these initiatives aim to quash a vocal pro-Palestine movement that has become highly visible across U.S. campuses since October 7th. In targeting this group, these efforts have variously treated the university as an “object” of national security, namely, as a potential site of national security risk, while simultaneously encouraging or pressuring universities to “participate” in national security, namely, by actively and, in many cases, voluntarily furthering U.S. national security objectives. The university’s status as object of and participant in national security has a long history, dating back to World War II and continuing in relatively unbroken fashion to the present moment, at least until recently.

This Article examines the university’s historical relationship to the U.S. national security state—as both object of and participant in national security—and situates current efforts to securitize higher education against that backdrop. While this recent securitization drive has accelerated and expanded since President Donald Trump took office in January 2025, this Article focuses on the origins of those efforts during the last fifteen months of the Biden administration. In doing so, this Article

[†] Associate Professor of Law, University of Colorado Law School. For helpful comments and conversations, thank you to Kathleen Claussen, Dana Evans Foster, Jonathan Feingold, Aziz Rana, Wadie Said, Shirin Sinnar, as well as participants in the Junior International Law Scholar’s Summer Workshop, Boston University School of Law’s Critical Race Theory Seminar, and Georgetown Law School’s International Law Colloquium. Thank you as well to the editors of the *Minnesota Law Review* for their selection, close review, and publication of this Article, particularly in this current environment. A very special thank you to Zara Abbassi whose care and commitment to this Article’s integrity went above and beyond. Copyright © 2025 by Maryam Jamshidi.

demonstrates how this recent chapter in the university's securitization comports with endemic trends in U.S. national security, which include the maintenance of U.S. global hegemony; the anti-Palestinian animus at the heart of U.S. counterterrorism laws; a tendency to create "enemies"; and the important role of private parties in shaping U.S. national security law and policy. Together, this analysis demonstrates that, rather than being aberrational, this current moment in the university's securitization is an unsurprising and predictable consequence of how U.S. national security has long operated.

2025]

SECURITIZING THE UNIVERSITY

303

TABLE OF CONTENTS

Introduction	304
I. The Historical Relationship Between the U.S. University and U.S. National Security	314
A. The University as Participant in National Security	315
1. Knowledge Production, Technology Creation, and the Establishment of University Centers, Departments, and Disciplines	316
2. Collaborating in National Security Policing and Surveillance, Enforcing National Security Laws & Programs, and Repressing Those Challenging U.S. National Security Interests	324
B. The University as Object of National Security	330
1. The University as Site of National Security Opportunity	331
2. The University as Site of Potential National Security Threat	336
II. Recent Efforts to Securitize the University	352
A. University Securitization at the Federal level	361
1. Proposed or Adopted Federal Legislation	361
2. Congressional Hearings, Investigations, and Other Government Activities	379
B. University Securitization at the State Level	390
1. Proposed State Legislation	390
2. Non-Legislative State Actions	394
C. University Securitization at the University level	396
1. The University's Securitized Response to Pro- Palestine Advocacy	397
2. The Symbiosis Between University and Government Securitization Efforts	405
3. Invoking National Security Concerns and Working with National Security Agencies	407
III. Reinforcing Existing National Security Trends	412
A. Maintaining U.S. Global Hegemony	413
B. Anti-Palestinian Animus in U.S. Terrorism Laws ...	418
C. U.S. National Security's Tendency to Construct "Enemies"	421
D. Private Involvement in U.S. National Security	424
Conclusion	429

INTRODUCTION

Only a few days after taking office, on January 29, 2025, President Donald Trump signed an Executive Order directing multiple executive branch agencies to develop recommendations for “familiarizing institutions of higher education” with U.S. immigration law’s security and security-related inadmissibility grounds.¹ The goal of this directive was to enable universities to “monitor for and report activities by” their foreign visa holding students and employees “relevant to those grounds” and to “ensur[e] that such reports about aliens lead, as appropriate and consistent with applicable law, to investigations and, if warranted, actions to remove” such foreign persons from the United States.² In an accompanying fact sheet, the White House made clear that Trump’s directive was intended to target students, faculty, and staff across U.S. universities who support the pro-Palestine³ movement.⁴ A few days later, in yet another thinly veiled and inflammatory effort to go after movement members, the Department of Justice announced the formation of “Joint Task Force October 7,” which among other things would “investigat[e] and prosecut[e] acts of terrorism, antisemitic civil rights violations, and other federal crimes committed by Hamas supporters in the United States, including on college campuses.”⁵ By early March 2025, the Trump administration had begun publicly

1. See Exec. Order No. 14188, 90 Fed. Reg. 8847, § 3(e) (Jan. 29, 2025).

2. *Id.*

3. While some may take issue with terms like “pro-Palestine” or “pro-Israel,” there are no “obvious alternative[s]” for capturing the sentiments of those participating in protests and other actions—discussed in this Article—that either support the Palestinian people or the Israeli state. Erica Chenoweth et al., *Protests in the United States on Palestine and Israel, 2023-2024*, SOC. MOVEMENT STUD., Oct. 18, 2024, at 2. For that reason, these and related terms are used throughout this Article.

4. *Fact Sheet: President Donald J. Trump Takes Forceful and Unprecedented Steps to Combat Anti-Semitism*, THE WHITE HOUSE (Jan. 30, 2025), <https://www.whitehouse.gov/fact-sheets/2025/01/fact-sheet-president-donald-j-trump-takes-forceful-and-unprecedented-steps-to-combat-anti-semitism> [<https://perma.cc/L5MN-G2HW>]. As discussed below, this directive echoed similar calls made by politicians and other public officials during the last fifteen months of the administration of President Joe Biden to deport foreign visa-holding students advocating for Palestine. See *infra* notes 402–04, 440–41 and accompanying text.

5. Memorandum from the Off. of the Att’y Gen. on Establishment of Joint Task Force October 7, to U.S. Dep’t of Just. Empls. (Feb. 5, 2025), <https://www.justice.gov/ag/media/1388516/dl?inline> [<https://perma.cc/JT9X-ER9B>].

implementing these various directives by, among other things, detaining visa and green card-holding students and scholars for their peaceful pro-Palestine activism,⁶ and launching a Justice Department probe to investigate whether pro-Palestine protests held the previous year at Columbia University had “violated federal terrorism laws.”⁷

While these efforts variously treated the university as a site of national security threat, they are neither the first nor the only instance of such treatment.⁸ They are also not unique in tasking the university with realizing national security-related objectives, in this case, monitoring and reporting on foreign students and staff. Indeed, since World War II, American universities and colleges⁹ have served as both participants in the U.S. national security state¹⁰ and objects of national security threat, often in simultaneous and overlapping ways.

6. *A Look at the People Ensnared in the Campaign Against Pro-Palestinian Activism at US Colleges*, ASSOCIATED PRESS: U.S. NEWS (last updated Apr. 1, 2025), <https://apnews.com/article/immigration-detainees-students-ozturk-khalil-78f544fb2c8b593c88a0c1f0e0ad9c5f> [<https://perma.cc/8UCP-7FUU>].

7. Reuters, *U.S. Justice Department Probes Columbia War Protests for Terrorism Violations, Official Says*, YAHOO NEWS (Mar. 14, 2025), <https://www.yahoo.com/news/us-justice-dept-probes-columbia-184103460.html> [<https://perma.cc/8UCP-7FUU>].

8. Though there are various approaches to conceptualizing the term, this Article adopts the definition of national security as “protecting the national government in its efforts to aid in the common defense, preserve public peace, repel external attacks, regulate commerce, and engage in foreign relations.” Laura Donohue, *The Limits of National Security*, 48 AM. CRIM. L. REV. 1573, 1576 (2011). For an overview of historical trends and shifts in how national security is defined, as well as the generally broad nature of government definitions of “national security,” see *id.* at 1577–87.

9. While “universities” and “colleges” are different types of institutions of higher education, I primarily use the word “university” or “institution of higher education” to refer to both in this Article.

10. The phrase “National Security State” was coined in the 1960s by former U.S. government official and public intellectual Marcus Raskin. MARCUS RASKIN & ROBERT SPERO, *THE FOUR FREEDOMS UNDER SIEGE: THE CLEAR AND PRESENT DANGER OF OUR NATIONAL SECURITY STATE* xx–xxi (2008). While this Article primarily focuses on the university’s relationship with the U.S. national security state—which develops and implements national security policy at the federal level—it also addresses various actions taken by state-level and private actors that support and even influence the national security policies and interests of the federal government. Indeed, both types of actors have long played a role in U.S. national security. See *infra* notes 44 and 581–89 and accompanying text for a discussion of the role of state governments, as well as private actors, in U.S. national security policy.

As *participants* in U.S. national security, institutions of higher education have for decades *actively engaged in and furthered U.S. national security interests and objectives, sometimes voluntarily and sometimes not*. They have done so, in part, by creating academic departments, shaping academic research, crafting curricula, and making academic hiring decisions based on the federal government's perceived national security needs.¹¹ Universities have also participated in national security by siding with the interests of the U.S. national security state over and against the interests of certain university members, including during the government's anti-communist, McCarthyite witch hunts of the late 1940s and '50s and the anti-Vietnam War protests of the 1960s and early '70s.¹²

In tandem with their status as participants, universities have been treated as *objects* of national security—*meaning they have been targeted by the U.S. national security state as sites of both potential security threat and opportunity*. The university's status as a locus of national security *threat* is reflected in the government's historical targeting of faculty, students, and university staff for holding “un-American” beliefs,¹³ as well as in the volume of national security laws, policies, and programs that have been directed at institutions of higher education, including government surveillance.¹⁴ The university's status as an object of national security *opportunity* is underscored, on the other hand, by the government's substantial financial support for the development of defense technologies¹⁵ and other national

11. See *infra* Part I.A.1.

12. See *infra* notes 119–26 and accompanying text.

13. See *infra* notes 118–26 and accompanying text.

14. See *infra* Part I.B.2.

15. While federal funding to universities is being weaponized by the Trump administration as of this writing, and even though that weaponization has often been directly tied to pro-Palestine campus protests, examining this issue is beyond the scope of this Article, which focuses on the last fifteen months of the Biden administration. See Alan Blinder, *Trump Has Targeted These Universities. Why?*, N.Y. TIMES (Apr. 9, 2025), https://go-gale.com.ezp1.lib.umn.edu/ps/i.do?p=OVIC&u=umn_wilson&id=GALE%7CA836616610&v=2.1&it=r&sid=summon&asid=73ca0f91 [https://perma.cc/MY42Y3LN] (discussing President Trump's withholding of universities' federal funding and highlighting targeted universities); see also Makiya Seminera, *A Look at the Universities with Federal Funding Targeted by the Trump Administration*, ASSOCIATED PRESS: U.S. NEWS (last updated Apr. 15, 2025), <https://apnews.com/article/harvard-trump-federal-cuts-universities-protests-8fa92331b2780394ea171b0b32d5d243> [https://perma.cc/LML2-EML2]. That being

security-oriented knowledge at institutions of higher education, as well as by its appreciation for the university's central role in helping win ideological battles against U.S. adversaries.¹⁶

The university's status as participant in and object of national security has been on stark display since October 7, 2023, when members of various armed Palestinian groups staged an incursion into Israel from the occupied Gaza Strip, taking hundreds of hostages and resulting in the deaths of over 1,000 Israeli civilians and soldiers, as well as non-Israeli nationals.¹⁷ Since that attack—which came sixteen years into Israel's illegal siege of Gaza,¹⁸ fifty-six years into its prolonged, unlawful occupation of the Gaza Strip, the West Bank, and East Jerusalem,¹⁹ and seventy-five years after the expulsion of 700,000 to 900,000 Palestinians from historic Palestine²⁰—campus activism in support of Palestinian self-determination and liberation has mushroomed. This activism has included trenchant criticisms and opposition to the many violations of international law Israel has committed against the Palestinian people—some of which have

said, and though it is too soon to tell, the administration's new approach to university-directed funding could have enduring effects on some of the historical trends identified in this piece. *See, e.g., infra* Part I.B.1.

16. *See infra* Part I.B.1.

17. Anat Peled & Summer Said, *Hamas Took More Than 200 Hostages from Israel. Here's What We Know*, WALL ST. J. (Jan. 25, 2025), <https://www.wsj.com/world/middle-east/hamas-hostages-israel-gaza-41432124> [<https://perma.cc/7PUK-D8Z6>]; Jeremy M. Sharp & Jim Zanotti, CONG. RSCH. SERV., R47828, ISRAEL AND HAMAS CONFLICT IN BRIEF: OVERVIEW, U.S. POLICY, AND OPTIONS FOR CONGRESS (2024).

18. *See* Press Release, Al Mezan Ctr. for Hum. Rts., In Focus: the Effects of Israel's Tightened Blockade on the Economic and Humanitarian Conditions in the Gaza Strip 2 (July 5, 2021), <https://reliefweb.int/report/occupied-palestinian-territory/focus-effects-israel-s-tightened-blockade-economic-and> [<https://perma.cc/XCK6-CRAQ>] (examining the impacts of Israel's blockade on Gaza); *see also* *Joint Letter on Israel's Unlawful Closure and Blockade of the Gaza Strip under International Law*, INT'L FED'N FOR HUM. RTS. (July 13, 2018), <https://www.fidh.org/en/region/north-africa-middle-east/israel-palestine/joint-letter-on-israel-s-unlawful-closure-and-blockade-of-the-gaza> [<https://perma.cc/Q3HW-JAXW>] (calling for an end to Israel's unlawful blockade of Gaza in a letter to European Union representatives).

19. Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem, Advisory Opinion, 2024 I.C.J. 1, ¶¶ 261–62 (July 19) [hereinafter ICJ Occupation Adv. Op.] (discussing the unlawful nature of Israel's occupation of Palestine since 1967).

20. Maryam Jamshidi, *Genocide and Resistance in Palestine under Law's Shadow*, J. GENOCIDE RSCH., May 6, 2024, at 2.

been identified by the International Court of Justice²¹—and outrage at Israel’s genocide against the Palestinian population in Gaza, which has been confirmed by multiple human rights organizations,²² as well as by experts on genocide and international law.²³ In voicing these and other denunciations of Israel’s actions, the pro-Palestine campus movement has articulated a central, uniting message: American universities have a duty to respond to Israel’s unlawful and criminal actions against the Palestinian people²⁴ by divesting from weapons manufacturers,

21. See generally ICJ Occupation Adv. Op., *supra* note 19; Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136 (July 9) (concluding that Israel violated international law by establishing settlements in the Occupied Palestinian Territory (OPT) and by constructing a separation Wall in the OPT that “severely impedes” the Palestinian people’s right to self-determination, amongst other legal violations).

22. E.g., *Our Genocide*, B’TSELEM 4 (2025), https://www.btselem.org/sites/default/files/publications/202507_our_genocide_eng.pdf [<https://perma.cc/L2U4-LDBJ>]; *Destruction of Conditions of Life: A Health Analysis of the Gaza Genocide*, PHYSICIANS FOR HUM. RTS., ISR. 5–6 (2025), <https://www.phr.org.il/wp-content/uploads/2025/07/Genocide-in-Gaza-PHRI-English.pdf> [<https://perma.cc/YKL8-GKCD>]; *How to Hide a Genocide: The Role of Evacuation Orders and Safe Zones in Israel’s Genocidal in Campaign in Gaza*, AL HAQ 1–4 (2024), <https://www.alhaq.org/cache/uploads/download/2025/01/02/evacuation-orders-two-pages-view-1735842246.pdf> [<https://perma.cc/NY8K-YR3W>]; ‘You Feel Like You Are Subhuman’: *Israel’s Genocide Against Palestinians in Gaza*, AMNESTY INT’L 12–13 (Dec. 5, 2024), <https://www.amnesty.org/en/documents/mde15/8668/2024/en> [<https://perma.cc/SXM2-LVJP>].

23. See generally Ernesto Verdeja, *The Gaza Genocide in Five Crises*, J. GENOCIDE RSCH., Jan. 20, 2025, at 1 (examining various crises brought to the fore by Israel’s genocide in Gaza, including for Palestinians living under Israeli control, Genocide and Holocaust studies, international law, atrocity prevention, and multilateralism); Francesca Albanese (Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967), *Genocide as Colonial Erasure*, U.N. Doc. A/79/384 (Oct. 1, 2024) (report examining “patterns of conduct” that underscore Israel’s intent to use genocide in order to ethnically cleanse all or parts of the OPT and arguing that Israel’s genocide may spread to the West Bank and East Jerusalem); Raz Segal, *A Textbook Case of Genocide*, JEWISH CURRENTS (Oct. 13, 2023), <https://jewishcurrents.org/a-textbook-case-of-genocide> [<https://perma.cc/LXY4-LJPR>] (arguing that Israel’s actions in Gaza post-October 7th constitute “a textbook case of genocide unfolding in front of our eyes”).

24. E.g., Press Release, ICC, Situation in the State of Palestine: ICC Pre-Trial Chamber I Rejects the State of Israel’s Challenges to Jurisdiction and Issues Warrants of Arrest for Benjamin Netanyahu and Yoav Gallant (Nov. 21, 2024), <https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-rejects-state-israels-challenges> [<https://perma.cc/ZNN9-LAS6>] (describing arrest warrants issued by the International Criminal Court against

other entities doing business with Israel, and Israeli companies.²⁵

Campus organizers have used large-scale protests and other activism to advocate for these positions since October 7th.²⁶ Various American politicians and other officials—at both the federal and state level—have responded to this mostly peaceful advocacy,²⁷ in turn, by framing pro-Palestine campus organizing as threatening U.S. national security. As part of these efforts, government officials and politicians have variously proposed bills—some of which have become law—held hearings, and conducted investigations that have weaponized the language of terrorism and the legacy of the War on Terror to smear pro-Palestine campus advocates, as either actually or potentially violating or otherwise triggering anti-terrorism laws.²⁸ They have even accused universities themselves of harboring or supporting these purported violations.²⁹ By and large, all these allegations have been based on either flimsy or non-existent facts and have been unsupported by applicable law.³⁰

Since October 7th, numerous universities have also adopted security-oriented approaches to pro-Palestine advocacy occurring on their campuses. While these approaches have typically framed the movement less as generating “national security” risk³¹ and more as threatening the “security” of the university or its members, security-oriented responses from many

Israeli Prime Minister Benjamin Netanyahu and former Defense Minister Yoav Gallant for war crimes and crimes against humanity committed in the Gaza Strip from at least October 8, 2023 to at least May 20, 2024).

25. Chenoweth et al., *supra* note 3, at 9. While this message, in different variations, has been particularly prominent, some campus groups have adopted other closely related demands. *Id.* at 9–10.

26. *Id.* at 5–6 (describing pro-Palestine protest movement on university campuses since October 7th); see generally Joseph Ax & Gabriella Borter, *US Colleges Become Flashpoints for Protests over Israel-Hamas War*, REUTERS (Oct. 14, 2023), <https://www.reuters.com/world/us/us-colleges-become-flash-points-protests-both-sides-israel-hamas-war-2023-10-13> [https://perma.cc/NBT4-K2YL].

27. See *infra* note 251 and accompanying text.

28. See *infra* Parts II.A–B. While beyond the scope of this Article, similar framings have been used against the pro-Palestine movement outside the university setting.

29. See *infra id.*

30. See *infra* notes 256–61 and 274–86 and accompanying text.

31. Though less common, university administrators have, at times, framed members of the pro-Palestine movement as threatening national security. See *infra* Part II.C.3.

institutions of higher education—which have frequently involved disproportionately harsh and exceptional sanctions against pro-Palestine campus advocates—have ultimately reinforced the national security framings promoted by federal and state politicians and officials.³²

As these developments suggest, the university's role as participant in and object of national security has been front and center since October 7th. As in the past, universities have actively promoted the government's national security interests—this time, by repressing the pro-Palestine campus movement.³³ As they have also done before, government actors have treated the university as an object of national security risk—in this case, as a central site of Palestine organizing that purportedly threatens U.S. national security.³⁴ Some government actors have gone even further and framed the university not just as a source of national security risk, but as an actual *enemy* of the state.³⁵ This appears to be the first time—or, at least, one of the few times—the university has been treated as a national security adversary in and of itself.³⁶

These dynamics, across government and college campuses, first materialized during the last fifteen months of President Joe Biden's administration, manifesting across red and blue states and at both private and public universities alike.³⁷ While this chapter in the university's securitization has continued, intensified, and accelerated since President Trump came to power earlier this year, this Article focuses on the origins of that securitization—during the Biden presidency—since it both laid the foundation for the Trump administration's on-going efforts and

32. See *infra* Part II.C.2.

33. As discussed *infra* notes 270–73 and accompanying text, this is hardly the first time U.S. universities have repressed pro-Palestine activism, even if it is the most widespread and severe episode of that repression.

34. See *infra* Parts II.A–B.

35. See, e.g., *infra* notes 296–99, 380, 405–07 and accompanying text.

36. While this framing is based on the novel and absurd claim that universities are supporting terrorist activities or groups by allowing pro-Palestine advocacy on their campuses (see *infra* Parts II.A–B), it is also rooted in long-standing right-wing attacks against U.S. higher education. See *infra* notes 274–86 and accompanying text.

37. See *infra* Part II.

underscores the bipartisan roots of many of those policies, which may be more obscured now.³⁸

In analyzing the university's securitization during the waning months of Biden's term, this Article also explores the relationship between that securitization and long-standing trends in U.S. national security. While national security is dynamic and evolving,³⁹ it is characterized by certain persistent tendencies, which are reflected in current efforts to securitize the university, including (1) a concern with maintaining U.S. global hegemony, as well as the economic and capitalist interests on which it depends; (2) an approach to terrorism that is deeply intertwined with anti-Palestinian animus; (3) a tendency to create "enemies," especially along racial lines; and (4) the central role of private parties in enforcing and shaping U.S. national security laws and policies.⁴⁰

In focusing on the university's securitization—both historically and more recently—this Article makes several contributions. First, it provides a framework for understanding and critiquing the national security state's relationship to other institutions of American life. Given national security's expansive and pervasive reach within U.S. policy-making,⁴¹ the dynamics, identified here, between the U.S. national security state and U.S. universities are unlikely to be singular. This Article's approach to understanding those dynamics—in terms of the object/participant rubric—provides a novel analytical framework for identifying and assessing whether and how *other* civic institutions have also become intertwined with the nation's security.

This Article's second key takeaway is that this current chapter in the university's securitization is not aberrational. While it may have certain unique characteristics,⁴² it is rooted both in

38. See Lara Deeb & Jessica Winegar, *Resistance to Repression and Back Again: The Movement for Palestinian Liberation in US Academia*, 33 MIDDLE E. CRITIQUE 313, 314 (2024) (describing the bi-partisan attack against the pro-Palestine campus movement after October 7th, 2023 through 2024).

39. See Aziz Rana, *Who Decides on Security?*, 44 CONN. L. REV. 1417, 1422 (2012) (describing the manner in which national security's meaning has evolved since World War II and the beginning of the Cold War).

40. See *infra* Part III.

41. Maryam Jamshidi, *A Transformational Agenda for National Security*, 2024 U. CHI. LEGAL F. 161, 185–86 (2024).

42. As mentioned earlier, this may be the first time the university itself has been treated as an enemy of the state. See *supra* note 36 and accompanying text.

the university's long-standing relationship with the U.S. national security state as well as in national security's operational trends.

This Article's final takeaway is that understanding those operational trends is crucial to meaningfully critiquing the university's securitization in this moment. While current securitization efforts are certainly eroding and eviscerating free speech and academic freedom at U.S. universities,⁴³ they are also doing more than that. In particular, they are upholding U.S. global and economic power; reinforcing anti-Palestinian prejudice embedded within U.S. counterterrorism laws; treating marginalized communities as the "enemy" and further excluding them from the body politic; and giving certain private parties the opportunity to shape national security goals and objectives, a key area of U.S. law and policy—all at once.

This Article proceeds as follows. Part I provides a historical overview of the relationship between the U.S. national security state and the U.S. university during and since World War II. While far from comprehensive, it provides an exemplary summary of how the national security state has historically related to and interacted with the American university, both as an institution and as a community of faculty, administrators, staff, and students. To describe and make sense of these dynamics, this Part utilizes and relies on the object/participant framework. Part II shifts to the contemporary moment. It explores recent efforts to securitize the university by focusing on post-October 7th responses to pro-Palestine campus activism at the federal, state,⁴⁴

43. Kayra Sener, *Renewed Crackdown on Free Speech Aims to Overwhelm US Student Protests*, MIDDLE E. EYE (Nov. 29, 2024), <https://www.middleeasteye.net/news/massive-crackdown-free-speech-threatens-overwhelm-us-student-protests> [<https://perma.cc/Y76V-5AU5>].

44. State governments have often partnered with or otherwise assisted the federal government in its national security work. Matthew Waxman, *National Security Federalism in the Age of Terror*, 64 STAN. L. REV. 289, 290–95 (2012). This partnership has even extended to universities. It was particularly evident during the McCarthyite period of the late 1940s and '50s, when state legislatures attempted to rout out so-called communists and other "subversives" at college campuses by passing or attempting to pass various laws targeting those individuals, as well as by investigating communist activities allegedly undertaken by university members. ELLEN W. SCHRECKER, NO IVORY TOWER: MCCARTHYISM & THE UNIVERSITIES 112–17 (1986). While this Article primarily focuses on the federal government's national security-inflected relationship with universities, the discussion in Part II.B underscores the continuing role of

and university level during the last fifteen months of the Biden administration. Again, rather than providing a comprehensive recounting, this Part concentrates on exemplary developments. Part III examines how recent efforts to securitize the university comport with various trends in U.S. national security. A brief conclusion follows.

This Article is grounded in my previous scholarship, which explores how national security manifests in unexpected areas of U.S. law;⁴⁵ the important role private parties play, as volunteers, in enforcing and shaping U.S. national security laws and policies;⁴⁶ the impact of political, economic, and social forces on the substance and implementation of U.S. national security laws and programs;⁴⁷ and the ways in which U.S. law, especially laws relating to terrorism, are instrumentalized to target the pro-Palestine movement and its supporters in the United States and beyond.⁴⁸ Rather than providing “solutions,” each of those projects focused on describing and diagnosing underappreciated problems and dynamics. This Article maintains that focus in the belief that the first step in curing an ailment is a correct and comprehensive diagnosis.

That being said, one reason this Article does not address solutions is because remedying the problems it identifies requires a complete and total overhaul of the university’s relationship to the national security state—something that cannot be adequately addressed within the limited confines of a law review article. There is, however, one comparatively modest remedy that is obvious and far more straightforward: *stop weaponizing terrorism laws to repress political movements, including the movement in support of Palestine and its people*. The dilemma

state governments in enforcing and imposing U.S. national security interests on American higher education.

45. Maryam Jamshidi, *How the War on Terror Is Transforming Private U.S. Law*, 96 WASH. U. L. REV. 559, 559 (2018) (exploring the War on Terror’s impact on tort law).

46. Maryam Jamshidi, *The Private Enforcement of National Security*, 108 CORNELL L. REV. 739, 742 (2023) (arguing that private volunteers are “using federal tort statutes to independently enforce the government’s national security laws and policies through litigation”).

47. Jamshidi, *supra* note 41, at 163.

48. See generally Maryam Jamshidi, *Instruments of Dehumanization*, BOS. REV. (Dec. 9, 2023), <https://www.bostonreview.net/articles/instruments-of-dehumanization> [<https://perma.cc/89U8-89ZU>].

this Article has no solution for is how to generate the political will necessary to achieving that goal.

I. THE HISTORICAL RELATIONSHIP BETWEEN THE U.S. UNIVERSITY AND U.S. NATIONAL SECURITY

While the concept of national security has existed in some form since the inception of the U.S. Republic, the term “national security” emerged as a distinct phrase in public discourse around World War II.⁴⁹ It was also during this period that the relationship between the national security state and the U.S. university began to take shape. While that relationship has evolved and shifted over time, it has remained constant and firm, at least until recently.⁵⁰ This Section provides an overview of the historical relationship between the U.S. national security state and the American university. Rather than presenting a chronological narrative, it describes this relationship using a novel framework that centers the university’s role as both participant in and object of national security. While the university as *participant* emphasizes how institutions of higher education understand and navigate their relationship to U.S. national security, the university as *object* emphasizes how the U.S. government understands and approaches that same relationship.

This Section demonstrates how universities have historically served as participants in national security—meaning they have actively engaged in and furthered U.S. national security interests and objectives—by working to produce knowledge and technology that serves the government’s national security interests and by otherwise enforcing the United States’ national security policies and priorities on their campuses, among other things. In ways that have sometimes overlapped with their role as participants, U.S. universities have also historically served as *objects* of national security—meaning they have been targeted by the national security state as both useful to its objectives as well as potentially threatening to its interests. This dynamic is underscored by the substantial research funding the federal

49. Rana, *supra* note 39, at 1462–63.

50. Time will tell whether the Trump administration’s on-going onslaught against American higher education will meaningfully alter the university’s long-standing relationship to the national security state. *See, e.g., supra* note 15. Given the radical changes the administration appears to be pursuing, it is possible new trends will emerge and/or that some trends identified in this Section of the Article will transform or disappear, as mentioned earlier. *Id.*

government has historically provided to universities—much of it for research relating to national security priorities—as well as by various national security-oriented laws and programs targeting campus-based threats. As suggested by this Part, but only briefly addressed at the end, the university-national-security-state relationship has historically generated benefits for universities, though not without serious costs to at least some campus members. As Parts II and III of this Article demonstrate, those costs are currently increasing at an alarming rate.

This Part begins by examining the university's role as participant in national security and then explores its status as an object of national security opportunity and threat. All told, this discussion provides important context for understanding efforts undertaken during the Biden administration to securitize the university in response to pro-Palestine campus activism—efforts that are addressed in Part II—and highlights the enduring consistencies as well as inconsistencies between those efforts and what came before.

A. THE UNIVERSITY AS PARTICIPANT IN NATIONAL SECURITY

Since the start of World War II, the university has participated in U.S. national security in two primary ways. The first is oriented around production and creation, while the second revolves around enforcement and repression. On the productive front, the university has participated in U.S. national security by creating knowledge, technology, and academic centers, as well as departments and disciplines that align with and further U.S. national security priorities, objectives, and projects.⁵¹ On the enforcement and repression front, the university has participated in U.S. national security by collaborating in various national security-oriented initiatives, particularly relating to surveillance, by enforcing national security laws and programs, and by repressing members of campus communities threatening the government's national security interests.⁵² This Section explores these two primary avenues of university participation in national security in turn.⁵³

51. *See infra* Part I.A.1.

52. *See infra* Part I.A.2.

53. The university has also participated in national security in other ways, including by creating a technocratic workforce useful to the U.S. national security state and promoting the United States' material and moral superiority.

In participating in national security, institutions of higher education have sometimes, but not always, acted voluntarily.⁵⁴ This “voluntariness” raises important questions about *why* universities have willingly taken part in the national security project. As this Section demonstrates, institutions of higher education have willingly and voluntarily participated in U.S. national security for reasons ranging from financial benefit and prestige to genuine ideological support.⁵⁵ While these motivations are not exhaustive—and do not capture concerns with, dissent to, and rejection of the university’s participation in national security by community members⁵⁶—they underscore how the university, particularly at the administrative and faculty level, has often been a willing and even enthusiastic participant in the national security state.

1. Knowledge Production, Technology Creation, and the Establishment of University Centers, Departments, and Disciplines

In large part, the university’s participation in national security has centered around the production and creation of knowledge, technologies, centers, departments, and disciplines intended to support the interests and goals of the U.S. national security state, including specific national security projects. Indeed, this is generally how the relationship between the university and the national security state began during World War II: as a partnership to produce various kinds of knowledge and technology. As demonstrated below, while this aspect of the university’s participation in national security has fluctuated, arguably reaching a low point during the Vietnam War period,⁵⁷ it has

Those practices are described in more detail in Part I.B as part of the university’s role as an object of national security opportunity since they are particularly important to that dynamic.

54. By voluntary action, I mean action the university is not legally obligated to undertake. As a participant in national security, the university is legally obliged, at times, to comply with and enforce certain national security directives, whether it wants to or not, as discussed below. *See, e.g., infra* notes 114–15 and accompanying text. I do not consider such compliance “voluntary.” I do, by contrast, consider actions taken by the university as a result of political or economic pressure to be voluntary.

55. For more on the various factors that have motivated the university to voluntarily participate in U.S. national security, see *infra* Part I.A.

56. *See infra* notes 127, 220–22 and accompanying text.

57. *See infra* notes 81–88 and accompanying text.

remained a constant feature of the university—national security state relationship for over eighty years. This Subsection broadly charts this participatory dynamic over World War II, the Cold War, and the post-9/11 period.

a. World War II

Prior to World War II, American universities did not serve as important sources of research and development for the federal government and received only limited federal support, which mostly went to specific programs in the agricultural sector.⁵⁸ Instead, it was “[a]utonomy from the federal government” that “was . . . central to the definition of the university”⁵⁹

The outbreak of World War II radically altered these dynamics. To meet its wartime needs and develop vital technologies and weapons systems, the government decided it had to work more closely with non-governmental institutions, like universities.⁶⁰ For the first time on a wide scale, universities were largely amenable and even enthusiastic about this government collaboration. While many administrators—at both public and private universities—had previously been resistant to accepting federal financial assistance,⁶¹ the Great Depression had taken a major toll, leaving many universities cash-strapped and more open to, and in some cases desperate for, financial support from Washington.⁶²

During World War II, universities and their faculties worked with the U.S. government in various ways. For example, they developed national security-oriented projects in aid of the war effort, including creating the CIA’s predecessor agency, the Office of Strategic Services.⁶³ They also generated game-

58. MATTHEW LEVIN, COLD WAR UNIVERSITY: MADISON AND THE NEW LEFT IN THE SIXTIES 27 (2013); R.C. Lewontin, *The Cold War and the Transformation of the Academy*, in THE COLD WAR & THE UNIVERSITY: TOWARD AN INTELLECTUAL HISTORY OF THE POSTWAR YEARS 12–13 (1997).

59. REBECCA S. LOWEN, CREATING THE COLD WAR UNIVERSITY: THE TRANSFORMATION OF STANFORD 2 (1997).

60. *Id.* at 43–44.

61. *Id.* at 31–34.

62. *Id.* at 13–14, 44. As discussed below, a sense of patriotism has also generally driven the university’s desire to collaborate with the national security state. See *infra* notes 79–80, 97 and accompanying text.

63. Lawrence Soley, *The New Corporate Yen for Scholarship*, in UNIVERSITIES AND EMPIRE: MONEY AND POLITICS IN THE SOCIAL SCIENCES DURING THE COLD WAR 229 (Christopher Simpson ed., 1998).

changing technology, like the atom bomb.⁶⁴ For institutions of higher education, the financial upside from this collaboration was significant. During the war, universities received a cumulative \$325 million in research funds from the federal government, a sum described as “unimaginable a half a decade earlier.”⁶⁵

b. Cold War

With the start of the Cold War in 1947, and particularly with the onset of the Korean War in 1950, this partnership between U.S. universities and the national security state became institutionalized.⁶⁶ Drawn to the prestige and money that flowed from government research projects, and fueled by competition with other institutions of higher education, university administrators and faculty, particularly at the most elite establishments,⁶⁷ eagerly sought to accommodate the federal government’s research needs.⁶⁸ Especially during the early years of the Cold War, many administrators and faculty members willingly and voluntarily reshaped their universities—including by reorganizing and supporting certain academic departments over others and encouraging particular kinds of research initiatives—in order to attract desired patronage from the government’s military and national

64. LOWEN, *supra* note 59, at 44.

65. *Id.*

66. *Id.* at 8, 14.

67. While “[r]esearch dollars and other funds went to many universities” during the early Cold War years, they were “especially concentrated in a small number of institutions that had long been regarded as the nation’s leading centers of academic research.” LEVIN, *supra* note 58, at 11. According to data from fiscal year 2023, federal science and engineering funding continues to be “concentrated within a relatively few institutions,” with the top twenty-five (mostly elite) university recipients obtaining nearly forty percent of that funding. *In FY 2023, Federal Science and Engineering Support for Higher Education Totaled \$49 Billion; Federal R&D to Nonprofits Totaled \$12 Billion*, NAT’L CTR. FOR SCI. & ENG’G STAT. 4–5 (June 2, 2025), <https://nces.nsf.gov/pubs/nsf25341> [<https://perma.cc/EAA25N2U>].

68. LOWEN, *supra* note 59, at 2, 97–99, 101, 187–88 (describing how universities pursued and won federal government patronage during World War II and the early Cold War period). In particular, universities were eager to continue participating in U.S. national security after World War II because of the generous contract terms the federal government offered during the war—contracts that effectively “subsidize[d] the universities themselves through the payment of indirect, or overhead, costs” *Id.* at 14.

security arms.⁶⁹ At times, this required “accommodating the military even when . . . [its] interests . . . were clearly at odds with academic traditions or . . . [the] preferences [of university administrators and faculty].”⁷⁰

In line with this commitment to the government’s national security needs, universities served as critical sites of scientific and technological research during the Cold War,⁷¹ working to develop computer, ballistic, communications, and other technologies relevant to U.S. military and national security objectives.⁷² Some universities created academic centers, which were closely connected to U.S. national security agencies and acted as venues for academic collaboration and coordination on issues of national security concern.⁷³ With funding from the federal government, which was sometimes supplemented by financial contributions from aligned private foundations,⁷⁴ social sciences departments at various American universities became important players in specific government projects.⁷⁵ More broadly, universities created new departments and otherwise supported emerging areas of academic inquiry—like development studies, communication studies, and area studies (as well as associated foreign language programs)—that were often shaped by national security interests and provided useful information and/or broad legitimacy to the government’s national security work.⁷⁶

69. See *id.* at 68–69, 109–10, 138, 149, 163 (providing examples of departmental reorganizations undertaken by university administrators, particularly at Stanford University, to accommodate governmental and militaristic goals).

70. *Id.* at 137.

71. See *id.* at 95, 120–21 (describing the rise in federal financial support for university research in the sciences and engineering during the early Cold War years).

72. Soley, *supra* note 73, at 229–30.

73. See Allan A. Needell, *Project Troy and the Cold War Annexation of the Social Sciences*, in *UNIVERSITIES AND EMPIRE*, *supra* note 63, at 22–24 (describing the creation of the MIT Center for International Studies and its role as a site for academic participation in government classified research and discussions).

74. LOWEN, *supra* note 59, at 193–202.

75. See, e.g., Needell, *supra* note 73, at 3–4 (describing Project Troy, a government project “[u]nderwritten by the Office of Naval Research,” that “enlisted prominent social scientists” to support the United States’ psychological warfare efforts around the world).

76. Irene L. Gendzier, *Play it Again Sam: the Practice and Apology of Development*, in *UNIVERSITIES AND EMPIRE*, *supra* note 63, at 57, 68–71, 74–80 (describing how development studies provided the U.S. government with

Even during the more politically quiescent period of the 1950s and early '60s, some university administrators were apprehensive about allowing their institutions to be subsumed by Cold War objectives or militarized by the government's national security interests. At the same time, these same leaders often believed the university *should* play a crucial role in supporting U.S. national security. For example, President Edwin Fred of the University of Wisconsin-Madison—which was a major beneficiary of federal funding during the Cold War⁷⁷—“rejected the idea of turning over the university entirely to military purposes” while also declaring universities to be “one of the basic arsenals of democracy. . . . As a community of scholars, equipped to carry on instruction and investigation in broad areas of knowledge, a university is a stockpile of specialized and highly useful manpower, information, plans, and equipment [for the government].”⁷⁸ Indeed, alongside a desire for the funds and prestige federal government contracts brought, some university administrators were broadly driven by loyalty and patriotism, and believed that university experts were “essential to national defense.”⁷⁹ Though some faculty expressed qualified reservations

“information and legitimation” for its foreign policy interests in the Third World during the Cold War); Christopher Simpson, *Universities Empire, and the Production of Knowledge: An Introduction*, in UNIVERSITIES AND EMPIRE, *supra* note 63, at xii–xiv (describing how interdisciplinary projects during the early Cold War period across area studies, communication studies, and other academic disciplines provided information supporting U.S. national security strategies in the Third World, including social engineering efforts); Bruce Cumings, *Boundary Displacement: Area Studies and International Studies During and After the Cold War*, in UNIVERSITIES AND EMPIRE, *supra* note 63, at 163–71 (describing how U.S. national security and foreign policy interests informed the development of area studies and foreign language programs during the Cold War); Soley, *supra* note 63, at 230 (noting that “[g]overnment psychological warfare programs helped shape mass communication research into a distinct scholarly field, strongly influencing the choice of leaders and determining which of the competing scientific paradigms of communication would get funded, elaborated and encouraged to prosper”); Immanuel Wallerstein, *The Unintended Consequences of Cold War Area Studies*, in THE COLD WAR & THE UNIVERSITY, *supra* note 58, at 195–97, 200–10 (describing how U.S. national security interests drove the development of area studies during the Cold War not only “to promote economic, political, and cultural relations among nations” . . . but in order better to understand the functioning of those that already had communist regimes and to help prevent other areas from “falling into the hands of the communists”)(citation omitted)).

77. LEVIN, *supra* note 58, at 11–12.

78. *Id.* at 29.

79. LOWEN, *supra* note 59, at 95–96, 98, 101.

about national security-oriented work during the early Cold War period, they too often still believed academics should support the government's national security goals.⁸⁰

As a result of the student-led, anti-Vietnam War movement of the latter half of the 1960s and early '70s, as well as other controversies, some of these participatory dynamics between the university and the national security state began to unravel.⁸¹ In particular, the protest movement seeded the view that academic expertise over the preceding years had "helped the state maintain ideological control over a potentially unruly population, shielded a murderous foreign policy from public view, and 'manufactured consent' by insisting that U.S. motives [in Vietnam] were pure and its power legitimate."⁸² Anti-war teach-ins, which were an important part of the movement, revealed further troubling details about the university's relationship to the military-industrial complex.⁸³ During this period, various actors within and outside the university, from student activists to faculty to journalists, also publicized secretive academic collaborations with U.S. security agencies that created a "tidal wave of shock."⁸⁴

Though the government attempted to "shine up its tarnished image in the academic world,"⁸⁵ some faculty members

80. Ellen Herman, *Project Camelot and the Career of Cold War Psychology*, in *UNIVERSITIES AND EMPIRE*, *supra* note 63, at 108–10. See ELLEN SCHRECKER, *THE LOST PROMISE: AMERICAN UNIVERSITIES IN THE 1960S* 220 (2021) ("Until Vietnam, most professors and graduate students had few qualms about taking Washington's money.").

81. Herman, *supra* note 80, at 121–23 (describing how the anti-Vietnam War movement contributed to critiques of academic participation in government work); Simpson, *supra* note 76, at xix. For example, in 1965, public revelations about academia's participation in Project Camelot, one of the U.S. government's counterinsurgency initiatives, led to the project's cancellation and, more generally, disrupted the "prior seemingly stable relations between the government and the social sciences in the United States." LISA STAMPNITZKY, *DISCIPLINING TERROR: HOW EXPERTS INVENTED "TERRORISM"* 58 (2013).

82. Herman, *supra* note 80, at 122.

83. *Id.* at 123. The teach-in movement was an innovation of the anti-Vietnam War effort on U.S. campuses. SCHRECKER, *supra* note 80, at 137. Individual teach-in sessions, which were usually organized by faculty, aimed to teach "students, colleagues, and the broader public the truth about Vietnam." *Id.* at 136–37.

84. See Herman, *supra* note 80, at 111–12; see also SCHRECKER, *supra* note 80, at 155 (describing Vietnam War-era reporting on the university's secret involvement with military-related research).

85. Herman, *supra* note 80, at 114.

remained reticent to directly participate in national security and military projects during the anti-Vietnam War protest period, with some supporting calls to refuse all military-related work.⁸⁶ While campus dissent against U.S. foreign policy and national security interests peaked during this time,⁸⁷ it planted seeds that arguably led to more protests against and resistance to the university's participation in and alignment with U.S. national security interests in the ensuing years.⁸⁸

Notwithstanding this burgeoning dissent, in the decades that followed, the university continued to actively participate in and support U.S. national security interests and projects. Even after a 1976 report from the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities—otherwise known as the Church Committee⁸⁹—disclosed stunning information about covert collaborations between U.S. intelligence agencies and faculty, some professors continued to clandestinely cooperate with the U.S. national security state.⁹⁰

86. SCHRECKER, *supra* note 80, at 197; *Declaration of Conscience Against United States Policies in Vietnam and the Dominican Republic*, WIS. HIST. SOC'Y (1965), <https://content.wisconsinhistory.org/digital/collection/p15932coll8/id/54410> [<https://perma.cc/DZR7-NX7C>].

87. Philip G. Altbach & Robert Cohen, *American Student Activism: The Post-Sixties Transformation*, 61 J. HIGHER EDUC. 32, 32–33, 36 (1990).

88. This was most notably reflected in protests, during the 1980s, calling for universities to divest from apartheid South Africa, a regime that was supported by the administration of U.S. President Ronald Reagan. *Id.* at 32–33, 40–41; Justin Elliott, *Reagan's Embrace of Apartheid South Africa*, SALON (Feb. 5, 2011), https://www.salon.com/2011/02/05/ronald_reagan_apartheid_south_africa [<https://perma.cc/FF6M-G72K>]. The sentiments of the anti-Vietnam War protests were also arguably reflected in student-led demonstrations against CIA recruitment on university campuses in the late Cold War period. Altbach & Cohen, *supra* note 87, at 42. Even in this current moment of pro-Palestine activism, students have pointed to the anti-Vietnam War protests as a source of inspiration. Colum. L. Students for Palestine & CUNY L. Students Against Genocide, *From the Encampments: Student Reflections on Protests for Palestine*, LPE PROJECT (May 2, 2024), <https://lpeproject.org/blog/from-the-encampments-student-reflections-on-protests-for-palestine> [<https://perma.cc/JD6R-2A72>].

89. The Church Committee was established by the U.S. Senate in 1975 to investigate “illegal, improper, or unethical” behavior by federal intelligence agencies, such as the FBI, CIA, and National Security Agency. *Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities*, U.S. S. HIST. OFF. (1976), <https://www.senate.gov/about/powers-procedures/investigations/church-committee.htm> [<https://perma.cc/H23RZHLK>].

90. DANIEL GOLDEN, SPY SCHOOLS: HOW THE CIA, FBI, AND FOREIGN INTELLIGENCE SECRETLY EXPLOIT AMERICA'S UNIVERSITIES 187, 193–95 (2017).

In a similar vein, universities carried on participating in national security-oriented projects, including a CIA initiative created in 1985, in which universities hosted intelligence officers nearing retirement at the CIA's expense.⁹¹

c. The Post-9/11 Period

Since 9/11, there has been a “quiet reengagement of a lot of the academy with the national security community.”⁹² This reengagement has included faculty participation in military projects, like the Human Terrain System, which deployed social scientists in the field as part of U.S. counterinsurgency operations in Afghanistan and Iraq.⁹³ As discussed below, the university has also remained an important site of national security-related research and knowledge production, during the post-9/11 period.⁹⁴ Universities have similarly continued to participate in and host various centers closely connected to U.S. national security agencies. These include the U.S. Department of Homeland Security's (DHS) Centers of Excellence,⁹⁵ as well as other university centers and labs dedicated to defense-oriented research funded by the U.S. military.⁹⁶

As a voluntary participant in national security post-9/11, the university has been driven by motivations similar to those evident during the Cold War. These motives include ideological commitments to the U.S. national security project. Much as they did during the Cold War, universities have continued to express a desire both to remain “open places” for inquiry *and* to partner with the U.S. government because “no one wants to do anything

91. *Id.* at 196.

92. *Id.* at 15.

93. Maja Zehfuss, *Culturally Sensitive War? The Human Terrain System and the Seduction of Ethics*, 43 SEC. DIALOGUE 175, 175 (2012).

94. See *infra* notes 139–40 and accompanying text.

95. “[L]ed by a U.S. college or university,” Centers of Excellence “conduct groundbreaking research resulting in rigorous, objective knowledge products and timely solutions for DHS Components.” *Centers of Excellence*, U.S. DEP’T OF HOMELAND SEC., <https://www.dhs.gov/science-and-technology/centers-excellence> [<https://perma.cc/QQ7M-ARL9>].

96. See William Hartung, *The Military Showers Universities with Hundreds of Millions of Dollars*, RESPONSIBLE STATECRAFT (Oct. 2, 2024), <https://responsiblestatecraft.org/pentagon-divestment> [<https://perma.cc/KK5C-JPR3>] (describing various contemporary university-military partnerships).

that is not entirely supportive of national security.”⁹⁷ Also like the Cold War period, the university’s contemporary participation in national security has likely been driven by financial considerations. While federal funding for university research has fluctuated since the 1970s, it has continued to flow in substantial amounts to certain academic departments (at least, until recently), particularly those working in areas important to U.S. defense.⁹⁸ In an era of rising costs,⁹⁹ those funds have undoubtedly been precious to many universities and have likely incentivized them to continue accommodating the U.S. national security state’s needs.

2. Collaborating in National Security Policing and Surveillance, Enforcing National Security Laws & Programs, and Repressing Those Challenging U.S. National Security Interests

As a participant in national security, the university has not just produced valuable knowledge and created departments, disciplines, and centers important to the government’s national security interests. It has also surveilled, controlled, and disciplined campus communities in the name of protecting and preserving the nation’s security. This work is reflected in several kinds of university activities, including: (1) partnering with the national security state’s policing and surveillance apparatus; (2) enforcing national security laws and programs on campus; and (3) repressing university members challenging or threatening U.S. national security interests. This Subsection discusses each of these issues in turn.

a. *Collaborating in National Security Policing and Surveillance*

When it comes to the university’s participation in the national security state’s policing and surveillance apparatus,

97. Dave Eggen, *FBI Taps Campus Police in Anti-Terror Operations*, THE WASH. POST (Jan. 25, 2003), <https://www.washingtonpost.com/archive/politics/2003/01/25/fbi-taps-campus-police-in-anti-terror-operations/c303eb1b-77d3-4bf5-8398-4bc56d76eb2c> [https://perma.cc/TW9D-FJ2U].

98. See generally *infra* notes 138–40 and accompanying text.

99. Carter Evans, *How Demand and Administrative Costs Are Driving Up the Cost of College*, CBS EVENING NEWS (Feb. 21, 2024), <https://www.cbsnews.com/news/college-tuition-cost-rise-loans-administrative-bloat> [https://perma.cc/W8DS-C3AN].

campus police departments have been key. In response to student activism of the 1960s and early '70s, universities developed their own modern police forces to "handle campus unrest."¹⁰⁰ These departments, which grew substantially in the 1990s and 2000s,¹⁰¹ have largely been used to further the university's own security-related interests, often through campus crime control and surveillance.¹⁰² As a result, the securitization of campus spaces has become ubiquitous in its own right, separate and apart from the interests of the U.S. national security state.¹⁰³

That being said, U.S. national security interests have *also* shaped the work of campus police departments. These departments have, for example, participated in national security-focused policing initiatives like the U.S. Department of Defense's 1033 program, which provides military-grade gear and weapons to state and local law enforcement.¹⁰⁴ While "[m]ost of the force used on campus these days . . . comes in 'less lethal' form,"¹⁰⁵ involvement in the 1033 program has likely contributed to the increasing tendency of campus police to use greater and greater force against student protestors.¹⁰⁶

100. A.W. Geisel, *Campus Policing and Police Reform*, 171 U. PA. L. REV. 1771, 1779–80 (2023).

101. *Id.* at 1794.

102. *Id.* at 1797–01.

103. See Vanessa Miller & Kathryn Russell-Brown, *Policing the College Campus: History, Race, and Law*, 29 WASH. & LEE J. C.R. & SOC. JUST. 59, 62 (2023) (detailing various ways in which U.S. campuses are sites of policing, surveillance, and other security practices).

104. *Id.* at 105.

105. Michael Gould-Wartofsky, *How to Build a Homeland Security Campus in Seven Steps*, TOMDISPATCH (Jan. 10, 2008), <https://tomdispatch.com/gould-wartofsky-seven-steps-to-a-homeland-security-campus> [<https://perma.cc/VU8L-PHD3>].

106. Michael Gould-Wartofsky, *Homeland Security Goes to College: How College Campuses Became a Homeland Security Battleground*, MOTHER JONES: CRIM. JUST. (Mar. 22, 2012), <https://www.motherjones.com/politics/2012/03/homeland-security-college-campus-crackdown-occupy> [<https://perma.cc/P2WP-L3K3>]. Writing in 2013, one commentator noted a "shift . . . in how many campus security and police forces respond to on-campus political protests" and described an emerging trend in which "peaceable protests are much more likely to be disbanded; greater numbers of students are being arrested; in many cases, campus (or local) police are responding with greater force and more menacing measures of 'crowd control.'" Joe Lewis, *The College Campus as Panopticon: How Security and Surveillance Are Undermining Free Inquiry*, in *POLICING THE CAMPUS: ACADEMIC REPRESSION, SURVEILLANCE, AND THE OCCUPY MOVEMENT* 141 (Anthony J. Nocella & David Gabbard eds., 2013).

Surveillance has been an especially important node of collaboration between campus police and the national security state. In particular, some university police departments have developed relationships with national security agencies that have likely facilitated government surveillance of campuses, either directly or indirectly, especially during the post-9/11 period. Some campus police officers have, for instance, actively promoted university collaboration with national security agencies, like the Federal Bureau of Investigation (FBI), to address potential threats posed by students holding so-called extremist views, among other things.¹⁰⁷ More broadly, since 9/11, various campus police departments have reportedly been involved in Joint Terrorism Task Forces,¹⁰⁸ which are run out of FBI field offices and work with local agencies to investigate actual or potential terrorist threats¹⁰⁹ typically through modes of surveillance.¹¹⁰ Campus police departments have also collaborated with the FBI's Campus Liaison Initiative, which was created in 2008 and assigns an FBI or Joint Terrorism Task Force Officer to coordinate with campus police and other university personnel "with the overriding goal of addressing terror threats and preventing attacks."¹¹¹ Another important node of the U.S. national security state—DHS—provides avenues for campus police to share and disseminate threat and other security-related information through platforms like the Homeland Security Information

107. Ronnell A. Higgins, *Campus Police Participation in Joint Terrorism Task Forces* 55–60, (Mar. 2020) (M.A. thesis, Naval Postgraduate School) (at the time of writing his thesis, the author was the Director of Public Safety and Chief of Police at Yale University).

108. *Id.* at 3–4; Eggen, *supra* note 97.

109. *JTTFS*, AM. C.L. UNION MASS., <https://www.aclum.org/en/jtfts> [<https://perma.cc/F5NV-LSAT>]. The FBI has reportedly encouraged campus police to participate in Joint Terrorism Task Forces. Higgins, *supra* note 107, at 6.

110. Press Release, Am. C.L. Union, ACLU Urges Court to Order Government to Release Records on Fusion Center and Joint Terrorism Task Force Surveillance, (Feb. 3, 2025), <https://www.aclu.org/press-releases/aclu-urges-court-to-order-government-to-release-records-on-fusion-center-and-joint-terrorism-task-force-surveillance> [<https://perma.cc/55KG-FXLH>]; *JTTFS*, *supra* note 109.

111. Robin Hattersley, *FBI to Colleges: We Want to Work with You*, CAMPUS SAFETY MAG. (Feb. 22, 2011), <https://www.campusafetymagazine.com/news/fear-not-the-fbi/18571> [<https://perma.cc/8SDD-B62N>]; *Campus Public Safety: Our Post-9/11 Role*, FED. BUREAU OF INVESTIGATION (Aug. 4, 2009), https://archives.fbi.gov/archives/news/stories/2009/august/campussecurity_080409 [<https://perma.cc/3GRN-MR9W>].

Network.¹¹² In the post-9/11 period, universities and their police departments have even worked with DHS to promote specific agency surveillance initiatives on campus, such as the “See Something, Say Something” program, a citizen-focused project that encourages individuals to report “suspicious activities” to government authorities.¹¹³ To varying degrees, all these collaborative information-sharing initiatives likely facilitate government surveillance of campus members in some form or another.

b. Enforcing National Security Laws, Programs, and Priorities

Increasingly, university participation in national security has revolved around enforcing various national security directives, including national security laws and programs—some of which emerged during the Cold War, but many of which have been developed since then—that regulate the university and its members. As discussed more fully in Part I.B of this Article, universities are legally obligated, among other things, to provide information to the U.S. government about certain foreign, visa-holding campus members,¹¹⁴ to report on particular kinds of foreign funding that they receive, and to comply with and enforce rules related to “academic espionage” and “research security.”¹¹⁵

Universities have also worked with the government to coordinate on and support national security programs and policies that specifically impact institutions of higher education. For example, until it was disbanded in 2018,¹¹⁶ some universities

112. *Resources to Support Campus Law Enforcement and Public Safety*, U.S. DEPT OF HOMELAND SEC., <https://www.dhs.gov/archive/news/2024/05/02/resources-support-campus-law-enforcement-and-public-safety> [https://perma.cc/9MPH-BPBC].

113. James T. Bryan, *Connecting the Dots: Fusion Centers Working with Higher Education to Combat Terrorism*, 82 POLICE CHIEF: PRO. VOICE L. ENFT 42, 44 (Feb. 2015).

114. Shafiqah Ahmadi, *The Erosion of Civil Rights: Exploring the Effects of the Patriot Act on Muslims in American Higher Education*, 12 RUTGERS RACE & L. REV. 1, 14 (2011). See *infra* notes 178–79 and accompanying text for a discussion of the immigration program that requires universities to provide the government with information about certain foreign, visa-holding campus members.

115. See *infra* notes 184–217 and accompanying text for a discussion of some of the national security rules and policies regulating foreign funding, academic espionage, and research security at universities.

116. Letter from U.S. H. Comm. on Sci., Space, & Tech., to Christopher Wray, Dir., Fed. Bureau of Investigation (Apr. 25, 2018), https://science.house.gov/_cache/files/f/a/fa080d79-71f1-41c3-8df8-e0059487bcd2/65C889AB352B

participated in the FBI's National Security Higher Education Advisory Board, which focused on national security matters relevant to academic research facilities and aimed to "bridge historical gaps between the U.S. Intelligence Community and academia with respect to national security issues."¹¹⁷

c. Repressing Those Challenging U.S. National Security Interests

Finally, as part of their participation in national security, universities have a long history of voluntarily disciplining and even eliminating faculty, staff, and students seen as threatening U.S. national security interests and orthodoxies. In the early days of the Cold War, for instance, universities were incentivized by their relationship to the national security state to ensure their faculties produced knowledge that aligned with received social, political, and economic beliefs. At schools like Stanford University, administrators actively avoided hiring faculty who were "openly critical of the status quo" and otherwise discouraged faculty members from publicly opposing or criticizing U.S. national security and foreign policy priorities, like the nuclear arms race with the Soviet Union.¹¹⁸

This early Cold War repression was particularly concentrated during the McCarthyite period of the late 1940s and 1950s. Driven both by patriotism and increasing dependence on the federal government's coffers, universities actively participated in government efforts—led by the House Un-American Activities Committee (HUAC)¹¹⁹—to root out "communist" and so-called leftist subversives and radicals from their campuses.¹²⁰ Many administrators—supported directly and indirectly by faculty—fired, punished, and blacklisted campus members and

64C5FC887B0D5DE08B31.sst-fbi-nsheab-4-25-2018.pdf [https://perma.cc/KGR5G5ZB].

117. Higgins, *supra* note 107, at 52.

118. LOWEN, *supra* note 59, at 222.

119. *Historic Congressional Committee Hearings and Reports*, BOS. PUB. LIBR., <https://guides.bpl.org/Congress/HUAC> [https://perma.cc/ASV9-83B6]. The McCarthyite period, which HUAC oversaw, was named after U.S. Senator Joseph McCarthy, who helped lead the U.S. government's witch hunt against so-called communist infiltrators in the 1950s. *McCarthyism/The "Red Scare,"* EISENHOWER PRESIDENTIAL LIBR. & MUSEUM <https://www.eisenhowerlibrary.gov/research/online-documents/mccarthyism-red-scare> [https://perma.cc/3EYB4RJB].

120. SCHRECKER, *supra* note 44, at 340.

generally encouraged ideological conformity at their institutions in the name of fighting communism.¹²¹ In total, from the late 1940s to the early 1950s, more than one hundred academics were terminated by their universities for “refus[ing] to cooperate with the congressional inquisition”¹²²

University repression in the service of and alignment with the national security state continued after the McCarthyite period ended. In particular, during the Vietnam War, universities took steps to punish and fire faculty who were opposed to the war or otherwise challenged U.S. policy towards Vietnam.¹²³ As the student activist movement, which had been gaining momentum during the Civil Rights Movement of the early 1960s, burgeoned into the free speech and then anti-war movements of the mid-to-late 1960s and early ’70s, students also increasingly became targets of the university’s repressive practices.¹²⁴

Following the Vietnam War-era protests, institutions of higher education became particularly focused on repressing student dissent, as reflected in their adoption of new rules and codes of conduct, as well as campus-focused surveillance practices that restricted speech and assembly.¹²⁵ While these new codes and practices were motivated by various considerations—including a general desire to promote a “safe and orderly” campus that would attract the most elite students and corporate donors—in the decades after the anti-Vietnam War movement peaked, campuses used these and other policies against campus protestors challenging U.S. national security and foreign policy interests,

121. *Id.* at 9–11, 265–66, 339–40. Universities also cracked down on so-called communist organizing by enforcing rules that had previously remained dormant, abolishing certain student organizations from campus, and demanding that student groups share their membership lists with administrators (which led many left-wing groups to disband and disappear from campus). *Id.* at 85–88.

122. SCHRECKER, *supra* note 80, at 34.

123. Howard Zinn, *The Politics of History in the Era of the Cold War: Repression and Resistance*, in *THE COLD WAR & THE UNIVERSITY*, *supra* note 58, at 35, 58–59.

124. Abdallah Fayyad, *The Lessons from Colleges that Didn’t Call the Police*, VOX (May 3, 2024), <https://www.vox.com/24147461/columbia-gaza-encampment-campus-protests-police-crackdown-pro-palestinian-students> [<https://perma.cc/NGH5-S9AZ>]; SCHRECKER, *supra* note 80, at 85–92; Zinn, *supra* note 123, at 59.

125. Wesley Strong, *Repression of Student Activism on College Campuses*, in *POLICING THE CAMPUS*, *supra* note 106, at 16–19.

including against anti-war activists and those supporting the Palestinian cause.¹²⁶

Notwithstanding continued university efforts to repress dissent and collaborate with the national security state, students, faculty, and even some administrators have persisted in protesting against U.S. national security activities and interests over the last several decades. For example, following 9/11, campus communities resisted and challenged government attempts to surveil and profile Arab, Muslim, and foreign students and university staff.¹²⁷

Understanding how institutions of higher education participate in national security demonstrates the ways in which universities themselves navigate and are shaped by their relationship to the national security state. To understand how the U.S. government approaches that same relationship, it is important to examine the university's role as an *object* of national security, which is addressed next.

B. THE UNIVERSITY AS OBJECT OF NATIONAL SECURITY

As with its role as participant, the university has been an object of the U.S. national security state since World War II. In this capacity, the university has been treated both as a site of potential national security opportunity and risk by the U.S. government. This Section discusses these two dynamics in turn. By and large, while the university has continued to participate in national security since the Cold War's end, the government has increasingly treated the university more as a site of potential national security risk than opportunity, especially over the last few years.¹²⁸

126. *Id.* at 15–16, 19, 22–23.

127. Eggen, *supra* note 97. This resistance has also been directed at local law enforcement activities on university campuses that have been part of broader federal surveillance initiatives, such as the New York Police Department's post-9/11 surveillance of Muslim Student Associations at institutions of higher education. Bridge Initiative Team, *Factsheet: The NYPD Muslim Surveillance and Mapping Program*, BRIDGE: GEO. UNIV. INITIATIVE (May 11, 2020), <https://web.archive.org/web/20250424204717/https://bridge.georgetown.edu/research/factsheet-the-nypd-muslim-surveillance-and-mapping-program> [https://perma.cc/CF5Z-ZQ86]; *NYPD Under Fire for Monitoring Muslim Students*, CBS NEWS (Feb. 21, 2012), <https://www.cbsnews.com/news/nypd-under-fire-for-monitoring-muslim-students> [https://perma.cc/QS7H-PFGU].

128. Though the government's treatment of the university as a site of national security threat has arguably been increasing since 9/11, it has noticeably

1. The University as Object of National Security Opportunity

In ways that overlap with its work as participant, the university has served as a site of national security opportunity for the government, as reflected by its role in: (1) developing critical technologies and other knowledge for the national security state; (2) supporting U.S. economic primacy, creating a technologically capable workforce, and otherwise meeting the national security state's manpower needs; and (3) promoting the United States' material and moral superiority, globally. This Subsection discusses each of these issues in turn. Through its generous funding schemes supporting many of these activities, the federal government has historically demonstrated a desire to maintain and expand upon this university work.

a. Developing Critical Technologies and Other Knowledge Production

For decades, the technological innovations and knowledge production necessary to maintaining and supporting U.S. national security interests have relied upon the infrastructure and experts at U.S. universities.¹²⁹ During World War II, the Manhattan Project—which developed the first atomic bomb with the help of university scientists¹³⁰—demonstrated to the government that partnering with academia could greatly benefit its military and national security apparatus.¹³¹ Indeed, as early as November 1944, the U.S. government was exploring ways to

spiked since the 2018–19 period, which also witnessed a sudden and dramatic rise in tougher U.S. government stances on China. These two national security concerns—with the university and with China—appear to be intimately linked, as reflected in various securitization initiatives discussed later in this Part. *See* Letter from Ted Mitchell, President, Am. Council of Educ., to Am. Council of Educ. Member Presidents & Chancellors (May 10, 2019), <https://www.acenet.edu/Documents/Memo-ACE-membership-foreign-espionage.pdf> [<https://perma.cc/Z5VJ-PMER>] (describing the sudden rise of strongly negative views about China amongst Democrats and Republicans and the concomitant risk for universities, that if they “do not address issues related to China on their own,” then “it’s going to be done for them by Congress or the Executive Branch”); *see infra* notes 192, 203, 210, 217 and accompanying text.

129. Lewontin, *supra* note 58, at 8–10.

130. *Scientists and Engineers of the Manhattan Project*, NAT’L PARKS SERV., <https://www.nps.gov/mapr/learn/historyculture/scientists.htm> [<https://perma.cc/A4MFHDM4>] (listing various university scientists who participated in the Manhattan Project).

131. Lewontin, *supra* note 58, at 13.

extend, formalize, and continue its burgeoning relationship with institutions of higher education after the war's end.¹³²

In order to entice universities to remain engaged in national security-oriented research and development, the federal government pursued various strategies, including continuing its World War II-era practice of offering universities contractual arrangements that contained generous terms,¹³³ as well as establishing well-endowed, grant-making government institutions, like the National Science Foundation, that would fund university research.¹³⁴ As demonstrated above, the government's liberal funding arrangements worked, with universities doing their utmost to win lucrative federal contracts and grants to produce technologies and knowledge desirable to the U.S. national security state during the Cold War.¹³⁵

Competition for this funding has continued since the Cold War's end. Because these funding opportunities have been intimately tied to U.S. national security, they have fluctuated over time as the security interests they relate to have evolved and transformed. In response to purported threats (or lack thereof) from the Soviet Union, for example, federal funding for university research—which has mostly focused on defense-related projects¹³⁶—grew substantially during the early Cold War period,¹³⁷ declined in the 1970s, and peaked in 1990, just before the Soviet Union's fall.¹³⁸ Federal funding for university research increased again in 2002, after the 9/11 attacks, reaching a then-all-time peak of \$151 billion in 2010, during the height of the War on Terror, before declining.¹³⁹ Over the last few years,

132. *Id.*

133. *See supra* note 68; *see also* LOWEN, *supra* note 59, at 63, 101.

134. Lewontin, *supra* note 58, at 15–16. The National Science Foundation (NSF) is an independent federal agency providing grants to “[p]romote the progress of science,” “[a]dvance the national health, prosperity[,] and welfare,” and “[s]ecure the national defense.” *About NSF*, U.S. NAT’L SCI. FOUND., <https://new.nsf.gov/about> [<https://perma.cc/D9L2-T3S6>].

135. *See supra* notes 68–76 and accompanying text.

136. David F. Labaree, *An Affair to Remember: America’s Brief Fling with the University as a Public Good*, 50 J. PHIL. EDUC. 20, 29 (2016).

137. By 1950, when the Korean War began, federal funding made up a significant portion of the budget of many major research universities. SCHRECKER, *supra* note 44, at 16.

138. Labaree, *supra* note 136, at 29. Despite receding somewhat toward the later end of the Cold War, between 1953 and 1990, federal funding for university research grew by 700%. *Id.*

139. *Id.*

federal spending on national security-related university research, especially by the Department of Defense, increased yet again, driven, in part, by a desire to develop AI-enabled weapons technologies.¹⁴⁰

b. Supporting U.S. Economic Primacy, Creating a Technocratic Workforce, & Meeting the Government's Other National Security-Related Manpower Needs

In addition to viewing the university as vital to its research and technology needs, the government has regarded institutions of higher education as critical to its national security-related economic and manpower objectives. It has even distributed funds to universities, both directly and indirectly, to realize those goals. The government has also developed other university-specific strategies to meet its national security-related manpower needs, including in the area of intelligence gathering.

Most notably, in order to ensure and maintain the U.S. economy's global dominance, the government has used university-directed funding to engage in economic intervention¹⁴¹ aimed at bolstering employment rates and developing a skilled workforce. During World War II, for instance, Congress passed the GI Bill of Rights, which, among other things, provided federal funds for service members to attend university.¹⁴² The bill helped stave off mass unemployment after the war, while also producing workers with the skills necessary to support U.S. economic growth.¹⁴³

During the Cold War, the government directed other funding to higher education in order to create the technocratic workforce necessary to maintain and support U.S. economic and global interests.¹⁴⁴ Through the National Defense Education Act of 1958 (NDEA), which was part of a broader government effort

140. Hartung, *supra* note 96. Relatedly, as of 2023, federal funding to universities for science and engineering activities—which can also meet defense-related needs—had increased in current dollar terms since 2015 after dipping in 2011. *In FY 2023*, *supra* note 67.

141. Lewontin, *supra* 58, at 20, 26–27, 31–33. U.S. national security and foreign policy have been driven by various economic interests since the early days of the American republic. Jamshidi, *supra* note 41, at 174–86.

142. *Servicemen's Readjustment Act (1944)*, NAT'L ARCHIVES, <https://www.archives.gov/milestone-documents/servicemens-readjustment-act> [<https://perma.cc/G5YM-MTBX>].

143. Labaree, *supra* note 136, at 28.

144. Lewontin, *supra* note 58, at 27.

to increase enrollment in U.S. universities,¹⁴⁵ the government specifically funded students who “possessed superior capacity” in mathematics, engineering, and foreign languages.¹⁴⁶ In financially supporting these university members, the government hoped it would “regain scientific and technological preeminence over [the Soviet Union]” and bolster the United States’ economic and military primacy.¹⁴⁷

During the contemporary period, the government has continued to use university-directed funding to develop a workforce useful to its national security goals. In particular, it has persisted in promoting initiatives that support science, technology, engineering, and mathematics (STEM) majors at institutions of higher education. Perhaps more so today than during the Cold War, STEM is seen as vital to creating a workforce that can support the U.S. national security state.¹⁴⁸ In this spirit, various national security agencies, like the Department of Homeland Security, have created their own programs aimed at providing undergraduate and graduate students, particularly STEM majors, with funded opportunities to conduct research in “homeland security-related areas.”¹⁴⁹ For its part, the Defense Department has fielded the National Defense Education Program, which among other things provides funding to institutions of higher education¹⁵⁰ in order to “foster[] and enhance[] the Department of

145. See *infra* notes 238–40 and accompanying text for further discussion of the NDEA.

146. Pamela Ebert Flattau et al., *The National Defense Education Act of 1958: Selected Outcomes*, INST. FOR DEF. ANALYSES: SCI. & TECH. POL’Y INST. II-1 (Mar. 2006), <https://www.ida.org/-/media/feature/publications/t/th/the-national-defense-education-act-of-1958-selected-outcomes/d-3306.ashx> [<https://perma.cc/6RGMHQ86>].

147. *Id.* at I-1.

148. See Press Release, Nat’l Acads. of Scis. Eng’g & Med., United States Needs New Strategy to Recruit and Retain STEM Talent, Says New Report (Aug. 29, 2024), <https://www.nationalacademies.org/news/2024/08/united-states-needs-new-strategy-to-recruit-and-retain-stem-talent-says-new-report> [<https://perma.cc/YH6L2S7G>] (describing “STEM talent” as a “critical component of the national security innovation base” and advocating for a “whole-of-government strategy to recruit and retain” STEM professionals).

149. *HS-POWER – Homeland Security Professional Research Opportunities for the Student Workforce to Experience Research*, U.S. DEPT OF HOMELAND SEC. (2024), https://www.dhs.gov/sites/default/files/2025-01/25_0113_st_hs-power_fact_sheet.pdf [<https://perma.cc/PKN5473U>].

150. *The DoD Awards \$47 Million in Grants Through the NDEP*, OFF. OF THE UNDER SEC’Y OF DEF., RSCH., & ENG’G, <https://web.archive>

Defense's . . . ability to access high-quality science, technology, engineering, and mathematics . . . personnel vital to national defense now and in the future."¹⁵¹

Beyond its economic and workforce objectives, the national security state has used universities to meet its manpower needs in other ways. In the past, the government has, for example, attempted to deputize administrators and faculty to assist with the selection of draftable soldiers. Specifically, during the Vietnam War, the government urged universities to provide class rank information to the military draft board to help with efforts to end deferrals for college students in good standing and draft those at the bottom of their class.¹⁵² More broadly during the Cold War, the government looked to universities as venues for identifying and recruiting informants and spies.¹⁵³ As revealed by the Church Committee, the CIA covertly used "several hundred academics" at over 100 U.S. universities to "provid[e] leads and, on occasion, mak[e] introductions for intelligence purposes"¹⁵⁴ The CIA also recruited university students for intelligence gathering roles.¹⁵⁵ For example, from 1950 to 1967, the CIA ran covert operations through the National Student Association—the largest U.S. student association of its time—which was founded in 1947.¹⁵⁶ Cultivating foreign students at U.S. universities was of particular interest to the CIA, which recognized their value as spies and informers upon their return to their home countries.¹⁵⁷ As part of its collaboration with the intelligence agency, the National Student Association assisted the CIA in identifying those

.org/web/20250125002854/https://www.cto.mil/news/47-million-grants-ndep [https://perma.cc/J5WFKKC8].

151. OFF. OF THE SEC'Y OF DEF., DEPARTMENT OF DEFENSE FISCAL YEAR (FY) 2020 BUDGET ESTIMATES (2019), https://comptroller.war.gov/Portals/45/Documents/defbudget/fy2020/budget_justification/pdfs/03_RDT_and_ERDTE_Vol3_OSD_RDTE_PB20_Justification_Book.pdf [https://perma.cc/RD3Z-95ST].

152. SCHRECKER, *supra* note 44, at 179. The government's request for class rank information triggered backlash from students and faculty alike, was eventually rescinded, and the deferral for students in good standing ultimately restored. *Id.* at 180–83, 194.

153. GOLDEN, *supra* note 90, at 185–87.

154. *Id.* at 187.

155. *Id.* at 185–86.

156. *Id.*; KAREN M. PAGET, PATRIOTIC BETRAYAL: THE INSIDE STORY OF THE CIA'S SECRET CAMPAIGN TO ENROLL AMERICAN STUDENTS IN THE CRUSADE AGAINST COMMUNISM, ix, 6–7 (2015).

157. GOLDEN, *supra* note 90, at 185–86.

students, both foreign and domestic, who could serve as informants for the agency.¹⁵⁸ Since the end of the Cold War, U.S. national security agencies have continued to recruit both U.S. and foreign members of university communities as potential informers and spies.¹⁵⁹

c. Promoting the United States' Material and Moral Superiority

Finally, the U.S. national security state has historically viewed the university as a valuable asset in demonstrating the superiority—both material and moral—of the United States over its adversaries. This was especially true during the Cold War when the country faced a rival superpower with a conflicting set of ideological commitments. During this period, federal financial investment in higher education was seen as crucial to “produc[ing] informed citizens to combat the Soviet menace, and demonstrate to the world the broad social opportunities available in a liberal democracy.”¹⁶⁰ Universities would contribute to those goals by providing “high-level human capital” that would “promote economic growth and demonstrate the economic superiority of capitalism over communism.”¹⁶¹ Universities would also help exhibit the superiority of the United States—at least, in theory—by providing educational opportunities to “racial minorities and lower classes,” thereby demonstrating that “our system is not only effective but also fair and equitable.”¹⁶²

2. The University as Site of Potential National Security Threat

As a site of national security opportunity, the university helps maintain U.S. political, economic, and military power globally. It is at least partly because of this reality, however, that the university has increasingly become more than just a site of national security opportunity for the government. It has also become a source of potential threat to U.S. national security interests. This dynamic is evident in various government approaches to institutions of higher education, including: (1) its surveillance

158. *Id.*

159. *Id.* at 13, 15–17.

160. Labaree, *supra* note 136, at 21.

161. *Id.* at 29.

162. *Id.*

and investigation of university members; (2) its focus on the so-called problems of “academic espionage” and “research security” at U.S. universities; (3) its attention to foreign funding flows to institutions of higher education; and (4) its concerns regarding certain ideological “threats” emerging from university campuses. Each of these trends is discussed in turn below. Many of these government activities and concerns have been particularly pervasive since 9/11, a period in which securitized approaches to higher education and framings of the university as a source of national security threat have arguably surged.

a. Surveillance and Investigations of University Members

Surveillance and investigation are at the heart of the government’s approach to the university as a site of potential national security risk, both in the past and present. The most notorious period of national security-oriented surveillance and investigation of campus communities dates back to the early Cold War, specifically the 1950s and ’60s.¹⁶³ As part of its mandate, the congressionally created Church Committee examined many of those practices in the mid-1970s.¹⁶⁴ That examination resulted in the FBI’s commitment to apply a “heightened standard” for initiating investigations at institutions of higher education.¹⁶⁵ That commitment did not, of course, render universities off limits to the FBI. According to current FBI guidance, the agency can still conduct investigations with an “academic nexus” where such investigations are in “pursuit of information or individuals of legitimate investigative interest.”¹⁶⁶

163. See Cumings, *supra* note 76, at 166 (describing FBI investigations into academics during the early Cold War period). For a detailed account of the FBI’s “national security” driven surveillance of one prominent American university—the University of California, Berkeley—in the 1950s and ’60s, see generally SETH ROSENFELD, *SUBVERSIVES: THE FBI’S WAR ON STUDENT RADICALS, AND REAGAN’S RISE TO POWER* (2012). For a deep-dive into McCarthy-era federal investigations and surveillance of university members in the late 1940s and 1950s, see generally SCHRECKER, *supra* note 44.

164. GOLDEN, *supra* note 90, at 187.

165. Anthony O’Rourke & Wadie E. Said, *Terrorism Investigations on Campus and the New McCarthyism*, DISSENT (Dec. 8, 2023), https://www.dissentmagazine.org/online_articles/terrorism-investigations-on-campus-and-the-new-mccarthyism [<https://perma.cc/CE4L-R6H3>].

166. Fed. Bureau of Investigation, *Domestic Investigations and Operations Guide*, U.S. DEPT OF JUST. § 9.10.2 (Feb. 27, 2024), <https://vault.fbi.gov/FBI%20Domestic%20Investigations%20and%20Operation>

Since 9/11, certain federal laws and programs have further facilitated government investigation and surveillance of university members as potential or actual national security threats. For example, under the USA PATRIOT Act of 2001—the landmark bill passed in the wake of 9/11—the U.S. Attorney General, among others, may obtain an *ex parte* court order requiring “an educational agency or institution to permit the Attorney General . . . to . . . collect education records in the possession of the educational agency or institution that are relevant to an authorized investigation or prosecution of an offense . . . [involving certain acts of terrorism transcending national boundaries] . . . or an act of domestic or international terrorism”¹⁶⁷

The USA PATRIOT Act also expanded the FBI’s ability to use National Security Letters (NSLs) against universities to surveil and investigate their members.¹⁶⁸ NSLs allow the FBI to collect certain types of information about targeted persons from “wire or electronic communications service provider[s],”¹⁶⁹ which include universities.¹⁷⁰ Before the PATRIOT Act amendment, NSLs were used to “retrieve information about the targets of a foreign counterintelligence operation.”¹⁷¹ The PATRIOT Act loosened this predicate requirement for NSLs, which can now be used to retrieve information “relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities”¹⁷²—a provision that has reportedly been given a broad interpretation.¹⁷³ While NSLs can be used to gather information about both U.S. and non-U.S. citizens, when directed at the latter, NSLs may be utilized even where the

s%20Guide%20%28DI0G%29/fbi-domestic-investigations-and-operations-guide-diog-2024-version [https://perma.cc/KJL3-YDJW]. The FBI treats investigations with an “academic nexus” as “special investigative matters” that require various layers of FBI approval. *Id.* § 9.10.1.

167. USA PATRIOT Act of 2001, Pub. L. No. 107-56, § 507, 115 Stat. 367 (2001).

168. *Id.* § 505.

169. 18 U.S.C. § 2709(a). The definition of “electronic communication service,” which applies to NSLs, is found in 18 U.S.C. § 2510(15) (defining “electronic communication service” as “any service which provides to users thereof the ability to send or receive wire or electronic communications”).

170. See Ahmadi, *supra* note 114, at 21 (“NSLs are . . . sent to colleges and universities that operate as Internet-service providers for students, faculty, and staff members.”).

171. *Id.*

172. 18 U.S.C. § 2709(b).

173. Ahmadi, *supra* note 114, at 21.

government's investigation or surveillance is based solely on First Amendment-protected activities.¹⁷⁴ Subject to certain preconditions, NSLs prohibit recipients from disclosing the government's information request to the person whose information is being sought.¹⁷⁵ As one scholar has put it, NSLs—which essentially constitute a “warrantless search and seizure”¹⁷⁶—provide “federal law enforcement agencies [with] seemingly unfettered access to students', professors', and scholars' private educational records,” on national security grounds.¹⁷⁷

Focusing specifically on foreign, visa-holding members of university communities, another PATRIOT Act provision mandated the implementation and expansion of a government system for monitoring foreign students.¹⁷⁸ That system, which is known as the Student and Exchange Visitor Information System (SEVIS), requires universities to provide certain information about nonimmigrant students and exchange visitors on university campuses, in order to facilitate government tracking of those persons on ostensible national security grounds.¹⁷⁹

On the programmatic side, various government surveillance agencies and programs have targeted universities as sources of national security risk since 9/11. As discussed above, at least some campus police forces have worked with the FBI's Joint Terrorism Task Forces—at the FBI's urging—likely resulting in government surveillance and investigation of campus members, whether directly or indirectly.¹⁸⁰ Certain federal government programs, like the Department of Defense's “Threat and Local Observation Notice” (TALON), have explicitly included universities in their threat-driven surveillance efforts. A counter-intelligence program that ran from 2003 to 2007, TALON tracked

174. 18 U.S.C. § 2709(b).

175. *Id.* § 2709(c).

176. Ahmadi, *supra* note 114, at 20. NSLs are considered, by the courts, to be “administrative subpoenas.” *In re Three Nat'l Sec. Letters*, 35 F.4th 1181, 1184 (9th Cir. 2022). While they do not require pre-issuance judicial review, service provider recipients are permitted to request post-issuance judicial review, either directly or through the government. *Id.*

177. Ahmadi, *supra* note 114, at 20.

178. USA PATRIOT Act of 2001, Pub. L. No. 107-56, § 416, 115 Stat. 367 (2001).

179. U.S. Immigr. & Customs Enf't, *Student and Exchange Visitor System*, DEPT OF HOMELAND SEC., <https://www.ice.gov/sevis/overview> [<https://perma.cc/WNC9-K2GU>]; Ahmadi, *supra* note 114, at 14.

180. *See supra* notes 108–10 and accompanying text.

“direct ‘potential terrorist threats’ to the Department of Defense itself.”¹⁸¹ Over its lifetime, TALON gathered at least 186 specific reports on “‘anti-military protests’ in the United States—some listed as ‘credible threats’—from student groups” at various U.S. universities.¹⁸² In yet another instance of government counter-intelligence targeting university members as potential threats, the Department of Education cooperated with the FBI—starting shortly after 9/11 and lasting until sometime in 2006—to search the Education Department’s database of federal student aid applicants for information about persons “material to counterterrorism investigations.”¹⁸³

b. Academic Espionage & Research Security

In addition to conducting its own surveillance and investigation into members of American universities, the U.S. national security state has regarded institutions of higher education as potential spaces for enemies to steal research vital to U.S. national security interests. This practice is known as “academic espionage”¹⁸⁴ and is closely connected to government concerns about “research security”¹⁸⁵ at universities.

While government anxiety about academic espionage is not new,¹⁸⁶ it has seemingly increased since 9/11,¹⁸⁷ becoming especially prominent during and since the administration of President Barack Obama.¹⁸⁸ To address its “academic espionage”

181. Gould-Wartofsky, *supra* note 105; Memorandum from the Under Sec’y of Def. for Intel. on Termination of the TALON Reporting System to the Deputy Sec’y of Def. (2007), https://www.esd.whs.mil/Potals/54/Documents/FOID/Reading%20Room/Science_and_Technology/07F2429_Termination_of_the_TALON_Reporting_System_07-12-2007.pdf [<https://perma.cc/AFH3RYXV>] (describing the termination of the TALON reporting system).

182. Gould-Wartofsky, *supra* note 105.

183. *Id.*; Jonathan D. Glater, *Education Dept. Shared Data with F.B.I.*, N.Y. TIMES (Sept. 1, 2006) <https://www.nytimes.com/2006/09/01/washington/01educ.html> [<https://perma.cc/66UN-6S9K>].

184. Erin N. Grubbs, *Academic Espionage: Striking the Balance Between Open and Collaborative Universities and Protecting National Security*, 20 N.C. J.L. & TECH. 235, 237–38 (2019).

185. *See infra* note 194 for the definition of “research security.”

186. John Krige, *National Security and Academia: Regulating the International Circulation of Knowledge*, 70 BULL. ATOMIC SCIENTISTS 42, 43–45 (2014).

187. *See id.* at 43 (noting, in a piece published in 2014, that “during the last 10 or 15 years the national security system inherited from the Cold War has been mobilized in novel ways in a wide-ranging attempt to regulate academic research in the United States”).

188. Grubbs, *supra* note 184, at 249–59.

concerns, the federal government has taken various steps, including creating particular visa requirements and screening parameters for foreign students and exchange visitors; utilizing export control laws that regulate the transfer of certain technologies and technical data to foreign persons and countries;¹⁸⁹ and surveilling international students and faculty at U.S. universities.¹⁹⁰ Though it is unclear how pressing the problem of “academic espionage” actually is,¹⁹¹ recent concerns about this issue seem fueled largely by fears about China’s rise as a

189. *Id.* at 242–49.

190. GOLDEN, *supra* note 90, at 16–18. U.S. sanctions law has also played a role in addressing government concerns about academic espionage. Grubbs, *supra* note 184, at 246–47.

191. While it is beyond the scope of this Article to evaluate whether “academic espionage” is an imperative problem, recent academic espionage cases raise some doubt about the pervasiveness of this “threat.” Indeed, many of these cases have ultimately relied on charges not of espionage or tradecraft theft, but rather of fraud relating to the filing of false tax returns or for failing to include particular information on immigration or grant paperwork. Bianca T. Tillman, Note, *Red Scare or Red Herring: How the “China Initiative” Strategy for Non-Traditional Collectors Is Stifling Innovation in the United States*, 11 SEATTLE J. TECH., ENV’T & INNOVATION L. 133, 157–60 (2020); Michael German, *The ‘China Initiative’ Failed U.S. Research and National Security. Don’t Bring It Back*, BRENNAN CTR. FOR JUST. (Sept. 23, 2024), <https://www.brennancenter.org/our-work/analysis-opinion/china-initiative-failed-us-research-and-national-security-dont-bring-it> [https://perma.cc/P4AE-FSZG].

near-peer rival,¹⁹² as well as by anxieties regarding the United States' declining dominance in science and technology.¹⁹³

In recent years, the government has also taken steps to address the closely related issue of “research security” for federally funded research and development (R&D).¹⁹⁴ One of the most

192. Jeffrey Bader, *Meeting the China Challenge: A Strategic Competitor, Not an Enemy*, BROOKINGS 1 (2020), <https://law.yale.edu/sites/default/files/area/center/china/document/1-introduction-jeffrey-bader-v2.pdf> [https://perma.cc/6U2Z-BL4N]. Indeed, the government's recent efforts to tackle the problem of “academic espionage” have placed particular emphasis on China as well as Chinese nationals. *See, e.g.*, Grubbs, *supra* note 184, at 252–53, 255–56 (describing a 2018 legislative proposal as well as a visa restriction, promulgated by the first Trump administration that same year, that were purportedly driven by academic espionage concerns and that either implicitly or explicitly targeted China and Chinese nationals); Hdeel Abdelhady, *Trade Wars: Restricting Foreign Access to US Technology*, LAW360 (Oct. 19, 2018), <https://www.law360.com/articles/1093803> [https://perma.cc/RW7Q-NR2B] (describing various China-focused efforts reportedly considered by the first Trump administration to limit “[f]oreign [s]tudent and [c]orporate [p]articipation in [a]cademic and [o]ther [r]esearch”). The China Initiative—which was launched during the first Trump administration to “identify[] and prosecut[e] those engaged in trade secret theft, hacking[,] and economic espionage” for China—is a particularly notable example of how China-focused concerns have shaped the government's approach to the issue of academic espionage. Jeff Sessions, *Attorney General Jeff Session's China Initiative Fact Sheet*, U.S. DEPT OF JUST. (Nov. 1, 2018), <https://www.justice.gov/opa/speech/file/1107256/dl?inline> [https://perma.cc/E7NM-GP9H]. As one commentator described it:

[T]he China Initiative broaden[ed] the DOJ's discretion to investigate universities and research institutions for instances of academic espionage Prior to the initiative, academic espionage convictions were challenging to prove because they required actual intent to share sensitive information and direct evidence of intellectual property theft. The China Initiative lessen[ed] the evidentiary burden on the DOJ by allowing academic espionage to be implied through a collection of previously dormant or underutilized federal reporting statutes.

Tillman, *supra* note 191, at 137–38. While some viewed the China Initiative as potentially justified by China's “aggressive” economic policies towards the United States, some of those same persons also described the U.S. government's decision to focus on academic espionage to address those concerns, as “worryingly overbroad and distracting.” *Id.* at 136–37.

193. Krige, *supra* note 186, at 49–50.

194. “Research security” is defined as “[s]afeguarding the research enterprise against the misappropriation of research and development to the detriment of national or economic security, related violations of research integrity, and foreign government interference.” Subcomm. on Rsch. Sec. & Joint Comm. On the Rsch. Env't, *Guidance for Implementing National Security Presidential Memorandum 33 (NSPM-33) on National Security Strategy for United States Government-Supported Research and Development*, NAT'L SCI. & TECH. COUNCIL 24 (2022) [hereinafter *Guidance on NSPM-33*], <https://web.archive.org/web/20250117224640/https://www.whitehouse.gov/wp-content/uploads/>

important laws in this regard is the National Security Presidential Memorandum-33 (NSPM-33), which was issued in the final days of the first Trump administration.¹⁹⁵ While various Executive agencies that support and fund research have developed their own security-oriented protocols,¹⁹⁶ NSPM-33 establishes a comprehensive U.S. national security policy for government-supported “R&D,”¹⁹⁷ which includes fundamental research,¹⁹⁸ and aims to “strengthen protections of United States Government-

2022/01/010422-NSPM-33-Implementation-Guidance.pdf [https://perma.cc/88R2-CBMS].

195. *Presidential Memorandum on United States Government-Supported Research and Development National Security Policy*, THE WHITE HOUSE (Jan. 14, 2021) [hereinafter *NSPM-33*], <https://trumpwhitehouse.archives.gov/presidential-actions/presidential-memorandum-united-states-government-supported-research-development-national-security-policy> [https://perma.cc/K4YXFM8X].

196. *E.g.*, Memorandum from Michael D. Griffin, Under Sec’y of Def., on Actions for the Protection of Intellectual Property, Controlled Information, Key Personnel and Critical Technologies to Under Sec’y of Def. for Acquisition & Sustainment, Assistant Sec’y of Def. for Acquisition, Serv. Acquisition Executives, & Special Operations Command (Mar. 20, 2019) <https://web.archive.org/web/20250223153457/https://rt.cto.mil/wp-content/uploads/USD-RE-Actions-to-Protect-Memo-20Mar2019.pdf> [https://perma.cc/VH4E-2TW7].

197. *Guidance on NSPM-33*, *supra* note 194, at ix. The CHIPS and Science Act, which was passed a year and a half after NSPM-33, includes provisions that support and compliment NSPM-33’s directives regarding research security, including but not limited to its concerns with “foreign government-sponsored talent recruitment programs.” *See generally NSPM-33*, *supra* note 195. The CHIPS Act refers to those programs as “malign foreign talent recruitment programs” and prohibits certain individuals from participating in them as a condition of receiving federal R&D funds. 42 U.S.C. § 19232. Under CHIPS, a “malign foreign talent recruitment program” includes any program, position, or activity that meets a set of detailed criteria; or that is a program sponsored by a foreign country of concern, which includes Iran, Russia, North Korea, and China or any other country so designated by the Secretary of State; or an entity based in a foreign country of concern, whether or not directly sponsored by the country of concern; or that is sponsored by an entity included in a specific set of government lists. 42 U.S.C. § 19237(2), (4). For further discussion of the CHIPS Act, see *infra* notes 214–16 and accompanying text.

198. *See NSPM-33*, *supra* note 195, § 1 (noting that government supported R&D includes fundamental research). “Fundamental research” means “basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community, as distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons.” White House Directive on National Policy on the Transfer of Scientific, Technical, and Engineering Information 1 (Sept. 21, 1985), https://www.acq.osd.mil/dpap/dars/pgi/docs/National_Security_Decision_Directive_189.pdf [https://perma.cc/UES8-LVKS].

supported Research and Development . . . against foreign government interference and exploitation.”¹⁹⁹

NSPM-33 obligates executive departments and agencies that fund R&D activities to establish policies that require certain persons who participate in those R&D projects to disclose information relating to “conflicts of interest and commitment.”²⁰⁰ Among other things, these funding agencies must also work with organizations that receive federal R&D funds, like universities, to ensure they have policies and procedures for identifying and addressing “research security and integrity” within their institutions.²⁰¹ NSPM-33 further obliges funding agencies to require research institutions that receive a *particular* threshold of federal science and engineering funding to certify that they have specific “research security programs” that include “elements of cyber security, foreign travel security, insider threat awareness and identification, and, as appropriate, export control training.”²⁰²

Again, concerns regarding “research security” are closely related to fears that U.S. global competitiveness will be eroded by adversaries—China, in particular—that may use American research and development to strengthen their own economic, military, and political positions globally. These concerns are laid bare by the text of NSPM-33, which states that “some foreign governments, including the People’s Republic of China, have not demonstrated a reciprocal dedication to open scientific exchange, and seek to exploit open United States and international research environments to circumvent the costs and risks of conducting research, thereby increasing their economic and military competitiveness at the expense of the United States”²⁰³

a. Foreign Funding

The federal government has identified foreign funding to U.S. universities as another potential national security threat, especially over the last few years. In the 1970s, foreign governments started providing funds to institutions of higher education to “cultivate goodwill on [U.S.] college campuses” and otherwise

199. *NSPM-33*, *supra* note 195, § 1.

200. *Id.* § 3(a).

201. *Id.*

202. *Id.* § 4(g).

203. *Id.* § 1.

promote their national interests.²⁰⁴ Then, in 1986, Congress amended the Higher Education Act (HEA) to require that universities disclose some of those funding flows.²⁰⁵ Under Section 117 of the HEA, institutions of higher education must file disclosure reports with the Secretary of Education “on January 31 or July 31, whichever is sooner” if they “receive[] a gift from or enter[] into a contract with a foreign source, the value of which is \$250,000 or more, considered alone or in combination with all other gifts from or contracts with that foreign source within a calendar year”²⁰⁶ The statute defines a “foreign source” as including, but not limited to, “a foreign government, including an agency of a foreign government.”²⁰⁷

For decades, Section 117 was largely ignored by the Department of Education, which failed to issue accompanying regulations to implement the section.²⁰⁸ Universities appear to have largely ignored the reporting requirement, as well.²⁰⁹ Then, under the first Trump Administration, the Department of Education began to aggressively enforce Section 117—mostly driven, yet again, by China-focused concerns about foreign influence on

204. Soley, *supra* note 63, at 234–36, 244.

205. Higher Education Amendments of 1986, Pub. L. No. 99-498, § 1206, 100 Stat. 1268 (1986). Since 1998, the foreign funding reporting requirement has been codified as Section 117 of the HEA, as amended at 20 U.S.C. § 1011f. Higher Education Amendments of 1998, Pub. L. No. 105-244, 112 Stat. 1581 (1998).

206. 20 U.S.C. § 1011f(a). Under Section 117, institutions of higher education that are owned or controlled by a “foreign source” must also report the source’s identity, the date it assumed ownership or control, and “any changes in program or structure resulting from the change in ownership or control.” *Id.* § 1011f(b)(3).

207. *Id.* § 1011f(h)(2).

208. Tillman, *supra* note 191, at 150.

209. Until the first Trump administration, only about three percent of U.S. institutions of higher education reported receiving foreign funding under Section 117. See *China’s Impact on the U.S. Education System: Hearing Before the S. Permanent Subcomm. on Investigations of the Comm. on Homeland Sec. & Governmental Affs.*, 116th Cong. 77 (2019) [hereinafter *S. Hearing on China’s Impact*] (statement of General Mitchell M. “Mick” Zais, Deputy Secretary, U.S. Department of Education); see also *Institutional Compliance with Section 117 of the Higher Education Act of 1965*, U.S. DEPT OF EDUC. 2–3 (2020), <https://www.ed.gov/sites/ed/files/policy/highered/leg/institutional-compliance-section-117.pdf> [<https://perma.cc/9BYS2T2C>] (concluding that Section 117 reporting is “systematically underinclusive and inaccurate”).

U.S. higher education²¹⁰—opening nineteen Section 117 investigations between 2019 and 2021.²¹¹ In response to this increased government attention to Section 117 reporting, which also came from Congress,²¹² universities “strengthened relationships with local FBI field offices and other agencies that . . . informed the development of risk criteria and comprehensive review processes for grants, contracts, and foreign gifts.”²¹³

Other measures, beyond Section 117, have also been taken to address national security-based concerns with foreign funding to U.S. universities. These include the CHIPS and Science Act (CHIPS), which was passed by Congress in 2022.²¹⁴ While primarily aimed at supporting and reviving the U.S. semiconductor industry as a national security priority,²¹⁵ among other things,

210. Tillman, *supra* note 191, at 150–51; see *S. Hearing on China’s Impact*, *supra* note 209 (U.S. Senate hearing on Chinese influence in U.S. education, including universities, that focused on Confucius Institutes, which are Chinese cultural institutions at U.S. educational institutions funded directly or indirectly by China, and that blamed the influence of these institutes, in part, on failures in Section 117 reporting).

211. Michael J. Vernick et al., *Renewed Congressional Focus on Foreign Gifts and Contract Reporting Under Section 117*, AKIN GUMP (Aug. 2, 2023), <https://www.akingump.com/en/insights/blogs/ag-study-guide/renewed-congressional-focus-on-foreign-gifts-and-contract-reporting-under-section-117> [https://perma.cc/9DM8-5SE8]. Under the Biden administration, the Department of Education closed many, though not all, of the investigations started under the first Trump administration though it largely maintained Trump-era guidance on Section 117 reporting. *Notice of Compliance Review and Records Request*, U.S. DEP’T OF EDUC.: FED. STUDENT AID (last updated July 17, 2025), <https://fsapartners.ed.gov/knowledge-center/topics/section-117-foreign-gift-and-contract-reporting/resources/notices-compliance-review-and-records-requests> [https://perma.cc/4X3M-DPQ6]; Katherine Knott, *Few Changes Planned to Foreign Gift Reporting Requirements*, INSIDE HIGHER ED (May 8, 2023), <https://www.insidehighered.com/news/government/2023/05/08/few-changes-planned-foreign-gift-reporting-requirements> [https://perma.cc/Q4GL-F6QD].

212. During the Biden administration, some members of Congress also focused aggressively on Section 117, a focus that only hardened after October 7th, as discussed below. See *infra* notes 361–72 and accompanying text; Vernick et al., *supra* note 211.

213. Letter from Ted Mitchell, President, Am. Council on Educ., to Virginia Foxx, Chairwoman, and Bobby Scott, Ranking Member, U.S. H. Comm. on Educ. & the Workforce 1 (Nov. 6, 2023) [hereinafter ACE Letter], <https://www.acenet.edu/Documents/Letter-House-Ed-Workforce-DETERRENT-Act-110623.pdf> [https://perma.cc/5CW4-MY8G].

214. CHIPS and Science Act of 2022, Pub. L. No. 117-167, 136 Stat. 1366.

215. *Two Years Later: Funding from CHIPS and Science Act Creating Quality Jobs, Growing Local Economies, and Bringing Semiconductor*

CHIPS requires institutions of higher education that receive grants from the National Science Foundation (NSF) to annually disclose “current financial support, the value of which is \$50,000 or more, including gifts and contracts, received directly or indirectly from a foreign source” that is associated with a “foreign country of concern.”²¹⁶ Congress has also passed various laws stripping U.S. government funding from universities that host certain institutes reportedly associated with and funded by foreign governments.²¹⁷

b. Ideological & Political Threats

Finally, the ideological and political views of university members have long been a source of concern and even “threat” to the U.S. national security state both in the past and contemporary period. As discussed earlier, McCarthy-era federal and state-level witch hunts explicitly targeted members of university communities for their supposedly threatening political viewpoints.²¹⁸ These government practices became even more pronounced with the spread of civil rights and anti-war protests across U.S. campuses in the 1960s.²¹⁹ In particular, campus activism against the Vietnam War—which reached its apex from 1965 to 1970—represented the most sustained, widespread opposition among faculty, staff, and students to a key U.S. foreign

Manufacturing Back to America, U.S. DEPT OF COM. (Aug. 9, 2024), <https://www.commerce.gov/news/blog/2024/08/two-years-later-funding-chips-and-science-act-creating-quality-jobs-growing-local> [https://perma.cc/YFH75YFA].

216. 42 U.S.C. § 19040(a). While this specific provision does not define “foreign country of concern,” the term is defined elsewhere in this chapter of the code. *Id.* § 19221(a)(1); *see* § 10612(a)(1), 136 Stat. at 1635.

217. Most recently, this type of legislation has targeted universities that host Confucius Institutes. *See, e.g.*, 42 U.S.C. § 19039 (prohibiting the NSF from disbursing certain funding under CHIPS to institutions of higher education that host Confucius Institutes, with certain exceptions); William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, § 1062, 134 Stat. 3859 (prohibiting all funds appropriated or made available to the Department of Defense in any fiscal year from going to an institution of higher education with a Confucius Institute, with certain exceptions).

218. *See supra* notes 44, 119–20 and accompanying text.

219. During this notable period of student protest, it does not appear the university itself was necessarily viewed or treated as a security threat; rather, it was the actors or ideologies that existed or flourished at the university that were treated as threatening to U.S. national security. As described below, it is only more recently that the university has been framed as an enemy of the state, in and of itself. *See infra* note 250 and accompanying text.

and national security priority in history, and featured diverse forms of engagement, ranging from teach-ins and lectures to the creation of various anti-war publications and the staging of protests and civil disobedience.²²⁰ During and immediately after this period, members of the university also increasingly began producing knowledge that broadly threatened or disrupted U.S. national security interests—whether economic, political, or social.²²¹

This anti-war mobilization across U.S. campuses made the late Cold War university a far less compliant and pliant place for the U.S. national security state as compared to the early Cold War university.²²² At the same time, thanks, in part, to federal investment and support, institutions of higher education had assumed a place within U.S. society and influence over educating future workers and leaders that they had never before enjoyed.²²³ During the Vietnam War, for example, teach-ins organized by faculty and students not only impacted campus sentiment—they also “change[d] the climate of opinion in the country.”²²⁴

This sort of power and influence made dissent emerging from the university a potentially serious and meaningful threat to the U.S. national security state. Whether or not government agencies fully understood this risk, they took actions to mitigate it. Throughout the 1960s, the FBI “secretly intervened on many campuses, planting informants, provocateurs, and misinformation, while seriously harassing left-wing faculty members.”²²⁵ As part of these initiatives, the FBI clandestinely participated in efforts to oust professors involved in the Civil Rights Movement by compiling and sharing records of their so-called pro-

220. For a detailed discussion of campus activism against the Vietnam war, see generally SCHRECKER, *supra* note 80.

221. CHRISTOPHER NEWFIELD, UNMAKING THE PUBLIC UNIVERSITY: THE FORTY-YEAR ASSAULT ON THE MIDDLE CLASS 30 (2008).

222. See *supra* notes 66–80 and accompanying text.

223. See, e.g., SCHRECKER, *supra* note 80, at 1–2 (describing the university as becoming an “indispensable social institution” during the early Cold War period with influence “far beyond” campus). In particular, thanks to the GI Bill, which brought over two million veterans to U.S. campuses, universities became synonymous with economic mobility and served as a “social safety valve” for mid-twentieth century America. *Id.* at 15.

224. *Id.* at 161.

225. *Id.* at 35.

communist activities;²²⁶ surveilled faculty members who served as counselors advising students on avoiding the Vietnam War draft;²²⁷ and endeavored to cast student protestors as driven and controlled by “communist” infiltrators leading a “well-planned insurgency.”²²⁸ In line with these activities and in the name of national security, the FBI launched COINTELPRO-New Left in the late 1960s—targeting (as the name suggests) members of the New Left,²²⁹ including on college campuses—in order to “expose, disrupt, and otherwise neutralize the activities of the various New Left organizations, their leadership and adherents.”²³⁰

Counter-intelligence was not, however, the only way the U.S. national security state responded to ideologically subversive university members during this period. For example, while only a small number of academics engaged in civil disobedience as part of the anti-Vietnam War protest movement—including by helping students resist the draft—some of these individuals were prosecuted by the Department of Justice for their actions.²³¹

The U.S. national security state has continued to focus on the ideological commitments of university members during the contemporary period. For instance, in a 2011 white paper about higher education’s vulnerability to academic and other forms of espionage, the FBI noted that

US college campuses are an especially good place [for foreign adversaries] to look for people with particular ideological views. Campuses

226. *Id.* at 43.

227. *Id.* at 194–96.

228. *Id.* at 111.

229. The New Left was “born in the early nineteen-sixties as a revolt against the modern university” and “helped mobilize opinion on issues like civil rights, urban poverty, the arms race, and the [Vietnam] war . . .” Louis Menand, *The Making of the New Left*, NEW YORKER (Mar. 15, 2021), <https://www.newyorker.com/magazine/2021/03/22/the-making-of-the-new-left> [<https://perma.cc/W8W9-9Y5U>].

230. ROSENFELD, *supra* note 163, at 414–15. COINTELPRO “took tactics developed for use against foreign adversaries during war and applied them to citizens: leaking phony allegations, sending anonymous poisonpen letters, interfering with jobs, having people arrested on drug charges, distributing misinformation, and encouraging violence.” *Id.* at 414. All COINTELPRO programs—there were five in total, dating back to 1956—were abruptly ended in 1971 after information about the programs was leaked to the media, though, as others have noted, the programs largely continued in different form. *Id.*; Deepa Kumar, *Terrorcraft: Empire and the Making of the Racialised Terrorist Threat*, 62 RACE & CLASS 34, 44 (2020).

231. SCHRECKER, *supra* note 80, at 207–08.

are known for their open discussions and debates. Foreign intelligence services sometimes find students with particular political or ideological beliefs by attending campus rallies, by interacting with particular clubs, or reading campus newspapers and blogs. When they discover someone they think will help, they may approach that person and entice him/her to join their cause.²³²

These concerns, about the ideological and political commitments of campus community members, endure to this day, as reflected in recent developments in the university's securitization discussed in Part II, below.

* * *

While the university's status as participant in and object of national security has certainly had detrimental effects on university communities, it has also arguably had positive impacts on American higher education. During the Cold War, for example, federal government investment in universities contributed to the "unprecedented and explosive expansion" of faculties.²³³ It gave those professors, able to win lucrative federal research contracts and grants, incredible power within their institutions and an "extraordinary degree of control over the conditions of their employment," in ways that had not existed before.²³⁴ At least for a time, the financial power those federal research arrangements gave to individual professors (mostly in the natural and social sciences) generated benefits within universities for faculty members more broadly.²³⁵

At an institutional level, the university's relationship with the national security state has benefited higher education by supporting its general funding needs. Indeed, since the early years of the Cold War, the government's financial support for universities has gone well beyond the provision of research contracts and grants, as well as other funding for work valuable to the national security state. Rather, it has extended to student grant and loan programs, fellowships, work-study programs, and funds for university construction projects, among other subsidies.²³⁶ According to some, this expansive government assistance originates, at least in part, in the "war-mentality" that

232. FED. BUREAU OF INVESTIGATION, HIGHER EDUCATION AND NATIONAL SECURITY: THE TARGETING OF SENSITIVE PROPRIETARY AND CLASSIFIED INFORMATION ON CAMPUSES OF HIGHER EDUCATION 5 (2011).

233. Lewontin, *supra* note 58, at 2, 29.

234. *Id.* at 2.

235. *Id.* at 30.

236. *Id.* at 26.

pervaded U.S. society after World War II and that legitimated state intervention into American higher education.²³⁷

Finally, the university's important role in U.S. national security has contributed to increased student enrollment and access to higher education. Understanding a university education as vital to the national interest, the post-war federal government created a blueprint in 1947 for increasing the number of students attending U.S. universities and colleges.²³⁸ One of the by-products of that effort was the National Defense Education Act (NDEA), which created the first federally funded grants and subsidized loan program for college students.²³⁹ Thanks, in part, to the NDEA as well as other state and federal funding, reflecting Cold War-era commitments, student enrollment increased by forty-five percent between 1945 and 1960 and doubled again by 1970.²⁴⁰ Between 1949 and 1979, university enrollment grew by 400%.²⁴¹ Alongside support at the state level, federal funding for higher education—especially public universities—also arguably helped make universities more accessible for many students (at least until the 1970s), and contributed to diversifying student bodies to include much larger numbers of black and brown students than had been enrolled in higher education before World War II.²⁴²

237. *Id.* at 23, 26–27.

238. See Ebert Flattau et al., *supra* note 146, at I-1; see also Labaree, *supra* note 136, at 30 (suggesting that the impetus for issuing the 1947 blueprint was rooted, in part, in the Cold War, which “provided a strong public rationale for broadening access to college”); George F. Zook, *The President's Commission on Higher Education*, 33 BULL. AM. ASS'N U. PROFESSORS 10, 10 (1947) (describing the motivation for creating the presidential commission, which issued the 1947 blueprint, as driven, in part, by a desire to understand the “means by which higher education can be made to contribute most effectively to the economic and political welfare of the country”).

239. Steven Mintz, *How the 1960s Created the Colleges and Universities of Today*, INSIDE HIGHER ED (June 22, 2022), <https://www.insidehighered.com/blogs/higher-ed-gamma/how-1960s-created-colleges-and-universities-today> [<https://perma.cc/LSV5-JN9N>]; Ebert Flattau et al., *supra* note 146, at I-1 to -2. While the Soviet Union's launch of Sputnik I—the first ever satellite to orbit Earth—was the immediate trigger for the NDEA's passage, the momentum for the “type of comprehensive federal education legislation” that the NDEA represented dated back to the government's 1947 blueprint. *Id.* at ES-1, I-1.

240. Mintz, *supra* note 239.

241. Labaree, *supra* note 136, at 29.

242. See NEWFIELD, *supra* note 221, at 1–5, 15 (arguing that the post-Cold War public university became more racially and economically integrated

Understanding the university as both an object of and participant in national security demonstrates how the university has long been a place of power politics. While the pre-war university was not irrelevant to the United States' national security interests,²⁴³ the post-World War II university has been more embedded in and responsive to those interests than ever before. It is this post-war transformation of the university—as much as, if not more than, the activism of university students during the Vietnam War and other periods of political upheaval—that has made the university an important site of political contestation,²⁴⁴ a dynamic that is on stark display in the current moment.

II. RECENT EFFORTS TO SECURITIZE THE UNIVERSITY

While part and parcel of U.S. higher education's historical securitization—especially its post-9/11 surge—efforts to securitize universities after October 7th have been notably bipartisan, concerted, organized, and dispersed across federal and state levels. This Part examines some of those efforts. In particular, it canvasses congressional legislation, proposed between October 7, 2023 and December 31, 2024, that treated the university as both an object of national security threat and a compelled participant in addressing those threats.²⁴⁵ Other prominent federal-level efforts to securitize higher education are similarly explored, including highly publicized congressional hearings held with university presidents from late 2023 through 2024. While more limited in scope, this Part also discusses select state-level

thanks, in part, to the “nearly universal access” those institutions provided). Notwithstanding these and other benefits for universities, actions taken by the second Trump administration, as of this writing, starkly demonstrate how the university's deep ties to the national security state can also have profoundly negative consequences for these institutions. This conclusion is further bolstered by events that occurred during the last fifteen months of the Biden administration discussed in Part II. It is partly for these reasons that I believe the university's relationship with the national security state must be revisited and substantially overhauled by university communities sooner rather than later, as suggested at the start of this Article.

243. SCHRECKER, *supra* note 80, at 217. As one example of this pre-World War II phenomenon, American universities aligned themselves with the prevailing political winds and repressed pacifists during World War I. LOWEN, *supra* note 59, at 20–21.

244. LOWEN, *supra* note 59, at 5.

245. This period roughly corresponds to the latter half of the 118th Congress, though that congressional term ended on January 3, 2025.

legislative and non-legislative actions taken between October 7, 2023 and December 31, 2024, which likewise presented the university as an object of and participant in national security. Finally, this section provides a high-level overview of the ways universities voluntarily participated in national security, in both direct and indirect ways, post-October 7th, focusing on the 2023–2024 academic year and the fall 2024 semester.²⁴⁶

As reflected in this Part, government-led efforts to securitize the university during the last fifteen months of the Biden administration weaponized the language of terrorism to frame certain campus members—specifically those advocating for the Palestinian cause—as supporting “terrorist groups” or engaging in “terrorist activities” in ways that violated or triggered existing U.S. counterterrorism laws.²⁴⁷ Many of these terrorism-focused framings revolved around the movement’s purported contravention of the federal criminal prohibition on material support.²⁴⁸ Notably, several congressional and state-level bills canvassed in this Part pushed beyond the already broad material support concept to penalize activities that were almost certainly protected by the First Amendment.²⁴⁹ In some cases, federal and state

246. Part II does not provide a comprehensive account of federal, state, and university-level securitization efforts between October 7, 2023 and December 31, 2024 and, instead, seeks to describe those efforts that are broadly representative of how universities and their community members were securitized during the covered period.

247. These efforts implicitly equated the movement’s ideological support for the Palestinian cause and the Palestinian people with support for or involvement in terrorism. Part III.B of this Article examines the racist, anti-Palestinian animus that has long fueled this logic.

248. See, e.g., *infra* notes 296–318, 354–55, 358–59 and accompanying text. Under federal criminal law, material support is defined as:

[A]ny property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (1 or more individuals who may be or include oneself), and transportation, except medicine or religious materials.

18 U.S.C. § 2339A(b)(1). Such material support cannot be knowingly or intentionally provided to facilitate certain enumerated terrorism-related activities, or knowingly provided to designated Foreign Terrorist Organizations (FTOs). *Id.* §§ 2339A(a), B(a)(1).

249. As discussed below, these bills often attempted to penalize vague forms of “affiliation” with or “pledges” of “support” to terrorist groups—an approach that is more akin to the immigration law view on prohibited terrorist activities

responses to post-October 7th, pro-Palestine activism also presented the university *itself* as a supporter of terrorism and an enemy of the state, for the first time.²⁵⁰

As discussed below, these government-led efforts to securitize the university were distinctive from, but intertwined with, the university's own security-oriented reactions to pro-Palestine campus advocates. During the 2023-2024 academic year, and continuing into the fall 2024 semester, many universities took unprecedented, severe punitive actions against protestors and advocates "calling for freedom for Palestinians and an end to violence being inflicted upon them," in overwhelmingly peaceful ways.²⁵¹ Instead of couching their responses in conventional national security terms, however, universities that adopted security-focused tactics²⁵² typically framed those responses as necessary to protect individual, group, or campus security, though they sometimes leveraged national security concepts and rhetoric more directly.²⁵³ Despite these differences in framing, university-led efforts to penalize and punish pro-Palestine advocates for more generic security-based reasons often complemented and were complemented by government-led efforts to treat the university as a site of national security

and that raises First Amendment concerns. *See, e.g., infra* notes 345–47, 423–25 and accompanying text.

250. *See, e.g., infra* notes 296–99, 380, 405–07, 430 and accompanying text.

251. Chenoweth et al., *supra* note 3, at 6–7; *see* Bianca Ho & Kieran Doyle, *US Student Pro-Palestine Demonstrations Remain Overwhelmingly Peaceful*, ARMED CONFLICT LOCATION & EVENT DATA INSIGHT (May 10, 2024), <https://acleddata.com/2024/05/10/us-student-pro-palestine-demonstrations-remain-overwhelmingly-peaceful-acleddata-brief> [https://perma.cc/XKJ9-VAWQ] (noting that between October 7, 2023 and May 3, 2024 the overwhelming majority of pro-Palestine campus protests—ninety-seven percent—were peaceful).

252. Admittedly, university responses, particularly to student protests, have "varied widely" with some schools "toler[ating]" or even being "empathetic" toward the pro-Palestine movement. Jay Ulfelder, *Crowd Counting Consortium: An Empirical Overview of Recent Pro-Palestine Protests at U.S. Schools*, HARV. KENNEDY SCH.: ASH CTR. FOR DEMOCRATIC GOVERNANCE & INNOVATION (May 30, 2024), <https://ash.harvard.edu/articles/crowd-counting-blog-an-empirical-overview-of-recent-pro-palestine-protests-at-u-s-schools> [https://perma.cc/4LSU-EVPQ]. There was, nevertheless, a notable tendency among numerous universities to respond to pro-Palestine protestors using security-based language and tactics during the covered period. *See infra* Parts II.C.1, II.C.3.

253. Typically, where university administrators invoked national security in response to pro-Palestine advocacy, they relied on terrorism-related concerns and implicitly or explicitly accused pro-Palestine students and university members of promoting or supporting terrorism or terrorist groups, much like their federal and state-level counterparts did. *See infra* Part II.C.3.

threat.²⁵⁴ The end product of this symbiosis was an interconnected and interdependent ecosystem of mutually supportive, repressive policies—pursued by both universities and the state—which promoted the view that campus members, who engaged in pro-Palestine advocacy, were terrorizing their communities and threatening the security of the nation itself.²⁵⁵

While this Article cannot and does not assess each and every pro-Palestine campus movement or evaluate every claim regarding “terrorist supporting” campus activities during the covered period, there is generally no credible evidence—beyond conclusory and inflammatory statements²⁵⁶ and racially motivated framings²⁵⁷—suggesting that advocacy associated with the movement violated U.S. counterterrorism laws, including the prohibition on material support.²⁵⁸ Instead, as the American Civil Liberties Union (ACLU) has suggested, attempts to frame

254. *See infra* Part II.C.2.

255. *See infra id.*

256. *E.g., ADL and Brandeis Center Letter to Presidents of Colleges and Universities*, ANTI-DEFAMATION LEAGUE (Oct. 26, 2023), <https://www.adl.org/resources/letter/adl-and-brandeis-center-letter-presidents-colleges-and-universities> [<https://perma.cc/FC8W-FG5P>] (accusing chapters of Students for Justice in Palestine (SJP)—a nationwide pro-Palestine group—of violating counterterrorism laws without providing credible proof); Memorandum from Ray Rodrigues, Chancellor, St. Univ. of Fla. Sys. (SUS), on Deactivation of Nat’l Students for Just. in Palestine to SUS Presidents (Oct. 24, 2023) [hereinafter *Florida SJP Ban Letter*], <https://www.flbog.edu/wp-content/uploads/2023/10/Deactivation-of-Students-for-Justice-in-Palestine.pdf> [<https://perma.cc/TXM2-MQP7>] (same).

257. *See supra* note 247.

258. As experts have noted, prominent efforts to accuse the pro-Palestine campus movement of violating the material support prohibition provided no credible evidence showing the movement engaged in anything other than legally protected independent advocacy. *See, e.g.,* O’Rourke and Said, *supra* note 165; Letter from Anthony D. Romero, Exec. Dir., Am. C.L. Union Found., et al., to U.S. Coll. & Univ. Presidents (Nov. 1, 2023) [hereinafter *ACLU Speech Letter to Universities*], <https://www.aclu.org/documents/open-letter-to-colleges-and-university-leaders-reject-efforts-to-restrict-constitutionally-protected-speech-on-campus> [<https://perma.cc/4M3X-BU3Q>]; *see Reverberations of October 7: Mobilization Against Genocide Undeterred by Peak Anti-Palestinian Repression*, PALESTINE LEGAL 12 (May 2024), <https://static1.squarespace.com/static/548748b1e4b083fc03ebf70e/t/664fbc07860df7037ba81300/1716501546613/Pal+Legal+Report+Reverberations+of+Oct+7th> [<https://perma.cc/7AY4-JU7B>] (describing allegations that SJP chapters engaged in material support of terrorism as “baseless”). Even in instances, described below, where universities themselves broadly raised terrorism concerns about campus activism, no terrorism-related charges have been publicly announced, as of this writing. *See* Part II.C.3.

pro-Palestine activists as supporting terrorism or breaking terrorism-related laws are little more than “ideologically motivated efforts to police speech on campus,” evocative of the McCarthy era.²⁵⁹ As put by Palestine Legal—the premier U.S. advocacy organization challenging efforts to repress, harass, and intimidate pro-Palestine activists and advocates²⁶⁰—these efforts “portend a normalizing of severe anti-Palestinian rhetoric and activity intended to criminalize speech, advocacy, solidarity, and even scholarship around Palestine.”²⁶¹

Behind these repressive efforts to securitize the university are two long-standing, underlying forces that should be noted at the outset. First, as discussed more fully in Part III, the weaponization of terrorism against pro-Palestine campus advocates, both legally and politically, is rooted in long-standing, racist,²⁶² Israeli-led efforts to suppress the Palestinian movement for self-determination and liberation.²⁶³ Among other things, these efforts have targeted pro-Palestine solidarity advocacy within U.S. academia and at U.S. universities for decades.²⁶⁴ “[A] direct response to the development of both activism and scholarship related to Palestine from the 1960s onward,”²⁶⁵ this corrosive project has attempted “to combat the hiring of faculty of Palestinian

259. ACLU Speech Letter to Universities, *supra* note 258. Following her ten-day visit to the United States during the height of the student encampment movement in the spring of 2024, the UN Special Rapporteur on the Right to Education, Farida Shaheed, issued a statement that reached a similar conclusion regarding the repression of pro-Palestine advocacy. Press Release, UN Off. of the High Comm. of Hum. Rts., UN Expert Alarmed by Violent Crackdown on Peaceful Student Protests Across US Campuses (May 10, 2024), <https://www.ohchr.org/en/press-releases/2024/05/un-expert-alarmed-violent-crackdown-peaceful-student-protests-across-us> [<https://perma.cc/DBK4-FDAJ>]. In that statement, Shaheed expressed “deep” concern regarding “the violent crackdown on peaceful demonstrators, arrests, detentions, police violence, surveillance and disciplinary measures and sanctions against members of the educational community exercising their right to peaceful assembly and freedom of expression” as well as with “the unequal treatment of protestors based on their political stance, particularly targeting pro-Palestinian demonstrators.” *Id.*

260. *About: Our Mission*, PALESTINE LEGAL, <https://palestinelegal.org/about> [<https://perma.cc/G5UC-FFLA>].

261. *Reverberations of October 7*, *supra* note 258, at 6.

262. Yasmeen Abu-Laban & Abigail B. Bakan, *Anti-Palestinian Racism: Analyzing the Unnamed and Suppressed Reality*, PROJECT ON MIDDLE E. POL. SCI. (2021), <https://pomeps.org/anti-palestinian-racism-analyzing-the-unnamed-and-suppressed-reality> [<https://perma.cc/R5NU-J4B2>].

263. *See infra* Part III.B.

264. Deeb & Winegar, *supra* note 38, at 315.

265. *Id.* at 316.

and/or Arab backgrounds, [to] silence Palestinian perspectives, and [to] prevent criticism of the Israeli state from appearing in campus events or curricula.”²⁶⁶ Even before 9/11, but more so since then, this anti-Palestinian movement has leveraged accusations of “complicit[y] [in] terrorism” to smear pro-Palestine advocates, including faculty and students.²⁶⁷

In various prior instances, these smear campaigns have triggered government and university-led repression. Responding, in part, to campaigns defaming pro-Palestine university members as terrorism supporters, the U.S. government has, for example, investigated, surveilled,²⁶⁸ and even prosecuted some of those individuals for allegedly violating counterterrorism laws.²⁶⁹

266. *Id.* at 315. During the 1970s and ’80s, “the tactics of threatening, targeting, surveilling, and accusing [pro-Palestine] faculty and students merged into a coherent strategy promoted in numerous tracts and conferences” by pro-Israel organizations, like the American-Israel Public Affairs Committee and the Anti-Defamation League. *Id.* See *infra* Part III.D for further discussion of the role of some of these and other private actors in depicting pro-Palestine campus advocates as threatening U.S. national security during the covered period.

267. Deeb & Winegar, *supra* note 38, at 318; see Jamshidi, *supra* note 48 (describing the ways in which pro-Israel groups have used accusations of terrorism to demonize pro-Palestine advocacy). While beyond the scope of this Article, accusations of antisemitism are the other primary smear tactic that has long been used against pro-Palestine movement members, on and off campuses. Jamshidi, *supra* note 48; *The Palestine Exception to Free Speech: A Movement Under Attack in the US*, PALESTINE LEGAL & THE CTR. FOR CONST. RTS. 17 (2015), <https://ccrjustice.org/sites/default/files/attach/2015/09/Palestine%20Exception%20Report%20Final.pdf> [<https://perma.cc/7336-LEHF>]. In line with this trend, accusations of antisemitism have also been heavily leveraged against the pro-Palestine movement since October 7th. See *infra* notes 287, 382, 393, 597 and accompanying text.

268. Deeb & Winegar, *supra* note 38, at 318; Kumar, *supra* note 230, at 43; *The Palestine Exception to Free Speech*, *supra* note 267, at 39–41.

269. The decision by the George W. Bush administration to bring terrorism-related charges against University of South Florida Professor Sami al-Arian, as well as other individuals, including a Florida graduate student, in the early 2000s is among the most notorious and prominent of these cases. See Murtaza Hussain & Glenn Greenwald, *Exclusive Interview: Sami al-Arian, Professor Who Defeated Controversial Terrorism Charges, Is Deported from U.S.*, INTERCEPT (Feb. 5, 2015), <https://theintercept.com/2015/02/05/sami-al-arian-charged-terrorism-never-convicted-deported-today-u-s> [<https://perma.cc/4BN4-X95W>]; Spencer S. Hsu & Dan Eggen, *Fla. Professor Is Acquitted in Case Seen as Patriot Act Test*, WASH. POST (Dec. 6, 2005), <https://www.washingtonpost.com/archive/politics/2005/12/07/fla-professor-is-acquitted-in-case-seen-as-patriot-act-test/c1ba5acd-c2ed-4a82-b948-2f3dd3a83617> [<https://perma.cc/QK2U-MLNQ>]; see also *University Seeks to Fire Scholar for Reputed Link to Terrorism*, N.Y. TIMES (Aug. 22, 2002), <https://www.nytimes.com/2002/08/22/us/university-seeks-to-fire-scholar-for-reputed-link->

Colleges and universities have also demonstrated a long-standing tendency to respond to anti-Palestinian smear campaigns, including allegations of terrorism support, by restricting academic freedom and free expression on Palestine.²⁷⁰

As support for the Palestine movement has swelled since October 7th,²⁷¹ anti-Palestinian smear campaigns—including campaigns targeting campus members as terrorist threats—have reached “unfathomable proportions,”²⁷² and been more organized, effective, and well-funded than ever before.²⁷³ Given the historical trend, it is no surprise that government and university actors have largely responded to those campaigns by repressing pro-Palestine advocates, as demonstrated below.

The second underlying force driving the university’s current securitization is the long-standing conservative campaign to remake U.S. higher education. This factor is particularly relevant to understanding why the university, itself, has been framed as an enemy of the state post-October 7th. The conservative campaign against universities—especially public universities—began to gain substantial strength in the 1960s and ’70s,²⁷⁴ just as

to-terrorism.html [https://perma.cc/YL2S-PKFG] (describing terrorism-related accusations brought against Professor al-Arian before his indictment, including by Fox News); Bruce Shapiro, *Florida Witch-Hunt*, SALON (Jan. 8, 2002), <https://www.salon.com/2002/01/08/professor> [https://perma.cc/4X3S-SQNA] (describing terrorism-related accusations made against al-Arian in 1994 by “terrorism maven” Steve Emerson).

270. *The Palestine Exception to Free Speech*, *supra* note 267, at 16, 20–22.

271. *Reverberations of October 7*, *supra* note 258, at 2–4, 7–8.

272. *Id.* at 3–4.

273. Deeb & Winegar, *supra* note 38, at 323–24.

274. Conservative attacks against the university arguably became part of mainstream national politics during the 1966 California gubernatorial campaign of Ronald Reagan. SCHRECKER, *supra* note 80, at 39; *see also* NEWFIELD, *supra* note 221, at 51 (describing Ronald Reagan as the “conservative politician who . . . made the most of the university threat”). According to one expert, “Reagan launched what became one of the most successful political careers of the twentieth century by depicting the University of California as a threat to social order and even national security . . .” NEWFIELD, *supra* note 221, at 52. Even though Reagan’s campaign may have helped popularize conservative attack on higher education, those attacks had been building since at least the late 1940s and ’50s, as reflected in the HUAC hearings, discussed above, as well as in William F. Buckley Jr.’s *God and Man at Yale: the Superstitions of Academic Freedom* (1951). Annelise Orleck, *Modeling the World We Seek*, in CRACKDOWN ON CAMPUS PROTESTORS 7 (2024), https://www.aaup.org/sites/default/files/AAUP_Campus_Protests.pdf [https://perma.cc/BM8T-EYFL]. Some date the start of conservative challenges to U.S. higher education even earlier,

institutions of higher education were becoming more integrated along racial and class-based lines²⁷⁵ and more central to achieving a just and egalitarian society.²⁷⁶ As one expert has described it, “conservative elites . . . threatened by the postwar rise of the college-educated economic majority . . . put that majority back in its place . . . [through] culture wars on higher education in general, and on progressive cultural trends in the public universities that create[d] and enfranchise[d] the mass middle class.”²⁷⁷ These “cultural” attacks against the university, which have continued over the last several decades,²⁷⁸ accelerated even further after the 2020 George Floyd anti-racism, anti-police brutality protests,²⁷⁹ with conservative politicians and pundits doubling down on claims that U.S. universities are “liberal” outposts promoting “radical left indoctrination.”²⁸⁰

specifically, to the establishment of Bob Jones College as a “training center for Christians” in the 1920s. Lauren Lassabe Shepherd, *The History Behind the Right’s Effort to Take Over American Universities*, TIME (Oct. 23, 2023), <https://time.com/6319108/conservative-universities> [https://perma.cc/229VSTUS].

275. NEWFIELD, *supra* note 221, at 3–5.

276. See SCHRECKER, *supra* note 80, at 2 (describing the U.S. university of the 1960s as the “repository of the American dream . . . of a more egalitarian society that would challenge the racial and gender intolerance and inequality that had for so long impeded human progress”).

277. NEWFIELD, *supra* note 221, at 5.

278. *Id.* at 11–13.

279. Shepherd, *supra* note 274.

280. Naomi Oreskes & Charlie Tyson, *Is Academe Awash in Liberal Bias? Most People Think So. They’re Wrong*, CHRON. OF HIGHER EDUC. (Sept. 14, 2020), <https://www.chronicle.com/article/is-academe-awash-in-liberal-bias> [https://perma.cc/848U-ELT5]; David A. Graham, *What a Direct Attack on Free Speech Looks Like*, ATLANTIC (July 10, 2020), <https://www.theatlantic.com/ideas/archive/2020/07/trump-universities/614038> [https://perma.cc/RM8RD4CT]. This most recent spate of conservative attacks included widespread and systematic efforts in red and blue states to reshape higher education according to a purportedly conservative political and ideological agenda. Isaac Kamola, *Manufacturing Backlash: Right-Wing Think Tanks and Legislative Attacks on Higher Education, 2021-2023*, AM. ASS’N OF UNIV. PROFESSORS (May 2024), <https://www.aaup.org/manufacturing-backlash-right-wing-think-tanks-and-legislative-attacks-higher-education-2021-2023> [https://perma.cc/C6PH-YVPT]; *Report of a Special Committee: Political Interference and Academic Freedom in Florida’s Public Higher Education System*, AM. ASS’N OF UNIV. PROFESSORS (Dec. 2023), <https://www.aaup.org/report/report-special-committee-political-interference-and-academic-freedom-florida’s-public-higher> [https://perma.cc/H6L3-AY4J]; *The Right-Wing Attacks on Higher Education: An Analysis of the State Legislative Landscape*, AM. ASS’N OF UNIV. PROFESSORS <https://www.aaup.org/sites/default/files/Higher-Ed-Legislative-Landscape.pdf> [https://perma.cc/5M89-MC34].

Though most of these earlier attacks did not explicitly present universities, themselves, as national security “threats,” some conservatives did implicitly frame faculty members²⁸¹ and ways of thinking purportedly promoted at U.S. universities as undermining the nation’s security.²⁸² At times, they even accused universities of being the “enemy,” though not in clear national security terms.²⁸³

After October 7th, conservative attacks against universities, as enemies threatening the nation’s security, became more explicit. While both Democrats and Republicans described pro-Palestine campus advocates as national security threats during the covered period, conservative politicians and groups—primed to see the university as the adversary—were particularly apt to accuse universities themselves of threatening or undermining U.S. national security.²⁸⁴ And even though, as discussed in Part III, this depiction comports with national security’s general tendency to create enemies,²⁸⁵ conservatives have used it, first and foremost, to further their broader ideological project of remaking U.S. higher education, including by dismantling Diversity, Equity, and Inclusion (DEI) initiatives.²⁸⁶

281. Caroline Wazer, *Fact Check: Yes, Vance Once Said ‘Professors Are the Enemy.’ He Was Quoting Nixon*, YAHOO! NEWS (Feb. 9, 2025), <https://www.yahoo.com/news/fact-check-yes-vance-once-030000127.html> [<https://perma.cc/PMX8-6CK8>].

282. See, e.g., CHRISTOPHER F. RUFO, AMERICA’S CULTURAL REVOLUTION: HOW THE RADICAL LEFT CONQUERED EVERYTHING, x–xi (2023) (describing critical race theory and other so-called “left-wing ideologies” taught at U.S. universities and elsewhere as a “rot spreading through American life” that is “starting to shake loose” the “country’s foundations” and suggesting that those ideologies threaten the continued existence of the “American Republic”); NEWFIELD, *supra* note 221, at 58–65 (describing early 1990s conservative criticism of “political correctness” and “race consciousness” at universities as framed partly in national security terms).

283. See, e.g., NATIONAL CONSERVATISM, *J.D. Vance / The Universities Are the Enemy / National Conservatism Conference II* YouTube (Youtube Nov. 10, 2021), <https://www.youtube.com/watch?v=0FR65Cifnhw>.

284. See, e.g., *infra* Part II.A.1–2.

285. See *infra* Part III.C.

286. *The Dismantling of DEI*, CHRON. OF HIGHER EDUC., <https://www.chronicle.com/package/the-assault-on-dei> [<https://perma.cc/S9AM-7YE9>] (illustrating ongoing right-wing attempts to dismantle DEI initiatives). Since October 7th, some conservatives have claimed that DEI programs are to blame for generating a so-called wave of support for terrorism and terrorist groups on college campuses. In particular, in its recently released “national strategy to combat antisemitism,” the Heritage Foundation, a conservative think tank,

This Part examines federal efforts to securitize the university during the last fifteen months of the Biden administration—which is its primary focus. It then discusses state-level efforts to do the same. It ends with a discussion of securitized responses from universities to pro-Palestine campus activism during the covered period.

A. UNIVERSITY SECURITIZATION AT THE FEDERAL LEVEL

This Section begins by describing some of the proposed and passed federal legislation, introduced between October 7, 2023 and December 31, 2024, that treated the university as both a compelled participant in national security and an object of national security risk—specifically in response to the so-called threat of terrorism coming from pro-Palestine advocates. It then examines some of the congressional hearings, investigations, and other federal-level efforts, including actions taken by the executive branch, that promoted a similarly securitized, terrorism-focused framing of pro-Palestine activism on U.S. campuses during the covered period.²⁸⁷

1. Proposed or Adopted Federal Legislation

While many of the federal bills canvassed in this Subsection did not become law, they were an important part of a multi-pronged effort during the last fifteen months of the Biden administration to securitize the university and its pro-Palestine members as terrorists or terrorist supporters—efforts that laid the

depicted U.S. universities as threatening U.S. national security by claiming, in part, that a so-called “ Hamas Support Network ” had successfully “ infiltrated ” the U.S. education system, including universities, thanks to DEI. Nat’l Task Force to Combat Antisemitism, *Project Esther: A National Strategy to Combat Antisemitism*, HERITAGE FOUND. 3, 10 (Oct. 7, 2024), <https://www.heritage.org/progressivism/report/project-esther-national-strategy-combat-antisemitism> [https://perma.cc/27UA-AYWK]. See *infra* notes 601–09 and accompanying text for further discussion of the Heritage Foundation report, which is known as *Project Esther*.

287. Though beyond this Article’s scope, some of the congressional bills and hearings, as well as Executive action, canvassed in this Section attempted to securitize the pro-Palestine campus movement by invoking allegations of antisemitic activity. As mentioned earlier, accusations of antisemitism have been systematically used by pro-Israel advocates to delegitimize and smear the pro-Palestine movement in the past. See *supra* note 267. Notably, these accusations largely rely on a relatively novel conflation of antisemitism with criticisms of Israel and anti-Zionism—a conflation that has been challenged by members of the Jewish community, as well as others. See *infra* note 597 and accompanying text.

groundwork for and have continued during the second Trump administration.²⁸⁸ Rather than being promoted by one party alone, a number of these bills—including but not limited to those that ultimately became law—received bipartisan support.²⁸⁹

Much of this legislation implicitly framed pro-Palestine campus advocates as likely violating or otherwise triggering U.S. counterterrorism laws, particularly the prohibition on material support. This framing often relied, in turn, on the legally and factually baseless and racist notion that activism in support of the Palestinian people inherently constitutes “material

288. For instance, the Trump administration’s decision to strip or withhold federal funding from certain schools—which has largely been triggered by pro-Palestine activism at those universities, *see supra* note 15—has arguably achieved the aims of H.R. 6408: “[T]o amend the Internal Revenue Code of 1986 to terminate the tax-exempt status of terrorist supporting organizations,” and its reintroduced version H.R. 9495: “[T]he Stop Terror-Financing and Tax Penalties on American Hostages Act.” H.R. 6408, 118th Cong. (2023); H.R. 9495, 118th Cong. (2024). Those bills were designed to threaten universities with economic pain in order to coerce them to crackdown on pro-Palestine activism. Through its threatened and actual funding cuts, the Trump administration has essentially achieved the same result (whether lawfully or not) even though those bills never became law. *See* Carolyn Thompson, *Columbia University Makes Deal with Trump Administration, Agrees to Pay More than \$200 Million to Restore Federal Funding*, PBS NEWS (July 24, 2025), <https://www.pbs.org/newshour/politics/columbia-university-makes-deal-with-trump-administration-agrees-to-pay-more-than-220-million-to-restore-federal-funding> [<https://perma.cc/J8P9-YTR5>] (reporting that, a day before publicizing its deal with the Trump administration to restore its federal funding, Columbia “announced it would suspend, expel or revoke degrees from more than 70 students who participated in a pro-Palestinian demonstration inside the main library in May [2025] and an encampment during alumni weekend last year”). For a discussion of H.R. 6408 and H.R. 9495, *see infra* Part II.A.1.a.

289. For example, H.R. 6408—“To amend the Internal Revenue Code of 1986 to terminate the tax-exempt status of terrorist supporting organizations”—its reintroduced version, H.R. 9495—“Stop Terror-Financing and Tax Penalties on American Hostages Act” (on its first vote), and H.R. 7888—“Reforming Intelligence and Securing America Act”—all received bipartisan support and are discussed in this Section. H.R. 6408; H.R. 9495; H.R. 7888, 118th Cong. (2024); *Roll Call 477, Bill Number: H.R. 9495*, U.S. H.R.: OFF. OF THE CLERK (Nov. 12, 2024), <https://clerk.house.gov/Votes/2024477> [<https://perma.cc/HRR9-L8JY>]; *Roll Call Vote 118th Congress – 2nd Session: On Passage of the Bill (H.R. 7888)*, U.S. S. (Apr. 19, 2024), https://www.senate.gov/legislative/LIS/roll_call_votes/vote1182/vote_118_2_00150.htm [<https://perma.cc/S2RK-QUZF>]; *Roll Call 121, Bill Number: H.R. 6408*, U.S. H.R.: OFF. OF THE CLERK (Apr. 15, 2024), <https://clerk.house.gov/Votes/2024121> [<https://perma.cc/26VZ-MUZP>]; *Roll Call 120, Bill Number: H.R. 7888*, U.S. H.R.: OFF. OF THE CLERK (Apr. 15, 2024), <https://clerk.house.gov/Votes/2024120> [<https://perma.cc/J5R8-9RQ7>].

support”²⁹⁰ to Hamas, a designated Foreign Terrorist Organization (FTO).²⁹¹ Some proposed bills went even further and sought to penalize pro-Palestine advocates for activities that likely exceed the material support concept’s broad scope.²⁹² These activities include “affiliation” with or “pledges” of “support” to terrorist groups—prohibitions that are more akin to immigration law approaches to unlawful terrorist activities and that raise First Amendment concerns.²⁹³ Other proposed bills depicted the university, itself, as an enemy of the state for hosting or otherwise allowing pro-Palestine campus advocacy.²⁹⁴

Notably, while these proposed and passed federal laws were responsive to pro-Palestine activism, especially on U.S. campuses, they were neutral on their face. This neutrality was belied, however, by statements made by their sponsors and supporters, as well as by the broader backdrop to their introduction, which exposed the political motives driving these legislative acts.²⁹⁵ Indeed, it is important to appreciate these bills in context. That is why they are discussed alongside other efforts launched during the covered period at both the federal and state level, which were often more explicit in their focus and intentions.

The congressional legislation examined in this Subsection falls into four categories, which are discussed in the following order: (1) federal legislation stripping universities of their non-profit status; (2) federal legislation expanding surveillance under Section 702 of the Foreign Intelligence Surveillance Act (FISA); (3) federal legislation relating to the No Fly List and deportations; and (4) federal legislation conditioning, monitoring, or restricting funding, both federal and foreign, to universities.

290. 18 U.S.C. § 2339A(b)(1).

291. See *infra* Parts III.B–C for a discussion of the racist nature of this presumption. Hamas has been designated by the United States as a prohibited terrorist organization since 1995 and as an FTO since 1997. Darryl Li et al., *Anti-Palestinian at the Core: The Origins and Growing Dangers of U.S. Anti-Terrorism Law*, CTR. FOR CONST. RTS. 14 (2024), https://ccrjustice.org/sites/default/files/attach/2024/02/Anti-Palestinian%20at%20the%20Core_White%20Paper_0.pdf [<https://perma.cc/7K9T-4ULG>]; Bureau of Counterterrorism, *Foreign Terrorist Organizations*, U.S. DEPT OF ST., <https://www.state.gov/foreign-terrorist-organizations> [<https://perma.cc/P7ZZ-6X2M>].

292. See *infra* notes 345–47, 356–57 and accompanying text.

293. See *id.*

294. See *infra* notes 296–99 and accompanying text.

295. See, e.g., *infra* notes 344, 350 and accompanying text.

a. *Federal Legislation Stripping Universities of Their Non-Profit Status*

One of the most concerning federal proposals, which framed the university itself as a national security enemy while also compelling its participation in U.S. national security, took aim at its very valuable²⁹⁶ tax-exempt, charitable status. Most U.S. universities are registered as 501(c)(3) non-profits and, as a result, are tax-exempt under the IRS Code.²⁹⁷ Though technically applicable to all registered 501(c)(3)s, H.R.

6408—To amend the Internal Revenue Code of 1986 to terminate the tax-exempt status of terrorist supporting organizations²⁹⁸—was introduced in Congress primarily to rescind the tax-exempt status of institutions of higher education and, thereby, punish them for supposedly failing to suppress pro-Palestine activism.²⁹⁹

While H.R. 6408 overwhelmingly passed the U.S. House of Representatives in April 2024, it stalled in the U.S. Senate.³⁰⁰ It was subsequently reintroduced in the House as H.R. 9495—Stop Terror-Financing and Tax Penalties on American Hostages Act.³⁰¹ After two rounds of voting, H.R. 9495 passed the House

296. See *infra* note 317 and accompanying text for more on the financial consequences for universities of losing their tax exemption.

297. *Tax Exemption for Universities and Colleges: Internal Revenue Code Section 501(c)(3) and Section 115*, ASS'N OF AM. UNIVS. (Mar. 2014), <https://www.aau.edu/sites/default/files/AAU%20Files/Key%20Issues/Taxation%20%26%20Finance/Tax-Exempt-Status-of-Universities-FINAL.pdf> [<https://perma.cc/PM6S-7YRC>].

298. H.R. 6408, 118th Cong. (2023).

299. Jason Smith, Chairman, U.S. H. Comm. on Ways & Means, Opening Statement at the Hearing on the Nexus Between Terror Financing, Tax-Exempt Charities, & Antisemitism (Nov. 15, 2023), <https://waysandmeans.house.gov/2023/11/15/chairman-smith-opening-statement-hearing-on-connection-between-terror-financing-tax-exempt-charities-antisemitism> [<https://perma.cc/32P9-6Q7Y>].

300. *All Actions: H.R. 6408—118th Congress (2023-2024)*, CONGRESS.GOV, <https://www.congress.gov/bill/118th-congress/house-bill/6408/all-actions> [<https://perma.cc/2P24-F6TT>]; S. 4136, 118th Cong. (2024); *All Actions: S.4136—118th Congress (2023-2024)*, CONGRESS.GOV, <https://www.congress.gov/bill/118th-congress/senate-bill/4136/all-actions> [<https://perma.cc/D2XZ-5TNK>].

301. H.R. 9495, 118th Cong. (2024). While H.R. 9495 contained more than one piece of proposed legislation, the portion that focused on stripping tax-exempt status from non-profits was identical to H.R. 6408. For convenience's sake, all citations to the text of the bill are to H.R. 6408.

in November 2024,³⁰² but ultimately failed to make it out of the Senate too.³⁰³

If either H.R. 6408 or H.R. 9495 had become law, the consequences for universities and especially for pro-Palestine campus activism would have been devastating. This is due to the broad, largely unchecked executive branch authority these bills would have created. Under its terms, H.R. 6408/9495 would have allowed the government to strip tax-exempt status from any university found to be a “terrorist supporting organization,”³⁰⁴ effectively marking those institutions as enemies of the state. H.R. 6408/9495 would have given the Secretary of the Treasury unilateral authority, with little to no due process limitations,³⁰⁵ to make such designations as long as the university in question provided “material support,” in excess of a de minimis amount, to certain prohibited groups in the preceding three years.³⁰⁶ The bills’ definition of “material support” was taken from the same federal criminal statute, alluded to earlier, which prohibits a very expansive set of activities, including speech “coordinated” with designated foreign terrorist groups.³⁰⁷ Universities would have risked triggering H.R. 6408/9495, if they provided this broad form of “support” to any domestic or foreign entity defined as a terrorist group under immigration law,³⁰⁸ among other

302. *Roll Call 477, Bill Number: H.R. 9495, supra* note 289; *Roll Call 458, Bill Number: H.R. 9495*, U.S. H.R.: OFF. OF THE CLERK (Nov. 12, 2024), <https://clerk.house.gov/Votes/2024458> [<https://perma.cc/8VWP-6PMM>].

303. Christopher Consoletti, *H.R. 9495: What Nonprofits Need to Know About the New Legislation*, AAFCPAS (Feb. 5, 2025), <https://www.aafcpa.com/2025/02/05/h-r-9495-what-nonprofits-need-to-know-about-the-new-legislation> [<https://perma.cc/GRP7-UUXX>].

304. H.R. 6408, 118th Cong. (2023).

305. Letter from Am. C.L. Union et al., to Mike Johnson, Speaker, U.S. H.R., & Hakeem Jeffries, Democratic Leader, U.S. H.R. 2 (Nov. 18, 2024), <https://www.aclu.org/documents/civil-society-letter-to-congress-opposing-hr-9495> [<https://perma.cc/U6QH-YH6G>].

306. H.R. 6408.

307. *Holder v. Humanitarian L. Project*, 561 U.S. 1, 31–32 (2010); 18 U.S.C. § 2339A(b)(1).

308. H.R. 6408/9495 itself did not include a definition of terrorist groups or organizations as it was intended to amend an existing tax law, 26 U.S.C. § 501(p), and incorporate that statute’s definition of prohibited “terrorist organizations.” H.R. 6408. Section 501(p)’s definition of terrorist organizations includes those groups encompassed by immigration law provision, 8 U.S.C. § 1182(a)(3)(B)(vi). 26 U.S.C. § 501(p)(2).

prohibited organizations.³⁰⁹ The immigration law definition of terrorist groups, which is one of the most expansive under federal law, includes those entities formally designated as FTOs by the Secretary of State, as well as *any* group of “two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in” material support to an FTO.³¹⁰ The bills’ inclusion of this latter category—groups with “two or more individuals, whether organized or not”—would have put pressure on universities to refrain from providing material support to a potentially unbounded number of formal and informal associations, even if the U.S. government had not formally designated those associations as terrorist organizations.

Together, these aspects of H.R. 6408/9495 would have exposed universities to incredibly expansive, politically motivated liability. It would have allowed the Treasury Secretary to label universities as terrorist supporters and strip them of their 501(c)(3) status where they provided material support—which would potentially include the provision of innumerable university services³¹¹ as well as funding—to an undesignated association of two or more individuals, if *that* group provided material support to an FTO, such as Hamas. Those undesignated associations could have and likely would have included Students for Justice in Palestine (SJP)—one of the largest nationwide pro-Palestine student organizations³¹²—as well as any other formal or informal group of two or more students advocating for the Palestinian cause. While it may seem ludicrous to believe U.S.-based student organizations are or have been providing “material support” to any designated FTO, H.R. 6408/9495’s

309. In accordance with the definition of terrorist organizations contained in section 501(p), H.R. 6406/9495 would have also prohibited material support to groups designated or identified by or pursuant to executive orders that are “related” to terrorism and that impose economic or other sanctions on those groups under the International Emergency Economic Powers Act or the United Nations Participation Act, and to groups designated or identified by or pursuant to executive orders issued under the authority of any federal law that identify those groups as engaging in terrorist activity or supporting terrorism, as defined by specific federal statutes, *and* that refer to section 501(p)(2). H.R. 6408; 26 U.S.C. § 501(p)(2).

310. 8 U.S.C. § 1182(a)(3)(B)(vi). Section 1182(a)(3)(B)(vi) covers other kinds of “terrorist organizations” as well.

311. See *supra* note 248 for the definition of material support.

312. See *infra* note 399 and accompanying text for more information on SJP.

proponents—much like other pro-Israel politicians and groups³¹³—publicly embraced the baseless narrative that the First Amendment-protected work of pro-Palestine campus organizations, like SJPs, provided Hamas with unlawful material support.³¹⁴ Indeed, this presumption was the conceptual basis for these bills.³¹⁵

Taken together, these dynamics would have created existential dilemmas for institutions of higher education and likely compelled them to uphold U.S. national security interests with devastating effects for pro-Palestine advocates. In particular, 501(c)(3) registered universities would have been faced with the predicament of either treating their SJP chapters and other pro-Palestine campus groups as terrorist entities—almost certainly based on their First Amendment-protected activities—or being themselves designated as “terrorist supporting organizations” and enemies of the state.³¹⁶ If they did allow pro-Palestine groups to continue operating on their campuses, universities would have had to contend with potentially losing untold amounts of funding, pursuant to H.R. 6408/9495’s tax-exempt stripping framework.³¹⁷ In all likelihood, many universities would have refused to take such risks and, instead, would have treated pro-Palestine campus groups as actual or potential terrorist organizations in order to protect their financial and

313. *ADL and Brandeis Center Letter*, *supra* note 256. See *infra* Part III.D for further discussion of the role of private groups in promoting the view that pro-Palestine advocates are engaging in material support of terrorism because of their advocacy.

314. See Smith, *supra* note 299 (opening congressional hearing relevant to H.R. 6408 by suggesting that 501(c)(3) organizations were providing support to SJP, whose events promote and feature “pro-Hamas slogans”); see generally Maryam Jamshidi, *Students for Justice in Palestine, Governors for Authoritarianism in Florida*, LPE PROJECT (Nov. 9, 2023), <https://lpeproject.org/blog/students-for-justice-in-palestine-and-governors-for-authoritarianism-in-florida> [https://perma.cc/Z3ZV-XC65].

315. This is reflected in various congressional hearings related to those bills. See *infra* notes 376, 378 and accompanying text.

316. H.R. 6408, 118th Cong. (2023).

317. Nathan Goldman, *3 Ways Losing Tax-Exempt Status Could Cost Harvard University Billions*, FORBES (Apr. 17, 2025), <https://www.forbes.com/sites/nathangoldman/2025/04/17/3-ways-losing-tax-exempt-status-could-cost-harvard-university-billions> [https://perma.cc/AP8W-VF7M].

reputational interests.³¹⁸ Given the broad nature of “material support,” this would have meant ending virtually all university support to those groups, making it nearly impossible for them to continue functioning on campuses across the country.

b. Federal Legislation Expanding Section 702 Surveillance

Another piece of legislation, introduced after October 7th, securitized the university as a site of national security threat by reauthorizing a counterterrorism law under circumstances suggesting it would or could be used to surveil pro-Palestine campus advocates.³¹⁹ The bill’s language also likely cleared the way for the government to compel university participation in those surveillance efforts.³²⁰ This legislation, which amended and expanded Section 702 of FISA³²¹—an already expansive law—was passed by Congress on April 19, 2024, just as pro-Palestine student encampments were beginning to mushroom across U.S. universities.³²²

Originally adopted in 2008 as an amendment to FISA,³²³ Section 702—which provided retroactive legitimacy to an illegal surveillance program created by the administration of President George W. Bush³²⁴—is one of the most notorious and controversial of the post-9/11 counterterrorism laws. While its purported aim is to facilitate warrantless mass foreign intelligence

318. Because H.R. 6408/9495 did not explicitly require that 501(c)(3)s *know* they are providing material support to terrorist organizations, universities would have been even more likely to over comply with the law and withdraw support from organizations that *might* qualify as terrorist groups. Shirin Sinar, *The Real Threat of the Nonprofit “Terrorism” Provision in Trump’s Big Bill*, SLATE (May 18, 2025), <https://slate.com/news-and-politics/2025/05/trump-big-beautiful-bill-nonprofit-terrorism.html> [<https://perma.cc/FX4D-SDK6>].

319. H.R. 7888, 118th Cong. (2024) (enacted).

320. *Id.*

321. *Id.*; H.R. 6304, 110th Cong. (2008) (enacted) (codified as amended in scattered sections of 50 U.S.C.).

322. Sanya Mansoor et al., *Pro-Palestinian Encampments Take Over American College Campuses*, TIME (Apr. 27, 2024), <https://time.com/6969875/pro-palestinian-encampments-take-over-college-campuses-across-america> [<https://perma.cc/T8UY-4RRD>].

323. H.R. 6304, 110th Cong. (2008) (enacted) (codified as amended in scattered sections of 50 U.S.C.).

324. Asha Rangappa, *Expert Backgrounder: Title I of the Foreign Intelligence Surveillance Act vs. Section 702*, JUST SEC. (May 25, 2023), <https://www.justsecurity.org/86713/expert-backgrounder-title-i-of-the-foreign-intelligence-surveillance-act-vs-section-702> [<https://perma.cc/ZR5B-A9SW>].

gathering, exclusively against non-Americans located abroad,³²⁵ Section 702's design inevitably sweeps in the private communications of U.S. citizens and persons in the United States as well.³²⁶ Indeed, the government has a track record of misusing this feature of Section 702, and, in the past, has exploited it to retrieve information about Black Lives Matter protestors³²⁷ and American journalists, among others.³²⁸

This abuse, coupled with the statute's expansive reach, has effectively made Section 702 a tool not just for foreign intelligence gathering, but also for domestic mass surveillance. As a result, the law has long been a *bête noire* for many civil liberties groups, which opposed reauthorizing the statute—set to expire in April 2024—without meaningful reforms.³²⁹ Its civil liberties pitfalls have also made Section 702 controversial within Congress, as reflected in wrangling over the statute among

325. Noah Chauvin & Elizabeth Goitein, *What's Next for Reforming Section 702 of the Foreign Intelligence Surveillance Act*, BRENNAN CTR. FOR JUST. 1 (Feb. 2, 2024), <https://www.brennancenter.org/our-work/research-reports/whats-next-reforming-section-702-foreign-intelligence-surveillance-act> [https://perma.cc/ME55-GS7X]; see Maryam Jamshidi, *The Discriminatory Executive and the Rule of Law*, 92 U. COLO. L. REV. 77, 157 (2021) (Section 702 cannot be used to “intentionally target[] . . . any person known to be in the United States or any U.S. person reasonably believed to be located abroad”); Rangappa, *supra* note 324 (“Section 702 does not provide a judicial process to review targeting of persons on an individual basis. Rather it allows the . . . [FISA Court] to ‘certify’ a surveillance *program* presented to it by the Justice Department and for the . . . [FISA Court] to continue to review the overall practice of the program on a periodic basis.”).

326. Chauvin & Goitein, *supra* note 325, at 1; Jamshidi, *supra* note 325, at 158.

327. Maggie Miller, *FBI Misused Surveillance Authorities to Investigate Black Lives Matter Protesters*, POLITICO (May 19, 2023), <https://www.politico.com/news/2023/05/19/fbi-surveillance-black-lives-matter-protesters-00097924> [https://perma.cc/W46G-UP3Z].

328. Chauvin & Goitein, *supra* note 325, at 1.

329. *E.g.*, Noah Chauvin, *Why Congress Must Reform FISA Section 702—and How It Can*, BRENNAN CTR. FOR JUST. (Apr. 9, 2024), <https://www.brennancenter.org/our-work/analysis-opinion/why-congress-must-reform-fisa-section-702-and-how-it-can> [https://perma.cc/JV89-S8FF]. The law was set to expire on the very date it was reauthorized: April 19, 2024. *Id.* Section 702 has a sunset provision that requires it to be periodically reauthorized by Congress. David Aaron, *Unpacking the FISA Section 702 Reauthorization Bill*, JUST SEC. (Apr. 18, 2024), <https://www.justsecurity.org/94771/unpacking-the-fisa-section-702-reauthorization-bill> [https://perma.cc/6S6V-3TY6].

reformists and intelligence hawks,³³⁰ as well as in the competing reauthorization bills that were most recently up for consideration.³³¹ One of the most hawkish of those bills, which was introduced in the House on April 9, 2024 as H.R. 7888—the Reforming Intelligence and Security America Act—ultimately became law.³³²

One reason for the success of H.R. 7888—and for the reauthorization of Section 702 more generally—may have been a desire to use the statute to surveil the post-October 7th, pro-Palestine protest movement, including on U.S. campuses. For example, in the lead up to its passage, some supporters of H.R. 7888, including a number of pro-Israel groups like the Anti-Defamation League (ADL) and the Jewish Federations of North America, suggested the bill was necessary to surveil U.S.-based, pro-Palestine activists.³³³ A few months before H.R. 7888’s introduction, prominent members of Congress also advocated for reauthorizing Section 702, without reforms, in order to surveil

330. Dell Cameron, *Congress Clashes Over the Future of America’s Global Spy Program*, WIRED (Dec. 11, 2023), <https://www.wired.com/story/section-702-house-bills-plewsa-frra> [<https://perma.cc/EDT7-CR6N>].

331. Chauvin & Goitein, *supra* note 325, at 2–3.

332. H.R. 7888, 118th Cong. (2024) (enacted).

333. Waleed Shahid (@_waleedshahid), X (formerly TWITTER) (Apr. 26, 2024), https://x.com/_waleedshahid/status/1783852614012084476 [<https://perma.cc/J22Y-ANJP>] (sharing a photograph of a Letter from the Conference of Presidents of Major American Jewish Organizations to Speaker of the House Mike Johnson and House Minority Leader Hakeem Jeffries). While these pro-Israel groups did not explicitly call for Section 702 to be used against pro-Palestine campus protestors, they did argue that “indications of foreign involvement in domestic antisemitic events in the wake of October 7 highlight the need for the Executive Branch to retain” Section 702 as a “vital tool.” Letter from the Conference of Presidents of Major American Jewish Organizations, to Mike Johnson, Speaker, H.R., and Hakeem Jeffries, Minority Leader, H.R. (Apr. 10, 2024) (on file with the *Minnesota Law Review*). In light of claims made by at least some of the letter’s signatories—like the ADL—that the pro-Palestine movement is both antisemitic and supportive of Hamas (*see, e.g., ADL and Brandeis Center Letter, supra* note 256), it is reasonable to assume the letter was suggesting Section 702 could or should be used to surveil pro-Palestine protestors, including on university campuses, on terrorism-related grounds. Luke Goldstein, *Pro-Israel Groups Pushed for Warrantless Spying on Protestors*, AM. PROSPECT (Apr. 26, 2024), <https://prospect.org/blogs-and-newsletters/tap/2024-04-26-pro-israel-groups-warrantless-spying-protesters> [<https://perma.cc/VB6E-PGU8>].

pro-Palestine individuals and groups in the United States for having “possible ties to Hamas.”³³⁴

Assuming Section 702 could be turned on U.S.-based, pro-Palestine advocates,³³⁵ language in the reauthorized statute likely clears the way for the government to force universities to participate in that surveillance. Though the original statute was almost certainly expansive enough to compel university involvement in Section 702 intelligence gathering,³³⁶ the amended law dramatically broadens the range of persons required to assist in that work as so-called “electronic communication service providers” under the statute.³³⁷ Reauthorized Section 702 expands

334. Press Release, Am. C.L. Union, “Dangerous and Unconstitutional”: ACLU Slams House Intelligence Committee Plan to Use Section 702 to Spy on Pro-Palestinian Protestors Without a Warrant (Mar. 12, 2024), <https://www.aclu.org/press-releases/aclu-slams-house-intelligence-committee-plan-to-use-section-702-to-spy-on-pro-palestinian-protestors-without-a-warrant> [https://perma.cc/HF93-HWVF] [hereinafter ACLU Section 702 Press Release].

335. In line with the statute’s broad scope, pro-Palestine activists in the United States *could* be subject to Section 702 surveillance where they, for example, speak to foreign pro-Palestine activists outside the United States.

336. See Peter Swire, *Professor Peter Swire Testimony in Irish High Court Case, Chapter 9: The Broad Scope of “Electronic Communications Service Providers” Subject to Section 702*, ALSTON & BIRD 9-2 to 9-3 (Nov. 2, 2016), <https://www.alston.com/en/resources/peter-swire-irish-high-court-case-testimony> [https://perma.cc/JK2S-VNFL] (discussing the potentially expansive scope of Section 702’s definition of an “electronic communication service provider” as including “any company that provides others with the means to communicate electronically, regardless of their primary business or function”). Notably, this expansive definition is nearly identical to the definition of “electronic communication service” used in the NSL context where it has reportedly been applied to universities, as discussed earlier. See *supra* notes 169–70 and accompanying text.

337. See Letter from Brennan Ctr. For Just. et al., to Merrick Garland, Att’y Gen., U.S. Dep’t of Just., & Avril Haines, Dir. Of Nat’l Intel., Off. Of Nat’l Intel. 1 (May 9, 2024) [hereinafter *Coalition Letter*], <https://www.brennancenter.org/our-work/research-reports/coalition-letter-urging-attorney-general-merrick-garland-and-director> [https://perma.cc/JEH9-YFJH]; Preston Marquis, *FISA Section 702 Reauthorized for Two Years*, LAWFARE (Apr. 30, 2024), <https://www.lawfaremedia.org/article/fisa-section-702-reauthorized-for-two-years> [https://perma.cc/46CC-KMCH]. Under Section 702, an “electronic communication service provider” must, among other things, “immediately provide the Government with all information, facilities, or assistance necessary to accomplish the acquisition” of foreign intelligence information about a person reasonably believed to be located outside the United States other than U.S. persons “in a manner that will protect the secrecy of the acquisition and produce a minimum of interference with the services that such electronic communication service provider is providing to the target of the acquisition” 50 U.S.C. § 1881a(i)(1).

those providers to include “service provider[s] who . . . ha[ve] access to equipment that is being or may be used to transmit or store wire or electronic communications”³³⁸ While civil libertarians have criticized this expansion as reaching “almost any U.S. business . . . as most businesses provide some type of ‘service,’ and all businesses have access to equipment on which communications might be routed or stored (such as phones, computers, and Wi-Fi routers),”³³⁹ the expanded definition also likely reaches universities, which, among other things, provide Wi-Fi to their campus communities as a matter of course. This—combined with credible concerns that the statute can or will be used against pro-Palestine activists³⁴⁰—suggests that reauthorized Section 702 could serve as a potent tool in government efforts to securitize the university as both a participant in and object of national security post-October 7th.

c. Federal Legislation Relating to the No Fly List and Deportations

Some bills introduced during the covered period variously treated the university as a compelled participant in national security and object of national security threat by pushing for travel and immigration restrictions to be placed on pro-Palestine campus advocates based on terrorism-related concerns. Yet again, these bills relied on and furthered the unsubstantiated and racist presumption that the pro-Palestine campus movement supported or was otherwise inherently intertwined with terrorism or terrorist groups. In some cases, these bills moved beyond the already broad concept of material support to penalize and prohibit certain activities likely protected by the First Amendment.

The first and most explicit of these bills, S.Amdt.2001—the No Flights For Terrorists Act, was an amendment introduced in May 2024 to another pending bill.³⁴¹ Though it did not

338. H.R. 7888, 118th Cong. § 25(a) (2024) (as passed by House); 50 U.S.C. § 1881(b)(4)(D). While the expanded definition excludes certain types of entities, like those that primarily serve as “dwellings,” institutions of higher education do not clearly fit any of those exceptions. 50 U.S.C. § 1881(b)(4)(E)(i)–(iv).

339. *Coalition Letter*, *supra* note 337.

340. *E.g.*, ACLU Section 702 Press Release, *supra* note 334.

341. S. amend. 2001, 118th Cong. (2024); Press Release, Senator Marshall and Blackburn Introduce Measure to Put Pro-Hamas Terrorist Agitators on FAA No Fly List (May 7, 2024) [hereinafter Marshall and Blackburn Press Release], <https://www.marshall.senate.gov/newsroom/press-releases/senator->

ultimately become law, the amendment would have placed certain university students and faculty on the government's notorious No Fly List.³⁴² Under S.Amdt.2001, the Director of the FBI would have been required, among other things, to include the names of students and faculty on the No Fly List if those persons had been subjected to university "disciplinary action" relating either to "openly pledg[ing] support for, or espous[ing] allegiance or affiliation to" designated FTOs, such as Hamas.³⁴³ In a public statement about the amendment, its sponsors made clear that the legislation was a "response to the continued antisemitic, pro-Hamas movements and encampments that have wreaked violence and chaos on college campuses nationwide."³⁴⁴

As written, the amendment's scope was startlingly broad. For example, in failing to define what constitutes "disciplinary action," the bill would have arguably required the FBI Director to add a student or faculty member to the No Fly List even if they were ultimately exonerated of all disciplinary charges. It would have also penalized activities, like "openly pledg[ing] support for" or "espous[ing] allegiance or affiliation" to FTOs, which would almost certainly fall outside the scope of the material support prohibition.³⁴⁵ Indeed, those types of activities are more akin to the immigration law approach to prohibited terrorist acts, which covers "endors[ing] or espous[ing] terrorist activity" or "persuad[ing] others to endorse or espouse terrorist activity or support a terrorist organization."³⁴⁶ In penalizing those

marshall-and-blackburn-introduce-measure-to-put-pro-hamas-terrorist-agitators-on-faa-no-fly-list [<https://perma.cc/Y8LN-WZXQ>].

342. While the bill technically applied to anyone who satisfied certain criteria, it specifically singled out students and professors at "institution[s] of higher education." S. amend. 2001. For more on the No Fly List, see *DHS Traveler Redress Inquiry Program*, U.S. DEP'T OF HOMELAND SEC.: TRANSP. SEC. ADMIN., <https://www.tsa.gov/travel/security-screening/travel-redress-program> [<https://perma.cc/M3PN-668E>].

343. S.Amdt.2001, *supra* note 341.

344. Marshall and Blackburn Press Release, *supra* note 341.

345. See *supra* note 248 for the definition of material support under federal criminal law. While the Supreme Court has held that advocacy "coordinated with, or controlled by" foreign terrorist groups is covered by the material support prohibition, it has also suggested that "independent" speech acts remain beyond its scope and protected by the First Amendment even if those acts "benefit[] foreign terrorist organizations." *Holder v. Humanitarian L. Project*, 561 U.S. 1, 36, 39 (2010). The Court has further suggested that the material support provision "does not penalize mere association with a foreign terrorist organization." *Id.* at 39.

346. 8 U.S.C. § 1182(a)(3)(B)(i)(VII).

activities and exceeding the bounds of the material support concept, S.Amdt.2001—which would have applied to all university faculty and students regardless of citizenship—raised colorable First Amendment concerns.³⁴⁷

Another bill introduced in November 2023 in both the House and Senate, titled Ending Subsidies for Pro-Terrorist Activity on Campus Act, would have created terrorism-related immigration regulations aimed at foreign students advocating for Palestine.³⁴⁸ If it had become law, the bill would have required universities to, among other things, report foreign student visa holders to the Departments of State and Homeland Security, if those students violated university policies prohibiting various kinds of speech relating to the “existence, terrorist activities, or goals of a foreign terrorist organization,” along with any disciplinary actions taken against those students.³⁴⁹ In a statement

347. In light of the holding in *Holder*, to the extent any espousal or pledge of allegiance to a terrorist group is done independently and no act of material support is otherwise involved, like funding or the provision of services to the terrorist organization, the material support prohibition is not violated, but the First Amendment may be. *Holder v. Humanitarian L. Project*, 561 U.S. 1 (2010); see also ACLU Speech Letter to Universities, *supra* note 258, at 2–3. While this issue has not been definitively resolved by the Supreme Court and cannot be considered in any depth here, it is also worth noting that the lower federal courts have recently held that the First Amendment applies with equal force and scope to citizens as well as to non-citizens “lawfully present in the United States.” Findings of Fact and Rulings of Law, Pursuant to Fed. R. Civ. P. 52(A), at 3, *Am. Ass’n of Univ. Professors v. Rubio*, No. 25-10685-WGY, (D. Mass. Sept. 30, 2025). What this means is that non-citizens in the United States benefit from the First Amendment’s protections for speech and peaceable assembly such that “political speech is not, on its own, a facially legitimate reason for expelling . . . [them] from this country” *Id.* at 121. See also *Mahdawi v. Trump*, 781 F. Supp. 3d 214, 229 (D. Vt. 2025) (“Noncitizen residents . . . enjoy First Amendment rights in this country to the same extent as United States citizens.”).

348. H.R. 6419, 118th Cong. § 3 (2023); S. 3184, 118th Cong. § 3 (2023).

349. H.R. 6419 §§ 3(b), (d); S. 3184 §§ 3(b), (d). The kinds of terrorism-related speech acts prohibited by this provision included speech that “imminently incites or produces lawless action,” “fighting words,” and “true threats,” among other forms of speech. H.R. 6419 § 3(b); S. 3184 § 3(b). Though it did not define their precise content, the bill, whose House and Senate versions were identical, would have also effectively required universities to develop policies of some kind to “prevent . . . and respond to” those forms of speech. H.R. 6419 § 3(b); S. 3184 § 3(b).

about the bill, which did not become law, its sponsors made clear it was intended to target “pro-Hamas protesters.”³⁵⁰

Yet another immigration-focused congressional bill, which was introduced in the House in May 2024 but did not pass, was titled *Hamas Supporters Have No Home Here Act*.³⁵¹ Among other things, this bill would have required that non-U.S. citizens, including foreign students, be deported if they were charged with any criminal violation (for instance, criminal trespass) related to their participation in “pro-terrorism or antisemitism rallies or demonstrations.”³⁵² As reflected in a statement from one of its co-sponsors, the bill—whose name implicitly depicts pro-Palestine protestors as “Hamas Supporters”—was aimed at “[f]oreign students and individuals . . . [who] are involved in planning, supporting, and attending . . . anti-American and antisemitic mobs which are increasingly occupying, vandalizing, and taking over university campuses”³⁵³

d. Federal Legislation Conditioning, Monitoring, or Restricting Funding, both Federal and Foreign, to Universities

Some legislation proposed between October 7, 2023 and December 31, 2024 securitized the university by explicitly weaponizing funding in order to quash pro-Palestine campus advocacy. This legislation included the *Ending Subsidies for Pro-Terrorist Activity on Campus Act*, referenced immediately above.³⁵⁴ Under the bill’s terms, universities that received federal funds would have been required to develop and implement policies for

350. Press Release, Bean, Nehls Take Action to Halt Antisemitic Attacks on Campuses (Nov. 15, 2023), <https://bean.house.gov/media/press-releases/bean-nehls-take-action-halt-antisemitic-attacks-campuses> [https://perma.cc/7NFW-F8Y7].

351. H.R. 8221, 118th Cong. (2024).

352. *Id.* Notably, this legislation was part of a host of calls from members of Congress and others for foreign students to be deported, under existing terrorism-focused immigration laws, for participating in pro-Palestine rallies since October 7th. *See infra* notes 402–04, 440–41 and accompanying text.

353. Press Release, Rep. Van Duyne Introduces the “Hamas Supporters Have No Home Here Act” to Deport Aliens Who Participate in Pro-Terrorism and Antisemitic Mob Gatherings (May 1, 2024), <https://vanduyne.house.gov/2024/5/rep-van-duyne-introduces-the-hamas-supporters-have-no-home-here-act-to-deport-aliens-who-participate-in-pro-terrorism-and-antisemitic-mob-gatherings> [https://perma.cc/5LLK-FPLM].

354. *See supra* notes 348–49 and accompanying text.

identifying prospective faculty, staff, and students who had “engaged in terrorist activity with the intent to accomplish a goal of a foreign terrorist organization;” “incited terrorist activity with the intent to accomplish a goal of a foreign terrorist organization;” or “provided material support or resources to a foreign terrorist organization[] or . . . with the intent to accomplish a goal of a foreign terrorist organization, provided material support or resources to an individual engaging in terrorist activity.”³⁵⁵ The bill would have also required universities receiving federal funds to ensure that such funds were not used for “institution activit[ies],” which included events organized by student groups, that “urge[] support for, endorse[], espouse[], encourage[], organize[] for, or promote[] a foreign terrorist organization or its terrorist activities”³⁵⁶—potentially exceeding the limits of the material support prohibition and raising First Amendment concerns, at least in some respects.³⁵⁷

Further framing the university as a site of national security threat, the bill took particular aim at federal financial support for individual, pro-Palestine students, again on terrorism-related grounds. One provision would have empowered the Secretary of Education to disqualify a student from receiving a “grant, loan, or work assistance” under the Higher Education Act (HEA)—a law that provides numerous federal aid programs to university students³⁵⁸—where the Secretary determined the student had been convicted of a crime that involved “engaging in terrorist activity with the intent to accomplish a goal of a foreign terrorist organization;” “inciting terrorist activity with the intent to accomplish a goal of a foreign terrorist organization;” “providing material support or resources to a foreign terrorist organization[] or . . . with the intent to accomplish a goal of a foreign terrorist organization, providing material support or resources to an individual engaging in terrorist activity;” or “conspiring to, or soliciting another person to, engage in terrorist activity, with the intent to accomplish a goal of a foreign terrorist organization.”³⁵⁹

355. H.R. 6419, 118th Cong. § 3(a) (2023); S. 3184, 118th Cong. § 3(a) (2023).

356. H.R. 6419 § 3(a); S. 3184 § 3(a).

357. *See supra* notes 345–47 and accompanying text.

358. JOSELYNN H. FOUNTAIN, CONG. RSCH. SERV., R43351, THE HIGHER EDUCATION ACT (HEA): A PRIMER 1 (2023).

359. H.R. 6419 § 3(c); S. 3184 § 3(c).

Other proposed bills, which also failed to pass Congress, securitized the university, as both object and participant, by invoking national security concerns to tighten existing laws regarding university foreign funding disclosures—measures their proponents argued would cripple funding supposedly flowing from “ Hamas-supporting ” foreign countries to the pro-Palestine campus movement.³⁶⁰ For example, H.R. 5933—Defending Education Transparency and Ending Rogue Regimes Engaging in nefarious Transactions (DETERRENT) Act was passed by the House in December 2023 to address purported gaps in Section 117 reporting under the HEA,³⁶¹ in ways some hoped would hurt pro-Palestine campus advocates.

While members of the higher education community opposed the DETERRENT Act and expressed skepticism regarding its necessity,³⁶² the bill’s main sponsor insisted the legislation was needed because “[u]niversity campuses are a modern battleground for information warfare with foreign adversaries,” “[e]ach dollar institutions accept from foreign entities that do not share American values comes with strings attached and undermines national interests,” and “[f]oreign gifts and contracts serve as footholds for regimes . . . to infiltrate American universities and steal secrets.”³⁶³

Thoroughly imbued with a national security mindset, the DETERRENT Act required, among other things, that universities disclose whether gifts or contracts reported under Section 117 were made by or with foreign sources (other than certain

360. See *infra* notes 371–72 and accompanying text.

361. H.R. 5933, 118th Cong. (2023). A Senate version of the bill, which was largely similar to H.R. 5933, did not pass. See S. 3362, 118th Cong. (2023); *All Actions: S. 3362—118th Congress (2023-2024)*, CONGRESS.GOV, <https://www.congress.gov/bill/118th-congress/senate-bill/3362/all-actions> [<https://perma.cc/K72N-K265>]. See *supra* notes 205–07 and accompanying text for a discussion of Section 117 of the HEA.

362. See, e.g., Letter from Ted Mitchell, President, Am. Council on Educ., to Mike Johnson, Speaker, H.R., and Hakeem Jeffries, Minority Leader, H.R. (Dec. 4, 2023), <https://www.aau.edu/sites/default/files/AAU-Files/Key-Issues/Higher-Education-Legislation/Letter-House-DETERRENT-Act-120423.pdf> [<https://perma.cc/X7BE-K4WX>]; ACE Letter, *supra* note 213 (expressing concern over the bill’s “overly burdensome expansion of Section 117” and its “duplicative and unnecessary” provisions).

363. Michelle Steel, *DETERRENT Act*, U.S. H. COMM. ON EDUC. & THE WORKFORCE (2023), https://edworkforce.house.gov/uploadedfiles/10.11.23_deterrent_act_118th_congress_bill_fact_sheet_final_pdf.pdf [<https://perma.cc/H9ZU-PASS>].

foreign governments) that have “any affiliation” with designated FTOs.³⁶⁴ It would have required “interagency information sharing” of Section 117 disclosures, obligating the Secretary of Education to share all such reports with various national security-related agencies and departments, among others.³⁶⁵ The bill also wholly prohibited institutions of higher education from entering into contracts with “foreign countr[ies] of concern”³⁶⁶ and “foreign entit[ies] of concern,”³⁶⁷ absent a waiver from the Education Secretary.³⁶⁸

Though the impetus for the bill pre-dated October 7th,³⁶⁹ the DETERRENT Act’s congressional supporters used the pro-Palestine student movement both to shape the bill’s final language³⁷⁰ and push the legislation forward. On the latter issue,

364. H.R. 5933 § 2.

365. *Id.*

366. The bill defined a “foreign country of concern” as any country that is a “covered nation” under 10 U.S.C. § 4872. H.R. 5933 § 5. Those countries are China, Russia, North Korea, and Iran. 10 U.S.C. § 4872(f)(2). The bill also defined “foreign countr[ies] of concern” to include “[a]ny country the Secretary [of Education], in consultation with the Secretary of Defense, the Secretary of State, and the Director of National Intelligence, determines to be engaged in conduct that is detrimental to the national security or foreign policy of the United States.” H.R. 5933 § 5.

367. The bill adopted the definition of “foreign entity of concern” contained in 42 U.S.C. § 19221(a) and includes those entities listed by the Department of Defense (DoD) pursuant to section 1286 of the National Defense Authorization Act for Fiscal Year 2019. H.R. 5933 § 5. For a recent section 1286 DoD list, see *FY23 Lists Published in Response to Section 1286 of the National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), as Amended*, U.S. DEPT OF DEF., https://rt.cto.mil/wp-content/uploads/2024/07/FY23-Lists-Published-in-Response-to-Section-1286-of-NDAA-2019_clearedv2.pdf [<https://perma.cc/6EF5-RVY6>].

368. H.R. 5933 § 2.

369. The bill was motivated, in part, by concerns about Chinese influence over U.S. education, discussed earlier in this Article, as well as by the belief, held by the bill’s Republican co-sponsors, that the Biden administration was not doing enough to enforce Section 117 reporting. *See supra* notes 192, 203, 210, 217 and accompanying text; Steel, *supra* note 363; Press Release, Steel, Foxx Bill Will Deter Foreign Adversaries’ Influence in Postsecondary Education (Oct. 11, 2023), <https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=409661> [<https://perma.cc/U33A-YU3T>].

370. For instance, the provision on reporting foreign sources affiliated with FTOs was an amendment added in response to the pro-Palestine student movement. 169 CONG. REC. H6177–78, H6184–85 (daily ed. Dec. 6, 2023); *see also id.* at H6177 (statement of Rep. Marcus Molinaro) (proposing amendment to DETERRENT Act to “clarify that ties to a designated terrorist organizations [sic], such as Hamas, must be disclosed when receiving funds from a foreign

proponents argued that the bill was critical to uncovering funding from the State of Qatar that was purportedly fueling Hamas “influence” on university campuses.³⁷¹ Whether or not such claims were credible—and they almost certainly were not³⁷²—the DETERRENT Act represented yet another effort to securitize the university, as both a compelled participant in and object of national security, in ways that targeted and depicted the pro-Palestine student movement as a terrorist threat.

2. Congressional Hearings, Investigations, and Other Government Activities

Not content to simply propose bills, members of Congress spearheaded various hearings, investigations, and other efforts between October 7, 2023 and December 31, 2024, in response to the outbreak of pro-Palestine campus protests. In framing both the university and its members as supporting or engaging in terrorism—often via accusations of direct or indirect support for Hamas or other armed Palestinian groups—many of these initiatives embraced the same securitized approach reflected in the proposed and passed federal bills, with particular emphasis on the university as an object of national security threat and enemy of the state.³⁷³

These initiatives included congressional hearings targeting universities, congressional investigations directed at pro-Palestine campus advocates or those perceived as supporting them, as well as demands by members of Congress that the Biden administration act against pro-Palestine individuals and groups at U.S. universities. In some cases, the administration implemented its own national security-related measures against organizations accused of supporting the pro-Palestine campus movement and may have even engaged in efforts to investigate

group or individual” and justifying that amendment in light of “the disgustingly callous and vile pro-Hamas demonstration[s] seen on college campuses across the country”).

371. *Id.* at H6168 (statement of Rep. Bob Good).

372. These politically-motivated claims have been strongly denied by the Qatari government. *Qatar Denies Influencing Pro-Palestinian Student Protests at US Universities*, NEW ARAB (Mar. 11, 2025), <https://www.newarab.com/news/qatar-denies-influencing-pro-palestine-us-student-protests> [<https://perma.cc/CU6Q-VC97>].

373. As reflected below, the pro-Palestine movement’s purported antisemitism was also a focus of some of these efforts. *See infra* notes 382, 393 and accompanying text.

and surveil pro-Palestine university members. This Subsection discusses each of these issues in turn.

a. Congressional Hearings

During the last fifteen months of the Biden administration, Congress held various hearings that framed the university as a site of national security risk, including as an enemy in and of itself. For instance, in connection with H.R. 6408/9495—the bills that sought to strip non-profit status from so-called “terrorist supporting organizations”³⁷⁴—the House Ways and Means Committee held various hearings, which featured wide-ranging discussions about the so-called terrorist threat emanating from pro-Palestine campus advocates.³⁷⁵ Throughout these hearings, members of Congress and invited speakers attempted to draw connections between the War on Terror, terrorism, and pro-Palestine campus protests;³⁷⁶ blamed universities for supposedly “placating” “pro-Hamas” campus groups, like SJP;³⁷⁷ and called for universities to be investigated and penalized for failing to

374. H.R. 6408, 118th Cong. (2023); H.R. 9495, 118th Cong. (2024).

375. *From Ivory Towers to Dark Corners: Investigating the Nexus Between Antisemitism, Tax-Exempt Universities, and Terror Financing: Hearing Before the H. Comm. on Ways & Means*, 118th Cong. (Nov. 15, 2023) [hereinafter *First Hearing on Non-Profit Bill*], <https://www.govinfo.gov/content/pkg/CHRG-118hhrg55066/pdf/CHRG-118hhrg55066.pdf> [<https://perma.cc/D73R-22HY>]; *The Crisis on Campus: Antisemitism, Radical Faculty, and the Failure of University Leadership: Hearing Before the H. Comm. on Ways & Means*, 118th Cong. (2024) [hereinafter *Second Hearing on Non-Profit Bill*]; *Fueling Chaos: Tracing the Flow of Tax-Exempt Dollars to Antisemitism: Hearing Before the Subcomm. on Oversight of the H. Comm. on Ways and Means*, 118th Cong. (2024) [hereinafter *Third Hearing on Non-Profit Bill*].

376. See, e.g., *First Hearing on Non-Profit Bill*, *supra* note 375, at 25–32 (statement of Jonathan Schanzer, Senior Vice President of Rsch., Found. for Def. of Democracies) (drawing purported connections between a “pro-Hamas network in America” and pro-Palestine activism on university campuses); *Third Hearing on Non-Profit Bill*, *supra* note 375, at 3 (statement of Rep. David Scheikert, Chairman, Subcomm. on Oversight of the H. Comm. on Ways & Means) (suggesting that pro-Palestine groups at universities have “possible ties to terrorism” and may be linked to U.S. charitable organizations “supporting terrorist organizations like Hamas”).

377. See *First Hearing on Non-Profit Bill*, *supra* note 375, at 2 (statement of Rep. Jason Smith, Chairman, H. Comm. on Ways & Means) (alleging university presidents sought to “placate the most radical voices” including SJP which purportedly use “pro-Hamas slogans”); *Second Hearing on Non-Profit Bill*, *supra* note 375, at 130 (statement of Rep. Lloyd Smucker, Member, H. Comm. on Ways & Means) (arguing that “several institutions . . . have placated the mob of violent protesters” and strongly implying that those “violent protesters” are pro-Palestine campus activists).

address so-called terrorism-related activities on campus.³⁷⁸ Hearing participants also focused on the purported problem of “foreign money” flowing to U.S. universities and described those funds as fueling pro-Palestine, “pro-terrorism” advocacy and antisemitism at those institutions.³⁷⁹ As these framings suggest, these hearings did not just accuse pro-Palestine student groups of supposedly threatening national security. They framed the university itself as a national security threat and enemy, as well.³⁸⁰

Perhaps, the most notorious set of campus-focused congressional hearings during this period were held by the House Committee on Education and the Workforce. Those hearings, which were convened in response to post-October 7th, pro-Palestine protests and featured various university presidents, began at the end of 2023 and continued into 2024.³⁸¹ Though mostly focused

378. See, e.g., *Third Hearing on Non-Profit Bill*, *supra* note 375, at 37–50, 60, 67 (statement of Dr. Charles Asher Small, Exec. Dir., Inst. for the Study of Glob. Antisemitism & Pol’y) (calling, among other things, for the government to investigate and penalize universities both for their alleged funding of pro-Palestine campus groups that “support designated terror organizations” and for receiving money from entities purportedly supporting those pro-Palestine campus groups); *Second Hearing on Non-Profit Bill*, *supra* note 375, at 138 (statement of Dr. Jonathan Pidluzny, Dir., Higher Educ. Reform, Am. First Pol’y Inst.) (agreeing that universities should face “financial penalties” for tolerating allegedly antisemitic behavior and allowing groups to “carry the flag of terror . . . onto a college campus”); *First Hearing on Non-Profit Bill*, *supra* note 375, at 108–09 (statement of Rep. Nicole Malliotakis, Member, H. Comm. on Ways & Means) (proposing ways to “go after” universities allegedly allowing or facilitating antisemitic and pro-Hamas ideas, groups, and events).

379. See, e.g., *Third Hearing on Non-Profit Bill*, *supra* note 375, at 5 (statement of Rep. Jason Smith, Chairman, H. Comm. on Ways & Means) (suggesting that alleged antisemitic activity by pro-Palestine advocates at universities is tied to “foreign actors who funnel resources” into those institutions); *Second Hearing on Non-Profit Bill*, *supra* note 375, at 138 (statement of Rep. Ron Estes, Member, H. Comm. on Ways & Means) (alleging that money from “foreign bad actors” is fostering “antisemitic activities” on college campuses); *First Hearing on Non-Profit Bill*, *supra* note 375, at 79 (statement of Jonathan Schanzer, Senior Vice President of Rsch., Found. for Def. of Democracies) (intimating that money from Qatar, which is a “state sponsor of Hamas,” is flowing to universities and influencing university responses to pro-Palestine campus advocacy).

380. This framing was particularly evident in comments made by Republican committee members. See, e.g., *First Hearing on Non-Profit Bill*, *supra* note 375, at 108–09 (statement of Rep. Nicole Malliotakis, Member, H. Comm. on Ways & Means).

381. H. COMM. ON EDUC. & WORKFORCE, *Holding Campus Leaders Accountable and Confronting Antisemitism* (Youtube, Dec. 5, 2023) [hereinafter *First Hearing with University Presidents*],

on smearing pro-Palestine campus activism as antisemitic,³⁸² these hearings also featured racist, terrorism-related accusations against both campus advocates and universities themselves. For example, across these committee hearings, members of Congress accused universities, without any credible evidence, of hosting pro-Palestine student groups that were funded by FTOs,³⁸³ that coordinated with FTOs,³⁸⁴ or that otherwise celebrated or promoted FTOs or terrorist activities.³⁸⁵ Relatedly and just as baselessly, congressional participants accused universities of broadly fostering campuses that celebrated or promoted terrorist organizations or terrorist activities³⁸⁶ and of accepting money from so-called terrorist-supporting states.³⁸⁷

b. Congressional Investigations

Other congressional efforts, which variously treated universities as compelled participants in national security and objects of national security threat, leveraged Congress's investigatory powers to target specific pro-Palestine faculty members and university centers, as well as organizations purportedly involved in pro-Palestine campus protests. For instance, in February 2024, the Republican members of the U.S. Senate Committee on the

<https://www.youtube.com/watch?v=3J0Nu9BN5Qk>; H. COMM. ON EDUC. & WORKFORCE, *Columbia in Crisis: Columbia University's Response to Terrorism* (Youtube, Apr. 17, 2024) [hereinafter *Second Hearing with University Presidents*], <https://www.youtube.com/watch?v=31Eu-xEZKzQ>; H. COMM. ON EDUC. & WORKFORCE, *Calling for Accountability: Stopping Antisemitic College Chaos* (Youtube, May 23, 2024) [hereinafter *Third Hearing with University Presidents*], <https://www.youtube.com/watch?v=4bu4eGIDNss>.

382. This focus is reflected in the report the committee released following the hearings. Press Release, U.S. H.R. Antisemitism on College Campuses Exposed, Education and the Workforce Committee Releases Report (Oct. 31, 2024), <https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=412025> [<https://perma.cc/NE9K-Q2F8>].

383. *E.g.*, *First Hearing with University Presidents*, *supra* note 381, at 3:06:30–3:06:53.

384. *E.g.*, *Second Hearing with University Presidents*, *supra* note 381, at 2:13:50–2:14:40.

385. *E.g.*, *Third Hearing with University Presidents*, *supra* note 381, at 1:00:32–1:01:07.

386. *E.g.*, *First Hearing with University Presidents*, *supra* note 381, at 3:17:50–3:19:00, 5:08:55–5:09:10; *Second Hearing with University Presidents*, *supra* note 381, at 16:08–17:30, 1:11:39–1:13:10, 1:36:50–1:37:22, 2:11:35–2:12:00; *Third Hearing with University Presidents*, *supra* note 381, at 47:58–48:11.

387. *E.g.*, *First Hearing with University Presidents*, *supra* note 381, at 5:04:10–5:09:30.

Judiciary sent a letter, addressed to the President and Chair of the Board of Governors of Rutgers University, targeting a well-established, pro-Palestine professor and accusing the university center she founded and runs of “promot[ing]. . . terrorist sympathizers” and “platforming . . . radical ideologues.”³⁸⁸ These accusations were based largely on the center’s run-of-the-mill academic work, including its scholarly conferences and events.³⁸⁹

In their letter, the Committee members asked the Rutgers President and Board Chair to answer various inflammatory and otherwise loaded questions about the named professor and her center.³⁹⁰ Exploiting and weaponizing their investigative and oversight powers, the Committee members justified this request by claiming it would help them “explore the efficacy” of legislation the Committee had previously worked on to “root out support for terrorism, and to compensate its victims.”³⁹¹ Notably, Committee members made no mention in their letter of any connection between the professor or the center and purported “victims” of terrorist activity.

Other congressional efforts framed the university as a site of national security threat by targeting non-profit groups, perceived as “fueling” pro-Palestine campus activism, on national security grounds. In May 2024, at the height of the pro-Palestine encampment movement,³⁹² two House committees—the Committee on Oversight and Accountability and the Committee on Education and the Workforce—sought information from the Treasury Secretary relating to the committees’ investigation into the “sources of funding and financing for groups who are organizing, leading, and participating in pro-Hamas, antisemitic, anti-Israel, and anti-American protests with illegal encampments on

388. Letter from Lindsey Graham, Ranking Member, U.S. S. Comm. on the Judiciary, et al., to Jonathan Holloway, President of the Univ., Rutgers Univ., & William E. Best, Chair of the Bd. of Governors, Rutgers Univ. 3 (Feb. 6, 2024), https://www.judiciary.senate.gov/imo/media/doc/sjc_republicans_to_rutgers_020624.pdf [<https://perma.cc/QLJ7-BXES>].

389. *See id.* at 1–3 (identifying “[c]ontroversial events” hosted by the center).

390. *See, e.g., id.* at 5 (“Prior to receipt of this letter, were you as individuals aware that the Center co-sponsored a controversial event on September 11, 2021? . . . Prior to this letter, were you aware of any events hosted by the Center, or public statements made by its affiliates, which spoke favorably of the violent atrocities of October 7, 2023?”).

391. *Id.* at 4.

392. *See* Ulfelder, *supra* note 252.

American college campuses.”³⁹³ As stated in the letter, the committees’ investigation related “both to malign influence on college campuses and to the national security implications of such influence on faculty and student organizations.”³⁹⁴ In connection with this investigation, the committees requested that the Treasury Secretary provide all Suspicious Activity Reports (SARs)—which must be filed with the Financial Crimes Enforcement Network by financial institutions, among others, in cases of suspected money laundering or fraud³⁹⁵—relating to twenty organizations, their employees, or officers.³⁹⁶

As an ostensible part of this investigation, one of the two House committees—the Committee on Oversight and Accountability—issued the first of several letters to American Muslims for Palestine (AMP), a Virginia-based charitable organization, in May 2024.³⁹⁷ That letter accused AMP of having “substantial ties to Hamas,” based on politically motivated and racist logics.³⁹⁸ In its letter, the Committee further alleged that AMP “founded and controlled” National Students for Justice in

393. Letter from James Comer, Chairman, U.S. H. Comm. on Oversight & Accountability, & Virginia Foxx, Chairwoman, U.S. H. Comm. on Educ. & the Workforce, to Janet Yellen, Sec’y, Dep’t of the Treasury (May 14, 2024) [hereinafter Congressional Letter to Treasury Secretary], <https://oversight.house.gov/wp-content/uploads/2024/05/Letter-to-Yellen-051424.pdf> [<https://perma.cc/E5PK-7DWN>].

394. *Id.*

395. *Suspicious Activity Reports (SAR)*, U.S. DEP’T OF THE TREASURY: OFF. OF THE COMPTROLLER OF THE CURRENCY, <https://www.occ.treas.gov/topics/supervision-and-examination/bank-operations/financial-crime/suspicious-activity-reports/index-suspicious-activity-reports.html> [<https://perma.cc/3A29-5425>]; *What Is a Suspicious Activity Report?*, THOMPSON REUTERS, <https://legal.thomsonreuters.com/en/insights/articles/what-is-a-suspicious-activity-report> [<https://perma.cc/4VDVV684>].

396. Congressional Letter to Treasury Secretary, *supra* note 393. With respect to certain groups, such as SJP, the letter also requested SARs for chapter organizations. *Id.*

397. Letter from Rep. James Comer, Chairman, U.S. H. Comm. on Oversight & Accountability, to National Students for Justice in Palestine, in care of Dr. Osama Abuirshaid, Exec. Dir., Am. Muslims for Palestine (May 29, 2024) [hereinafter First Letter to Dr. Abuirshaid], <https://oversight.house.gov/wp-content/uploads/2024/05/Letter-to-National-SJP-5.29.24.pdf> [<https://perma.cc/JQ3R-8YH8>].

398. First Letter to Dr. Abuirshaid, *supra* note 397, at 2. See *infra* note 439 for a discussion of the political and racist motivations behind the campaign against AMP, which echo the politically motivated, racist efforts to shut down the pro-Palestine movement more generally, as discussed in Part III.B.

Palestine (National SJP),³⁹⁹ and demanded a series of documents and other information likely aimed, among other things, at establishing that AMP had funded the campus protest movement.⁴⁰⁰

c. Congressional Demands Directed at the Executive and Other Executive Action

Finally, members of Congress invoked national security concerns to demand the Biden administration conduct investigations, enforce existing laws, and make changes to national security programs in order to quash pro-Palestine activism and advocacy on university campuses.⁴⁰¹ The administration also took its own national security-related action against organizations accused of supporting pro-Palestine campus protests and

399. First Letter to Dr. Abuirshaid, *supra* note 397, at 1. National SJP is the umbrella organization for over 350 SJP chapters across North America and aims to unify and support the pro-Palestine movement on university campuses based on principles of “freedom, solidarity, equality, safety, and historical justice” *Who Are We? Our Purpose*, NAT’L STUDENTS FOR JUST. IN PALESTINE, <https://www.nationalsjp.org/about> [<https://perma.cc/75EB-4DN9>]. Because of its central role in organizing pro-Palestine activism across U.S. campuses, National SJP and its chapter organization have faced particularly targeted, inflammatory, and racist attacks based on frivolous and unsubstantiated claims of supporting or engaging in terrorist activity or having links to “terrorist” groups in violation of U.S. law. *E.g.*, *National Students for Justice in Palestine (NSJP): Antisemitism, Anti-Americanism, Violent Extremism and the Threat to North American Universities*, INST. FOR THE STUDY OF GLOB. ANTISEMITISM & POL’Y 17, 30–31 (2024), https://isgap.org/wp-content/uploads/2024/06/SJP_Report.pdf [<https://perma.cc/6HHC-BWNS>] (claiming National SJP “glorifies terror groups” and alleging nebulous links to various “militant” and “terrorist” organizations); *First Hearing on Non-Profit Bill*, *supra* note 375, at 44–46 (statement of Noa Tishby) (describing SJP as a “hate group” that “support[s] and finance[s] . . . terrorist groups,” without providing any meaningful evidence).

400. First Letter to Dr. Abuirshaid, *supra* note 397, at 3. The first letter was actually addressed to National SJP but directed to the Executive Director of AMP. *Id.* at 1. After AMP refused to comply with the committee’s request and notwithstanding AMP’s assertions that it neither founded nor had a “corporate relationship” with National SJP, the committee sent a second letter, this time addressed only to the Executive Director of AMP, reiterating its demands. *See* Letter from James Comer, Chairman, U.S. H. Comm. on Oversight & Accountability, to Dr. Osama Abuirshaid, Exec. Dir., Am. Muslims for Palestine (June 24, 2024) [hereinafter June 2024 Oversight Committee Letter to AMP], <https://oversight.house.gov/wp-content/uploads/2024/06/AMP-Follow-Up-062424.pdf> [<https://perma.cc/BH3V-KCBN>].

401. While it is unclear whether the Biden administration acceded to any of these demands, their public nature contributed to the university’s securitization as an object of national security threat during the covered period.

may have even engaged in efforts to investigate and surveil pro-Palestine university members. All told, these initiatives—much like other federal actions—variously sought to compel the university to participate in national security and/or framed the university and its members as objects of national security threat. That “threat” was grounded in the same set of allegations, discussed above, that universities or their members had engaged in terrorist activities or provided prohibited support to designated foreign terrorist groups.

With respect to congressional demands directed at the Biden administration, in October 2023, then-Republican Senator Marco Rubio sent a letter, on behalf of himself and several other Republican senators, to the Secretary of DHS, calling on him to adopt various responses to pro-Palestine protests occurring across the United States.⁴⁰² Among other things, the letter urged the Secretary to apply existing immigration law to “revoke the visas of those who have endorsed or espoused Hamas’ terrorist activities and then deport them.”⁴⁰³ While this broad demand implicitly swept in visa-holding students, faculty, and staff at U.S. universities, the Rubio letter also focused on institutions of higher education in more specific ways. In particular, it called on DHS to make changes to the Student and Exchange Visitor Information System (SEVIS) to require universities to “report pro-Hamas, or related activity, whether on campus or not, into SEVIS as a disqualifier for continued possession of a visa or lawful status as a student or exchange visitor.”⁴⁰⁴

Going even further, Rubio’s letter framed the university itself as a potential enemy of the state. In particular, it called on the DHS Secretary to make changes to the Department’s Student and Exchange Visitor Program (SEVP)—which is the DHS program administering SEVIS⁴⁰⁵—in order to disqualify

402. Press Release, Marco Rubio, Sen., U.S. S., Rubio, Colleagues Urge Removal of Hamas and Terrorist Supporters (Oct. 20, 2023) [hereinafter Rubio Letter], <https://web.archive.org/web/20241120150807/https://www.rubio.senate.gov/rubio-colleagues-urge-removal-of-hamas-and-terrorist-supporters> [https://perma.cc/QC3E-ZJUZ].

403. *Id.*

404. *Id.*

405. Universities can only enroll and host non-immigrant students with F and M visas—the core student visa classifications—if they have been approved by SEVP. See *Student and Exchange Visitor Program: Schools and Programs*, U.S. IMMIGR. & CUSTOMS ENFT, <https://www.ice.gov/sevis/schools> [https://perma.cc/3VLF-W799].

universities from SEVP eligibility if the “institution has officially supported, endorsed, or espoused Hamas or its recent activities, whether by issuing official statements, allowing pro-Hamas demonstrations on campus, or officially recognizing or providing financial assistance to student groups that support Hamas”⁴⁰⁶ The letter also urged DHS to coordinate with the Department of Justice National Security Division and the Department of Treasury Office of Terrorism and Financial Intelligence to “take action against any institution of higher education that recognizes, or provides financial assistance, to student groups, including but not limited to ‘Students for Justice in Palestine,’ and other similar front organizations.”⁴⁰⁷

In another example of congressionally led pressure on the Executive to securitize the university as a source of threat, two Republican members of Congress—U.S. Senator Joni Ernst and Congresswoman Elise Stefanik—sent a letter to the FBI in October 2024 demanding that it investigate a coalition of pro-Palestine student organizations at Columbia University, known as Columbia University Apartheid Divest (CUAD).⁴⁰⁸ Grounding their call to action exclusively on statements and other speech acts by CUAD about Israel-Palestine, Ernst and Stefanik claimed that an investigation was warranted in order to “prevent any acts of terrorism.”⁴⁰⁹

As for the Biden administration itself, it engaged in activities that further framed universities as sites of national security risk during the covered period. For instance, the administration took national security-related, terrorism-focused action against third-party organizations purportedly supporting the pro-Palestine protest movement, including on U.S. campuses. In October 2024, the administration designated one such group, the Canadian NGO Samidoun Palestinian Prisoner Solidarity Network—an “international coalition of activists dedicated to supporting

406. Rubio Letter, *supra* note 402.

407. *Id.*

408. Letter from Joni K. Ernst, Sen., Cong., & Elise Stefanik, Rep., Cong., to James E. Dennehy, Assistant Dir. in Charge, Fed. Bureau of Investigation (Oct. 14, 2024), <https://freebeacon.com/wp-content/uploads/2024/10/2024.10.14-Letter-from-Sen-Ernst-Rep-Stefanik-to-FBI-NYC-Field-Office.pdf> [<https://perma.cc/KRM6-TMAX>].

409. *Id.*

Palestinian prisoners in their fight for freedom”⁴¹⁰—as a Specially Designated Global Terrorist (SDGT).⁴¹¹ In attempting to justify its actions, the administration accused Samidoun of being “a sham charity that serves as an international fundraiser” for the Popular Front for the Liberation of Palestine (PFLP), a designated FTO.⁴¹² Samidoun’s designation, which has been criticized as a legally baseless and politically motivated effort to suppress the pro-Palestine movement,⁴¹³ came in the wake of a long-standing delegitimization campaign against the group led by the Israeli state and pro-Israel organizations.⁴¹⁴ While those efforts undoubtedly contributed to Samidoun’s designation, more recent allegations that the organization played a substantial role in post-October 7th pro-Palestine protests, including on college campuses, likely also played a part.⁴¹⁵ Indeed, in the wake of its

410. *NLG Condemns the US Government Attack on Samidoun and the Palestinian Solidarity Movement, Calls for an End to Resurgent McCarthyism*, NAT’L LAWS. GUILD (Oct. 16, 2024) [hereinafter *NLG Statement on Samidoun*], <https://www.nlg.org/nlg-condemns-the-us-government-attack-on-samidoun> [https://perma.cc/UHM4-GJ82].

411. Press Release, U.S. Dep’t of the Treasury, United States and Canada Target Key International Fundraiser for Foreign Terrorist Organization PFLP (Oct. 15, 2024), <https://home.treasury.gov/news/press-releases/jy2646> [https://perma.cc/W3ZL-YK4B].

412. *Id.*

413. See, e.g., Selma Karame, *The Ongoing Suppression of Pro-Palestinian Advocacy in the United States*, ARAB CTR. WASH. DC (Jan. 8, 2025), <https://arabcenterdc.org/resource/the-ongoing-suppression-of-pro-palestinian-advocacy-in-the-united-states> [https://perma.cc/KJ38-LSVK] (describing the Samidoun designation as part and parcel of an effort “to suppress any pro-Palestinian solidarity and activism” by leveraging “vaguely interpreted” statutory language); *Palestine Legal and the Center for Constitutional Rights Condemn US Designation of Palestine Advocacy Group as Genocide Escalates*, PALESTINE LEGAL (Oct. 30, 2024), <https://palestinelegal.org/news/2024/10/30/samidoun-statement> [https://perma.cc/RH3L-7B6K] (describing the designation as “mark[ing] a major and dangerous development that is intended to chill the growing movement for Palestinian rights”); *NLG Statement on Samidoun*, *supra* note 410 (condemning the designation as “an embarrassment to the rule of law” intended to “chill[] . . . Palestine solidarity work”).

414. Karame, *supra* note 413.

415. See, e.g., Ryan Mauro, *Samidoun Sanctioned as Terrorists: Why It’s a Bigger Deal Than Realized*, CAP. RSCH. CTR. (Oct. 16, 2024), <https://capitalresearch.org/article/samidoun-sanctioned-as-terrorists-why-its-a-bigger-deal-than-realized> [https://perma.cc/PT2L-L4C6] (describing Samidoun as “one of the most important groups” in the “anti-Israel protest movement in the United States” that are “behind the demonstrations and are contributing to a growing domestic terrorism threat”); Ryan Mauro, *Marching Toward Violence: The Domestic Anti-Israeli Protest Movement*, CAP. RSCH. CTR. 46, 48 (2024),

designation, pro-Israel groups celebrated the sanctions against Samidoun as a blow to the campus movement.⁴¹⁶

Finally, the Biden administration may have securitized the university as a site of national security threat by investigating and/or surveilling pro-Palestine campus advocates—likely in response to terrorism smears leveled against them.⁴¹⁷ This much was suggested by public statements from the administration shortly after October 7th. On November 14, 2023, the Biden White House issued a press release announcing that the Justice Department, along with DHS, had “disseminated public safety information to and hosted calls with *campus law enforcement* as part of broader outreach to state, local, tribal, and territorial officials to address the threat environment and share information about available resources,” in the wake of the October 7th attacks.⁴¹⁸ That same press release further noted that DHS’s Cybersecurity and Infrastructure Security Agency was providing “resources, tools, and services to . . . higher educational institutions to support their security requirements.”⁴¹⁹

As Professors Anthony O’Rourke and Wadie Said have noted, even though the White House announcement was not explicit on this point, the timing and backdrop to its release—including high-profile allegations that SJP chapters had violated the criminal material support statute—suggested “a real possibility that federal law enforcement will investigate . . . SJP members for material support.”⁴²⁰ While the announcement also did not describe the administration’s campus initiative as

<https://capitalresearch.org/app/uploads/Marching-Toward-Violence-1.pdf> [<https://perma.cc/QEX8-E7GH>] (describing Samidoun as a “pro-terrorism group[] behind the criminally disruptive anti-Israel protests on college campuses and elsewhere in the United States”).

416. See, e.g., Mauro, *Samidoun Sanctioned as Terrorists*, *supra* note 415 (describing the move as “a powerful gut punch to the anti-Israel . . . movement”).

417. O’Rourke & Said, *supra* note 165.

418. *Fact Sheet: Biden-Harris Administration Takes Action to Address Alarming Rise of Reported Antisemitic and Islamophobic Events at Schools and on College Campuses*, WHITE HOUSE (Nov. 14, 2023) (emphasis added), <https://web.archive.org/web/20250118021304/https://www.whitehouse.gov/briefing-room/statements-releases/2023/11/14/fact-sheet-biden-harris-administration-takes-action-to-address-alarming-rise-of-reported-antisemitic-and-islamophobic-events-at-schools-and-on-college-campuses> [<https://perma.cc/D2GJ-JFN5>].

419. *Id.*

420. O’Rourke & Said, *supra* note 165.

involving “surveillance,” any effort to “address the threat environment” and support the “security” needs of universities, especially using cybersecurity tools, would likely involve surveillance of some kind.

As these various examples suggest, efforts to securitize the university and its pro-Palestine members along terrorism-related lines were systematically pursued across the legislative and executive branches of the federal government during the last fifteen months of the Biden administration. Similar securitization efforts were also reflected in state-level approaches to the university and its members, which are discussed in the next Section.

B. University Securitization at the State Level

Like their federal counterparts, various legislatures, across red and blue states, proposed bills that framed the university as a compelled participant in and object of national security between October 7, 2023 and December 31, 2024. These bills mirrored federal-level efforts baselessly depicting pro-Palestine campus advocates as terrorist threats. Unlike the proposed and passed federal legislation canvassed above, some state-level bills were clear on their face about targeting pro-Palestine campus activists.⁴²¹ As for those that were facially neutral, the surrounding circumstances—a rising pro-Palestine campus movement coupled with pervasive terrorism smears against it—made the political motives behind those bills more than evident.

This Section provides a high-level overview of state-level bills securitizing the university during the covered period, none of which ultimately became law. It also examines a small selection of non-legislative efforts pursued by state politicians and officials that framed the university and its pro-Palestine members as national security threats on terrorism-related grounds.

1. Proposed State Legislation

Much like the proposed and passed congressional bills, state legislative proposals securitized the university based on the

421. *See, e.g.*, Assemb. 4420, 221st Leg., Reg. Sess. (N.J. 2024) (“The bill is in response to encampments on the lawns of Voorhees Mall at Rutgers University-New Brunswick by students demanding various actions from the institution in response to the Israel-Hamas conflict.”); S. 3213, 221st Leg., Reg. Sess. (N.J. 2024) (same).

politically motivated and racist view that pro-Palestine advocacy is tantamount to support for terrorism or terrorist groups. As similarly reflected in federal legislation canvassed above, certain state-level bills penalized activities that—while akin to immigration law approaches to prohibited terrorist acts—exceeded the bounds of material support and raised First Amendment concerns.⁴²² Also like their federal counterparts, some state bills treated institutions of higher education, themselves, as enemies and terrorist threats.

In framing institutions of higher education as participants in and objects of national security, state legislative proposals adopted various strategies for addressing the so-called terrorism risk emanating from university campuses. Most prominently, a number of bills weaponized state funding to compel universities to participate in national security by coercing them to shut down pro-Palestine campus advocacy. These bills also implicitly framed universities, themselves, as enemies of the state by suggesting they were facilitating activities, groups, or persons supporting terrorist organizations and deserved, as a consequence, to have their funding withheld.

One proposed New York State law would have stripped all state funding from institutions of higher education that directly or indirectly allowed organizations or activities that “support”—a term the bill did not define—designated Foreign Terrorist Organizations (FTOs) on their campuses.⁴²³ The bill would have also prohibited funding to student groups that directly or indirectly “promote[], encourage[], advocate[] or engage[] in any activity in support of” an FTO and “directly or indirectly promote[], encourage[], advocate[] or permit[] any terrorist advocacy or activities on campus,” and banned those groups from using campus facilities and property.⁴²⁴ In aligning with the immigration law approach to prohibited terrorist activities and

422. See *supra* notes 345–47 and accompanying text for a discussion of the prohibited terrorist activities embraced by some federal bills and how that approach aligns with immigration law, pushes beyond the material support concept, and potentially violates the First Amendment.

423. S. 9193, 2024 Leg., 246th Sess. § 1 (N.Y. 2024). An identical bill was also introduced in the New York Assembly. Assemb. 10485, 2024 Leg., 246th Sess. § 1 (N.Y. 2024).

424. N.Y. S. 9193 § 1; N.Y. Assemb. 10485 § 1. Another proposed bill applied similar regulations specifically to the State University of New York, City University of New York, and community colleges. S. 8225, 2024 Leg., 246th Sess. (N.Y. 2024).

exceeding the bounds of the material support prohibition, the bill potentially raised First Amendment concerns.⁴²⁵

Some funding-oriented bills attempted to coerce universities into targeting pro-Palestine faculty and staff as terrorist threats. One proposed New York State bill would have prohibited state funding to colleges where “instructional staff”—a broadly defined term that includes faculty, staff, and administrators—directly or indirectly “promote[], encourage[], advocate[] or engage[] in any activity on campus in support” of a designated FTO, unless the college took “appropriate corrective steps.”⁴²⁶ Like other legislation canvassed here, the bill’s list of prohibited terrorism-related activities exceeded the already broad and expansive ambit of the criminal material support prohibition and potentially ran afoul of the First Amendment.⁴²⁷

Some bills would have stripped pro-Palestine students of financial aid on terrorism-related grounds. For example, an Iowa bill would have variously deprived students of state financial support, aid from a state institution of higher education, or grants, where those students “endorse[] or promote[]” terrorism or the actions of an FTO,⁴²⁸ again exceeding the requirements of the material support prohibition and raising First Amendment concerns.⁴²⁹ Other proposals weaponized legislative authority over state institutions of higher learning to compel those institutions to “cancel the recognition or registration of a student organization that endorses or promotes” terrorism or the actions of a designated FTO, and threatened state enforcement in cases of institutional non-compliance⁴³⁰—implicitly suggesting

425. See *supra* notes 345–47 and accompanying text.

426. S. 9600, 2024 Leg., 246th Sess. § 1 (N.Y. 2024). An identical bill was also introduced in the New York Assembly. N.Y. Assemb. 10485 § 1. These bills did not define “support.”

427. See *supra* notes 345–47 and accompanying text. This approach also aligned with the immigration law view on prohibited terrorist activity, as do the remaining bills in this section that raise First Amendment concerns. See *infra* notes 429, 430, 434 and accompanying text.

428. See H. 2077, 2024 Leg., 90th Sess. §§ 4, 7 (Iowa 2024); see also H. 5458, 2024 Leg., 93d Sess. § 2 (Minn. 2024) (making students ineligible for “any grant or scholarship” where they have “endorsed or promoted terrorism or the actions of a terrorist organization”); S. 5514, 2024 Leg., 93d Sess. § 2 (Minn. 2024) (same).

429. See *supra* notes 345–47 and accompanying text.

430. Iowa H. 2077 § 3; see also Minn. H. 5458 § 1 (requiring covered institutions of higher education, both public and private, to “cancel the recognition or

universities would be the enemy if they failed to shut down “terrorism supporting” student groups.

Some proposed state bills weaponized the language of terrorism to undo commitments made by universities to pro-Palestine student protestors. As part of a May 2024 agreement with student activists, Rutgers University agreed to create scholarships for displaced Palestinian students from Gaza.⁴³¹ In response to that move, members of the New Jersey state legislature—at both the Assembly and Senate levels—introduced bills that would have prohibited an institution of higher education from establishing “any scholarship fund or student assistance program that is only available to students enrolled in the institution who are citizens or permanent residents of a country or territory that is controlled by” a designated FTO.⁴³²

In at least one case, a state legislature—the Indiana House of Representatives—specifically targeted immigrants engaged in pro-Palestine advocacy based on so-called terrorism concerns.⁴³³ Under the proposed bill, Indiana state universities and colleges would have been required to develop policies prohibiting “immigrant member[s] of the campus community” from “[e]spousing terrorist activity,” “[p]ersuading others to endorse or espouse terrorist activity,” or “[s]upporting a terrorist organization.”⁴³⁴ Among other things, the bill detailed various measures state institutions of higher education would have been required to take in order to enforce those “antiterrorism” policies and included a

registration of and cease provision of any monetary or nonmonetary support to a student organization that the institution determines has endorsed or promoted terrorism or the actions of a terrorist organization”; Minn. S. 5514 § 1 (same). In penalizing student groups for “endorsing” or “promoting” terrorism or the actions of FTOs, these bills exceeded the bounds of the material support statute and raised First Amendment concerns. See *supra* notes 345–47 and accompanying text.

431. Press Release, Off. of the C., Rutgers Univ.–New Brunswick, Community Engagement Following Student Protests (May 8, 2024), <https://newbrunswick.rutgers.edu/chancellor/communications/community-engagement-following-student-protests> [<https://perma.cc/RRU3-B686>].

432. Assemb. 4420, 221st Leg., Reg. Sess. (N.J. 2024); S. 3213, 221st Leg., Reg. Sess. (N.J. 2024). Schools that failed to comply with these laws would have been stripped of various forms of funding. N.J. Assemb. 4420; N.J. S. 3213.

433. H. 1294, 123d Gen. Assemb., 2d Sess. § 2 (Ind. 2024).

434. *Id.* As with other state bills discussed in this Section, this bill did not define “support” or otherwise reference the concept of “material support” suggesting that a broader notion of support was intended. *Id.* See also *supra* note 347 for a discussion of the First Amendment concerns this law may have raised.

provision empowering the state attorney general to sue schools that failed to investigate policy violations⁴³⁵—provisions, which taken together, framed the university as both a necessary participant in and object of national security.

2. Non-Legislative State Actions

Some states took non-legislative action that securitized the university, as an object of national security risk and source of terrorist threat, during the covered period. For instance, at least one state—Florida—attempted to ban all SJP chapters on state university campuses through executive action that recycled the familiar and unsupported accusation that National SJP, and by extension its chapter organizations, provided material support to Hamas.⁴³⁶ Other states launched investigations into pro-Palestine advocacy groups accused of funding campus protestors. These efforts included an investigation spearheaded by the Attorney General of Virginia against American Muslims for Palestine (AMP).⁴³⁷ While that investigation aimed to determine if the charitable organization had “used funds to benefit ‘terrorist organizations,’”⁴³⁸ it was also likely grounded in the politically motivated and racist view that AMP was funding and fueling the campus movement’s so-called support for terrorism.⁴³⁹

435. Ind. H. 1294, § 2.

436. Florida SJP Ban Letter, *supra* note 256; Jamshidi, *supra* note 314. Under litigation pressure, Florida walked back its ban on SJP chapters. *Students for Justice in Palestine at the University of Florida v. Raymond Rodrigues*, AM. C.L. UNION (last updated Nov. 16, 2023), <https://www.aclu.org/cases/students-for-justice-in-palestine-at-the-university-of-florida-v-raymond-rodrigues> [<https://perma.cc/3MBT-U87U>].

437. Tara Suter, *Virginia’s Attorney General Opens Probe into pro-Palestine Nonprofit*, HILL (Oct. 31, 2023), <https://thehill.com/homenews/state-watch/4285773-virginias-attorney-general-probe-pro-palestine-nonprofit> [<https://perma.cc/KH46-ML7H>].

438. *Id.*

439. Along with National SJP, AMP has been one of the most systematically attacked and targeted pro-Palestine organizations since October 7th. *See, e.g., supra* notes 397–400 and accompanying text. While Virginia’s investigation into AMP was likely sparked by dubious allegations it is tied to Hamas and while AMP and its members have been subjected to racist smears by pro-Israel individuals and groups for several years, one reason AMP has been singled out recently is the perception it has fueled or funded the post-October 7th “pro-Hamas” student protest movement, specifically via National SJP and its chapter organizations. *E.g.,* June 2024 Oversight Committee Letter to AMP, *supra* note 400; *First Hearing on Non-Profit Bill*, *supra* note 375, at 28–32 (statement of Jonathan Schanzer, Senior Vice President of Rsch., Found. for Def. of

States engaged in other terrorism-focused efforts to securitize the university between October 7, 2023 and December 31, 2024, as well. These efforts included a letter sent by twenty Republican state attorneys general to the State Department and Department of Homeland Security, urging them to “vigorously renew vetting” of foreign students, who had presumably engaged in pro-Palestine advocacy.⁴⁴⁰ The letter’s signatories urged the federal government to “promptly remove” those students who had violated existing immigration laws that make foreign nationals “ineligible to receive a visa and ineligible to be admitted to the United States” if they “endorse[] or espouse[] terrorist activity or persuade[] others to endorse or espouse terrorist activity or support a terrorist organization,” or who had violated the prohibition against material support.⁴⁴¹

Together with their federal counterparts, these terrorism-focused, state-level efforts aimed to compel universities to participate in national security while simultaneously depicting universities and their pro-Palestine members as potential national security threats and enemies. Universities also participated in the securitization trend post-October 7th by voluntarily adopting measures that framed pro-Palestine advocates as undermining the security of their campus communities and the nation at large, a topic addressed in the next Section.

Democracies) (describing congressional testimony from 2016 by pro-Israel individual who characterized AMP as “spawned by individuals who previously worked for nonprofits that were shuttered by federal authorities or sued in civil court because they provided financial or material support to Hamas”); Charlotte Silver, *US Activists’ Homes Targeted in Pro-Israel Intimidation Campaign*, ELEC. INTIFADA (May 17, 2017), <https://electronicintifada.net/blogs/charlotte-silver/us-activists-homes-targeted-pro-israel-intimidation-campaign> [https://perma.cc/Y9YSYRQF] (detailing long-standing Islamophobic campaign against AMP and its members). This perception, which is intimately tied to enduring attempts to smear AMP as a front for Hamas, reinforces and is intimately connected to the racist view that advocacy for Palestine is tantamount to support for terrorism.

440. Letter from Tim Griffin, Att’y Gen., St. of Ark., et al., to Anthony Bilken, Sec’y, U.S. Dep’t of St., & Alejandro Mayorkas, Sec’y, U.S. Dep’t of Homeland Sec. 1 (Nov. 8, 2023), <https://ago.mo.gov/wp-content/uploads/2023-11-08-Arkansas-Letter-Student-Visa-Holder-Supporting-Terrorist-Organizations.pdf> [https://perma.cc/MXK3-26PL]. While the letter did not explicitly call for foreign pro-Palestine students to be “vigorously” vetted, its call to action was clearly directed at those students. *Id.*

441. *Id.* at 1, 3.

C. UNIVERSITY SECURITIZATION AT THE UNIVERSITY LEVEL⁴⁴²

After October 7th, many—though not all⁴⁴³—universities treated pro-Palestine activists as security threats,⁴⁴⁴ subjecting them to harsh disciplinary and carceral measures. While some of these institutions depicted those advocates as endangering national security, most did not. Instead, as discussed in this Section, universities that adopted securitized approaches to pro-Palestine activism largely relied on broad notions of “security” that centered the safety and welfare of the campus and campus members. That being said, securitized university responses often fed into, partially mimicked, and were arguably given some legitimacy by the government’s national security framings of the pro-Palestine movement. All told and notwithstanding increasingly militarized university approaches to campus protests in recent years,⁴⁴⁵ securitized university responses to Palestine advocacy, especially to demonstrations, were exceptionally swift and punitive after October 7th.⁴⁴⁶

This Section broadly canvasses the various security-oriented strategies—primarily grounded in *generic* notions of security—universities deployed against pro-Palestine campus mobilization between October 7, 2023 and December 31, 2024; demonstrates how those securitized responses mirrored and were fed by government efforts to frame pro-Palestine advocates as national security threats; and describes some, albeit less frequent, instances where universities directly invoked national security concerns or worked with national security agencies to repress Palestine activism. As these developments suggest, many

442. The sheer volume of U.S. university actions and reactions towards pro-Palestine advocacy during the covered period is difficult to capture. This short Section does not attempt to do so. Instead, it focuses on one aspect of this phenomenon: security-inflected university responses. Even then, because of space limitations, this Section only captures the tip of this massive iceberg.

443. See *supra* note 252 and *infra* note 447 and accompanying text.

444. The discussion in this Section is based, in part, on a comprehensive analysis of twenty U.S. universities that were prominent sites of pro-Palestine protests from October 7, 2023 until roughly October 2024. See *generally* Matthew Hanna, Private and State Laboratories of Anti-Constitutionalism and Authoritarianism: Research and Analysis of American Universities’ Institutional Responses to Student Protest Activities Before, Around, and After October 7, 2023 (Nov. 1, 2024) (unpublished manuscript) (on file with the *Minnesota Law Review*).

445. See *supra* notes 104–06 and accompanying text.

446. See *infra* notes 484–85 for a discussion of the exceptional nature of this response.

universities effectively served as voluntary participants in U.S. national security during the covered period.

1. The University's Securitized Response to Pro-Palestine Advocacy

Rather than being passive victims of government-led securitization, many universities actively participated in and reinforced that securitization by adopting their own security-based approaches to pro-Palestine campus activism post-October 7th. Admittedly, university responses to the movement were not framed only in security terms and did not exclusively involve security-oriented reactions.⁴⁴⁷ Nor did they singularly involve punitive and repressive approaches.⁴⁴⁸ That being said, many university responses to pro-Palestine advocacy—across red and blue states⁴⁴⁹ as well as public and private universities⁴⁵⁰—were dominated by various, often arbitrary, exaggerated, or even manufactured security and threat-based rationales aimed at quashing the protest movement.⁴⁵¹

The exaggerated or manufactured nature of many of these threat-centered justifications is underscored by data, covering the first seven months of the protest movement, from the Crowd

447. See *supra* note 252. Universities also framed their responses to the pro-Palestine movement as enforcing university rules and upholding antidiscrimination rules and norms, among other framings. Hanna, *supra* note 444, at 3. In particular, some universities justified their crackdowns on pro-Palestine advocacy by accusing protestors of engaging in antisemitic acts or creating an unwelcoming atmosphere for members of the university's Jewish community, though some of these justifications arguably had a securitized valence. *E.g.*, Letter from Ellen M. Granberg, President, Geo. Wash. Univ.: Off. of the President, to Members, Geo. Wash. Univ. Cmty. (May 5, 2024), <https://president.gwu.edu/message-regarding-ongoing-campus-protests> [https://perma.cc/T2HV-DH36]; Letter from Minouche Shafik, President, Colum. Univ.: Off. of the President, to Fellow Members, Colum. Univ. Cmty. (Apr. 29, 2024), <https://president.columbia.edu/news/statement-columbia-university-president-minouche-shafik-4-29> [https://perma.cc/6AUJ-W36E].

448. See *supra* note 252.

449. See Ulfelder, *supra* note 252. (“[W]hile Republican governors such as Greg Abbott (Texas) and Ron DeSantis (Florida) may be more openly hostile to left-leaning protesters than their Democratic counterparts, many of the schools with the most arrests of pro-Palestinian protesters . . . [from October 2023 until May 2024] sit in cities led by Democratic mayors located in states led by Democratic governors.”).

450. As reflected in the discussion and footnotes in the rest of this Section, both public and private universities adopted security-based responses to pro-Palestine protests.

451. Hanna, *supra* note 444, at 5.

Counting Consortium (CCC) at Harvard University's Ash Center for Democratic Governance and Innovation. As that data shows, during the thousands of days of pro-Palestine campus demonstrations, between October 7, 2023 and May 29, 2024, "[o]nly a few dozen of these thousands of protest days . . . [saw] property damage or injuries to police or counter-protestors."⁴⁵² Despite those facts, as CCC notes, many public figures continued to insist that university protestors were threatening or even violent.⁴⁵³

Whether exaggerated or manufactured, universities promoted various security-based narratives about the pro-Palestine campus movement during the covered period. In particular, universities frequently depicted Palestine advocates as seriously compromising the university's ability to function⁴⁵⁴ or threatening the safety, security, or emotional welfare⁴⁵⁵ of campus

452. Ulfelder, *supra* note 252. According to CCC, most of the property damage was "limited to graffiti." *Id.* As for physical injuries, the CCC noted that:

We've seen reports of . . . police injuries at only eight [on-campus protests], all of those during police actions to clear encampments or break up other demonstrations. Meanwhile, we've seen reports of injured pro-Palestinian protesters 36 times, some at the hands of police and others at the hands of counter-protesters, who have appeared at more than 300 of these protest days, or about 8 percent.

Id.

453. *Id.*

454. *E.g.*, *Events of May 5, 2024*, UNIV. OF S. CAL.: OFF. OF THE PROVOST (2024), <https://www.provost.usc.edu/policies-and-statements/faq-for-april-may-2024> [<https://perma.cc/ST43-7ZJL>]; Letter from Paul Alivisatos, President, Univ. of Chi., to Members, Univ. of Chi. Cmty. (May 3, 2024), <https://president.uchicago.edu/from-the-president/messages/2405203-effects-of-the-encampment> [<https://perma.cc/5B7Y-BNZJ>].

455. *See* Alex Gourevitch, *The Right to Be Hostile*, BOS. REV. (July 22, 2025), <https://www.bostonreview.net/articles/the-right-to-be-hostile> [<https://perma.cc/6LH6-YCWN>] (noting that some universities cracked down on pro-Palestine protestors "on the basis of self-reported feelings rather than on findings of credible, imminent threats or systematic denial of access" and that "[w]hen some students or faculty said they felt threatened or harassed, that in itself counted as incontrovertible evidence of threat or harassment"); Hanna, *supra* note 444, at 20; Caroline Capozzi & Eden Stranahan, *Students and Professors Raise Concerns over Barnard's New Resident Hall Door Décor Policy*, COLUM. SPECTATOR (Mar. 3, 2024), <https://www.columbiaspectator.com/main/2024/03/03/students-and-professors-raise-concerns-over-barnards-new-residence-hall-door-decor-policy> [<https://perma.cc/7B79-FH3A>]; *see* Deeb & Winegar, *supra* note 38, at 321 ("[University administrators] have allowed student demands to 'feel safe' in the classroom . . . the enabling of violent physical attacks against students protesting for Palestinian rights by both police and counter-protestors.").

members.⁴⁵⁶ At times, universities even recycled old national security tropes by accusing “external” actors of fomenting instability or insecurity during campus demonstrations.⁴⁵⁷

These framings were often accompanied by draconian and punitive university responses to pro-Palestine activism. While not limited to protests, many of these measures were taken in reaction to or in anticipation of pro-Palestine demonstrations. These excessive and disproportionate responses to the largely peaceful protest movement included calling in⁴⁵⁸ or threatening to call in local police;⁴⁵⁹ arresting protestors or those otherwise present at demonstrations;⁴⁶⁰ increasing the police and security

456. *E.g.*, J. Larry Jameson et al., *Ending the Encampment*, PENN TODAY (May 10, 2024), <https://penntoday.upenn.edu/announcements/ending-encampment> [https://perma.cc/V59C-2L55] (“Our community has been under threat and our campus disrupted for too long.”); City News Serv., *UCLA Announces New Office of Campus Safety Following Unrest Over Pro-Palestinian Demonstrations*, NBC 4 L.A. (May 5, 2024), <https://www.nbclosangeles.com/news/local/ucla-to-create-new-office-of-campus-safety-following-unrest-over-pro-palestinian-demonstrations/3405144> [https://perma.cc/M5B5-RA62].

457. *E.g.*, Mike Mather, *Demonstration Ends After Protesters Refuse to Comply with University Policy*, UVA TODAY (May 5, 2024), <https://news.virginia.edu/content/demonstration-ends-after-protesters-refuse-comply-university-policy> [https://perma.cc/S3QE-FNJQ] (“[A]fter the protesters . . . made a public call for others to join . . . individuals unaffiliated with the University – who also presented some safety concerns – . . . joined them.” (quoting UVA President Jim Ryan)); Letter from Minouche Shafik, *supra* note 447.

458. *E.g.*, Fayyad, *supra* note 124; Press Release, John Beckman, Spokesperson, N.Y. Univ., Statement about Greene St. Walkway by NYU Spokesperson John Beckman (May 3, 2024), <https://www.nyu.edu/about/news-publications/news/2024/may/statement-about-greene-st-walkway-by-nyu-spokesperson-john-beck.html> [https://perma.cc/83QZ-DMN2]; Ikram Mohamed et al., *Dozens More Arrested at UT-Austin as Police Use Pepper Spray, Flash Bangs to Break Up Protests*, TEX. TRIB. (Apr. 29, 2024), <https://www.texastribune.org/2024/04/29/university-texas-pro-palestinian-protest-arrest> [https://perma.cc/HY6B-PWVX].

459. *E.g.*, Emma H. Haidar & Cam E. Kettles, *Harvard President Garber Declines to Rule Out Police Response to Campus Protests*, HARV. CRIMSON (Apr. 23, 2024), <https://www.thecrimson.com/article/2024/4/23/garber-police-response-palestine-protest> [https://perma.cc/4JJ5-8S4D].

460. *E.g.*, Tsehai Alfred et al., *NYPD Arrests At Least 173 Protesters Inside and Outside City College, Sweeps Encampment*, COLUM. SPECTATOR (May 1, 2024), <https://www.columbiaspectator.com/city-news/2024/05/01/nypd-arrests-at-least-173-protesters-inside-and-outside-city-college-sweeps-encampment> [https://perma.cc/7EDJ-6AWQ]; Ikram Mohamed et al., *supra* note 458. According to the Crowd Counting Consortium, from October 7, 2023 until May 29, 2024, police arrested over 3,600 campus protest participants, which amounts to “an average of nearly one per protest day.” Ulfelder, *supra* note 252. Rather than reacting to actual or threatened acts of violence, these arrests often came

presence on campuses outside of active protests;⁴⁶¹ instituting disciplinary proceedings against student protestors and student organizations,⁴⁶² which often involved rewriting, distorting, selectively enforcing, or violating existing disciplinary rules or other policies in real-time;⁴⁶³ creating new rules to quash and restrict pro-Palestine demonstrations in anticipation of the 2024–2025 school year;⁴⁶⁴ limiting campus access to university

“in response to concerns about . . . purported disruptions to academic life . . .” Chenoweth et al., *supra* note 3, at 6.

461. *E.g.*, Kayla Quintero, *USC Increases Security, But at What Cost?*, USC ANNENBERG MEDIA (Sept. 19, 2024), <https://www.uscannenbergmmedia.com/2024/09/19/usc-increases-security-but-at-what-cost> [https://perma.cc/LM8U-GXXZ]; *First Hearing with University Presidents*, *supra* note 385, at 3:44:30–3:45:00 (comments from Harvard President Claudine Gay noting that after October 7th, Harvard had enhanced police monitoring and “24/7 threat monitoring”).

462. *E.g.*, Student Coalition for Palestine at GWU (@gwuscpalestine), *Breaking: GWU Sanctions Student Orgs for Protesting Against Genocide – SJP and JVP Suspended, 6 Others on Disciplinary Probation*, INSTAGRAM (Aug. 19, 2024), <https://www.instagram.com/p/C-3Nl5dSppg/?igsh=OGpiM3hueDRzenhu>; Michelle N. Amponsah et al., *Harvard Reverses Decision to Suspend 5 Pro-Palestine Protesters Following Faculty Council Appeal*, HARV. CRIMSON (July 10, 2024), <https://www.thecrimson.com/article/2024/7/10/harvard-reverses-encampment-suspensions> [https://perma.cc/B5CT-GR9X]; Sarah Huddleston & Chris Mendell, *Columbia Begins Formally Notifying Students of Suspension for Participation in Wednesday’s ‘Gaza Solidarity Encampment,’* COLUM. SPECTATOR (Apr. 19, 2024), <https://www.columbiaspectator.com/news/2024/04/19/columbia-begins-formally-notifying-students-of-suspension-for-participation-in-wednesdays-gaza-solidarity-encampment> [https://perma.cc/26K5-7W7L].

463. *E.g.*, Rifqa Falaneh, *Title VI Complaint Against University of Chicago (National Origin-Palestinian)*, PALESTINE LEGAL 82–98, <https://static1.squarespace.com/static/548748b1e4b083fc03ebf70e/t/66f458309a2606dbb783b39/1727289410690/Title+VI+Complaint+Re+UChicago+-+Redaction+Applied+%2B+Scrubbed.pdf> [https://perma.cc/Y9BP-A5DX]; Jonah Valdez, *Columbia Cuts Due Process for Student Protesters after Congress Demands Harsher Punishment*, INTERCEPT (Aug. 29, 2024), <https://theintercept.com/2024/08/29/columbia-campus-protests-gaza-subpoena> [https://perma.cc/BK2G-3U7D]; Brian Rosenzweig, *Indiana University Changed Its Policy a Day Before a Protest. Then 33 People Were Arrested*, INDYSTAR (Apr. 27, 2024), <https://www.indystar.com/story/news/local/2024/04/27/33-arrested-at-pro-palestine-rally-after-indiana-university-policy-change/73470602007> [https://perma.cc/2GFV-F7U5].

464. Sophie Hurwitz, *New University Rules Crack Down on Gaza Protests*, MOTHER JONES (Sept. 13, 2024), <https://www.motherjones.com/politics/2024/09/new-university-rules-crack-down-on-gaza-protests> [https://perma.cc/Z9GU-W7G7]; Nick Perry et al., *US Colleges Revise Rules on Free Speech in Hopes of Containing Anti-War Demonstrations*, ASSOCIATED PRESS: U.S. NEWS (Aug. 15, 2024), <https://apnews.com/article/campus-protests-gaza-israel-hamas->

ID holders and affiliates;⁴⁶⁵ creating checkpoints⁴⁶⁶ and barricades on campus;⁴⁶⁷ and closing off central areas of the university even to university members.⁴⁶⁸

Some schools created new, dedicated campus safety or security offices, in explicit response to pro-Palestine demonstrations.⁴⁶⁹ Other schools—including Columbia University, Barnard College, and Yale University—reportedly employed extensive surveillance practices, including tracking students at protests by using CCTV footage and university ID swipes; monitoring the social media accounts of pro-Palestine students; surveilling student protests using aerial drones; and employing human surveillance, in order to discipline student demonstrators for violating university rules and policies or otherwise engaging in unlawful behavior.⁴⁷⁰

war-columbia-b2321b9626e4a824f47cfce6b680e6d9 [https://perma.cc/SQ74-XGWC].

465. E.g., Nathan Solis, *After Canceling Commencement, USC Will Host Event at L.A. Coliseum, Rolls Out New Campus Security*, L.A. TIMES (May 3, 2024), <https://www.latimes.com/california/story/2024-05-03/usc-shores-up-campus-limits-access-before-commencement> [https://perma.cc/U7RF-NV77]; Alex Tey, *The Showdown at NYU Over Public Space*, CURBED (Apr. 30, 2024), <https://www.curbed.com/article/nyu-students-gaza-encampment-open-space-barricade-closed.html> [https://perma.cc/NAB5-FA8N]; Haidar & Kettles, *supra* note 459.

466. E.g., Harlow Raye, *Dear USC Administration, Please Stop Copying the Israeli Government*, DAILY TROJAN (Oct. 31, 2024), <https://dailytrojan.com/2024/10/31/dear-usc-administration-please-stop-copying-the-israeli-government> [https://perma.cc/4HGT-NE93].

467. E.g., Jared Mitovich & Katie Barlett, *Penn Dismantles Gaza Solidarity Encampment on College Green, Disposing of Tents, Flags, and Signs*, DAILY PENNSYLVANIAN (May 10, 2024), <https://www.thedp.com/article/2024/05/penn-dismantles-gaza-solidarity-encampment> [https://perma.cc/R278-P2CN]; Ella Mitchell & Fiona Riley, *Hundreds of Pro-Palestinian Demonstrators Rally on First Day of Encampment*, GW HATCHET (Apr. 26, 2024), <https://gwhatchet.com/2024/04/26/hundreds-of-pro-palestinian-demonstrators-gathered-on-first-day-of-the-encampment> [https://perma.cc/FC2W-58RB].

468. E.g., Diany Wang, *The Graduation Issue 2024: Penn's Gaza Solidarity Encampment, from Beginning to End*, DAILY PENNSYLVANIAN (May 16, 2024), <https://www.thedp.com/article/2024/05/penn-gaza-solidarity-encampment-recap> [https://perma.cc/2QXL-NAAQ].

469. City News Serv., *supra* note 456.

470. Theia Chatelle, *Inside Yale Police Department's War on Student Protesters*, JEWISH CURRENTS (Dec. 20, 2024), <https://jewishcurrents.org/inside-yale-police-department-war-student-protesters-palestine> [https://perma.cc/6THJ-F2PS]; Sarah Huddleston & Maya Stahl, *Inside Columbia's Surveillance and Disciplinary Operation for Student Protesters*, COLUM. SPECTATOR (Sept. 12, 2024), <https://www.columbiaspectator>

Beyond these harsh responses to periods of substantial, albeit peaceful protests, many universities generally failed to “uphold their autonomy and respect the principle of non-discrimination and equal protection of the rights of all students and scholars”⁴⁷¹—a predictable consequence of adopting a securitized approach to pro-Palestine advocacy.⁴⁷² For instance, universities canceled “scores of courses, lectures, seminars, or panel discussions about Palestine,”⁴⁷³ including a documentary screening⁴⁷⁴ as well as an exhibition dedicated to the work of a Palestinian-American visual artist planned before October 7th,⁴⁷⁵ suspended pro-Palestine student groups,⁴⁷⁶ failed to

.com/news/2024/09/12/inside-columbias-surveillance-and-disciplinary-operation-for-student-protesters-3 [https://perma.cc/4YDA-EQPH].

471. See Irene Khan (Special Rapporteur on the Promotion and Protection of the Right to Expression), *Global Threats to Freedom of Expression Arising from the Conflict in Gaza – Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 39, U.N. Doc. A/79/319 (Aug. 23, 2024) [hereinafter *Report of UN Special Rapporteur on Freedom of Opinion and Expression*], <https://www.un.org/unispal/document/report-special-rapporteur-23aug24> [https://perma.cc/62A4-NF4B].

472. Rights erosions have long been endemic to security-oriented areas of law and policy, as demonstrated by U.S. national security law itself. See Jamshidi, *supra* note 41, at 169.

473. *Report of UN Special Rapporteur on Freedom of Opinion and Expression*, *supra* note 471, ¶ 45; e.g., William J. Ford, *UMCP Police, Citing Threats, Pushed to Cancel Pro-Palestinian Event on Oct. 7*, MD. MATTERS (Sept. 30, 2024), <https://marylandmatters.org/2024/09/30/umcp-police-citing-threats-pushed-to-cancel-pro-palestinian-event-on-oct-7> [https://perma.cc/W2CM-SDW7]; Patrick St. John, *UVM Abruptly Cancels Palestinian Lecturer, Sparking Uproar [Updated]*, RAKE VT. (Oct. 24, 2023), <https://www.rakevt.org/2023/10/24/uvm-abruptly-cancels-palestinian-lecturer-sparking-uproar> [https://perma.cc/52EE-JPK9].

474. Ethan Young & Diany Wang, *Middle East Center Director Resigns as Faculty Allege Penn Admin. Violated Academic Freedom*, DAILY PENNSYLVANIAN (Nov. 28, 2023), <https://www.thedp.com/article/2023/11/penn-middle-east-center-director-resignation-aaup-israelism-academic-freedom> [https://perma.cc/XMJ9-6CVA].

475. Marissa Meador, *Art Show Highlights Palestinian Painter Samia Halaby's Work, Rebukes IU's Cancellation*, IND. DAILY STUDENTS (Feb. 20, 2024), <https://www.idsnews.com/article/2024/02/samia-halaby-uncanceled-palestinian-painter-artwork-iu-cancellation> [https://perma.cc/QWL3-TBQ2].

476. Emily Pickering, *New York State Supreme Court Upholds Columbia's Suspension of SJP and JVP*, COLUM. SPECTATOR (Nov. 13, 2024), <https://www.columbiaspectator.com/news/2024/11/13/new-york-state-supreme-court-upholds-columbias-suspension-of-sjp-and-jvp> [https://perma.cc/SF6B-CDK7]; Haley Cohen, *Brandeis Becomes First Private University to Ban Students for Justice in Palestine on Campus*, JEWISH INSIDER (Nov. 6, 2023), <https://jewishinsider.com/2023/11/brandeis-becomes-first-private-university-to->

renew the appointments of adjunct faculty because they “spoke out in solidarity with Palestinians”;⁴⁷⁷ suspended and banned tenured and tenure-track faculty from campus “due to speech” related to Palestine;⁴⁷⁸ and, for the “first time ever” shut down the website of a well-known law review “in an attempt to deter the publication of an article by a Palestinian legal scholar.”⁴⁷⁹

These securitized, severe, and disproportionate university responses⁴⁸⁰ to pro-Palestine advocacy were pervasive during the covered period. In a report published in 2024, Palestine Legal observed that of the 1,037 requests for legal support it received from October 7, 2023 to December 31, 2023—which was itself nearly five times the number of requests it had received in all of 2022—478 were related just to universities, “where administrators [had] engaged in a staggering crackdown on student organizing [on Palestine]”⁴⁸¹ In a report published a year later, in 2025, Palestine Legal reported receiving 2,099 total requests for legal support, “an increase of 55% from 2023, and an over 600% increase from the 290 total requests in 2022 . . . [with] a significant increase in incidents related to university

ban-students-for-justice-in-palestine-on-campus
LLX3].

[<https://perma.cc/7CMM>]

477. *Report of UN Special Rapporteur on Freedom of Opinion and Expression*, *supra* note 471, ¶ 45.

478. Deeb & Winegar, *supra* note 38, at 323. Some tenured faculty were even fired for their pro-Palestine activism. *E.g.*, Ryan Quinn, *Tenured Jewish Professor Says She’s Been Fired for Pro-Palestinian Speech*, INSIDE HIGHER ED (Sept. 27, 2024), <https://www.insidehighered.com/news/faculty-issues/academic-freedom/2024/09/27/tenured-jewish-prof-says-shes-fired-pro-palestine> [<https://perma.cc/CQD4-FTN8>].

479. *Report of UN Special Rapporteur on Freedom of Opinion and Expression*, *supra* note 471, ¶ 45. That journal was the Columbia Law Review. *Id.* Though the journal is an independent non-profit separate from Columbia University and though it was the journal’s board of directors that shut down the law review, that board is composed of faculty and alumni from Columbia Law School. Natasha Lennard & Prem Thakker, *Columbia Law Review Refused to Take Down Article on Palestine, So Its Board of Directors Nuked the Whole Website*, INTERCEPT (June 3, 2024), <https://theintercept.com/2024/06/03/columbia-law-review-palestine-board-website> [<https://perma.cc/YZE6-VTGL>].

480. Gourevitch, *supra* note 455; *see also Report of UN Special Rapporteur on Freedom of Opinion and Expression*, *supra* note 471, ¶ 41 (describing the response of “some university administrators” in the United States to pro-Palestine student encampments as “particularly harsh and disproportionate”).

481. *Reverberations of October 7*, *supra* note 258, at 4, 7.

administration investigations and sanctions . . . more than five times the year prior.”⁴⁸²

The severity of the university response during the covered period was also exceptional and unprecedented in the contemporary era. According to *The Washington Post*, university reactions to the surging pro-Palestine encampment movement—which kicked off at Columbia University on April 17, 2024 and spread rapidly across the country through at least May 2024⁴⁸³—involved “consequences not imposed [on campus protestors] en masse for decades: suspensions, expulsions, and arrests” all in the hopes of “tamp[ing] down [on] a spiraling movement . . .”⁴⁸⁴ A report from the American Association of University Professors—an organization dedicated to promoting academic freedom and shared governance across U.S. universities—succinctly summarized the harsh and exceptional situation facing the pro-Palestine campus movement, particularly during the height of the student encampments:

In spring 2024, the half-century tradition of college administrations letting peaceful protest flourish unobstructed on campuses across the United States came to a sudden and violent end as one college president after another called in armed riot police to physically subdue and arrest student protesters calling for a ceasefire in Gaza. By June, more

482. *A New Generation for Liberation: Historic Student Protests Defy University Crackdowns, 2024 Year-in-Review*, PALESTINE LEGAL 3–4 (Apr. 2025), <https://static1.squarespace.com/static/548748b1e4b083fc03ebf70e/t/67fe79259066a5210ae06fad/1744730460662/Palestine+Legal+2024+Year+in+Review+Report> [https://perma.cc/A3EM-UY48].

483. While post-October 7th pro-Palestine student encampments began before the April 17, 2024 encampment at Columbia, they exploded after that encampment started. Ulfelder, *supra* note 252.

484. Laura Meckler & Hannah Natanson, *Massive Pro-Palestinian College Protests Bring Rare Surge in Discipline*, WASH. POST (May 6, 2024), <https://www.washingtonpost.com/education/2024/05/06/college-protests-suspensions-expulsion-arrests> [https://perma.cc/FNV2-9Q56]; see also Nicole Narea, *How Today's Antiwar Protests Stack Up Against Major Student Movements in History*, VOX (May 1, 2024), <https://www.vox.com/politics/24141636/campus-protest-columbia-israel-kent-state-history> [https://perma.cc/T24Z-X6T6] (quoting a historian of student activism as observing that “[t]he pressure to suppress . . . [the pro-Palestine] demonstrations is quicker and more extreme than was the case in any prior student movement I’ve ever studied”). Rule changes made by universities in response to pro-Palestine campus activism were also exceptional. In August 2024, as universities were scrambling to change their policies after the activism of the spring, the then-General Counsel for the American Association of University Professors, Risa Lieberwitz, described the new rules as a “resurgence of repression on campuses that we haven’t seen since the late 1960s.” Perry et al., *supra* note 464.

than 3,200 students, faculty, and community members had been arrested—many injured, some shot with rubber bullets.⁴⁸⁵

2. The Symbiosis Between University and Government Securitization Efforts

These and other university responses to the “security” of the campus and its community members were almost certainly shaped by and fed back into government-level efforts to securitize the university on “national security” grounds—a dynamic that underscores the distinct⁴⁸⁶ but mutually reinforcing nature of “national security” and “security” as concepts.⁴⁸⁷

Several factors point to the existence of this interconnected relationship between university and government-level securitization during the covered period. First, universities were under tremendous external pressure from actors who depicted pro-Palestine advocates as national security threats. Through legislative initiatives and other efforts discussed earlier in this Part, universities were targeted by state and federal officials and politicians who either explicitly or implicitly accused them of failing to act against “terrorists” and “terrorist activities” on their campuses.⁴⁸⁸ Universities were also under pressure from private individuals and groups to crack down on pro-Palestine activism,⁴⁸⁹ pressure that, at times, depicted the movement as similarly threatening to national security.⁴⁹⁰ In light of these external

485. Orleck, *supra* note 274, at 2. This statement portrays the pre-October 7th situation on campuses as more idyllic than it actually was. As mentioned above, even before October 7th, campus police were adopting increasingly harsh responses to peaceful student protestors. See *supra* notes 104–06 and accompanying text. That being said, the post-October 7th reaction to student demonstrators remains exceptional, even relative to that period.

486. Rana, *supra* note 39, at 1425.

487. See Jeremy Waldron, *Safety and Security*, 85 NEB. L. REV. 454, 460 (2006) (suggesting that “national security” is valued to the extent that it realizes “our security”). Like “national security,” “security” is a notoriously ambiguous and vague term. *Id.* at 456, 460 n.29. One definition, from Professor Jeremy Waldron, conceives of “security” as more than just physical survival. *Id.* at 474. For Waldron, security also includes “protection against harm to one’s basic mode of life and economic values, as well as reasonable protection against fear and terror, and the presence of a positive assurance that these values will continue to be maintained into the future.” *Id.* For this Article’s definition of “national security,” see *supra* note 8.

488. See *supra* Parts II.A–B.

489. Report of UN Special Rapporteur on Freedom of Opinion and Expression, *supra* note 471, ¶ 43.

490. See *infra* notes 595, 601–09 and accompanying text.

forces, national security framings likely had some influence on those universities that adopted securitized responses to the pro-Palestine movement, even if those responses were based on more generic notions of security.

The interconnected relationship between university and government-level securitization was further reflected in the ways pro-Palestine students were punished for their activism. In particular, the severity of university-level disciplinary measures displayed a logic also found in government-led responses to individuals threatening U.S. national security. That logic often frames those individuals as uniquely dangerous without necessarily requiring any violence on their part. For example, under federal law, those found guilty of terrorism-related crimes are subject to sentencing enhancements that substantially increase their prison terms, even if they have only been convicted of a non-violent crime and are first-time offenders.⁴⁹¹ This enhancement—which is the most severe under federal law—“can lead to a sentence from thirty years to life for a crime that would otherwise result in a sentence of around five years.”⁴⁹² Once in prison, those convicted on terrorism-related charges can experience exceptionally harsh incarceration conditions.⁴⁹³ The rationale for this severe treatment is based, in part, on the dubious belief that those individuals are “uniquely dangerous: because they cannot be deterred or rehabilitated, they must instead be incapacitated to protect society from their *ideologically* violent goals.”⁴⁹⁴

The university sanctions leveled against largely peaceful pro-Palestine students—sanctions that exposed those individuals to violence⁴⁹⁵ and deprived them of access to their

491. WADIE SAID, CRIMES OF TERROR: THE LEGAL AND POLITICAL IMPLICATIONS OF FEDERAL TERRORISM PROSECUTIONS 123–25 (2015); Sameer Ahmed, *Is History Repeating Itself? Sentencing Young American Muslims in the War on Terror*, 126 YALE L.J. 1520, 1523–24 (2017).

492. Ahmed, *supra* note 491, at 1528.

493. These prison conditions can include “restrictions on the prisoner’s ability to communicate with the outside world, placement in solitary confinement, denial of access to a host of privileges and materials, and even assignment to one specific prison, regardless of security status or proximity to family members.” SAID, *supra* note 491, at 135–36.

494. Ahmed, *supra* note 491, at 1523 (emphasis added).

495. See Chenoweth et al., *supra* note 3, at 6 (“[W]e’ve seen far more violence directed at people protesting for Palestinian liberation or against genocide than we’ve seen from them.”).

classrooms, dorm rooms,⁴⁹⁶ and university degrees⁴⁹⁷—may not have risen to the level of punishment experienced by terrorism defendants. Still, in their disproportionate severity, they adopted, reflected, and communicated a similar rationale, namely, that campus advocates were “uniquely dangerous” and deserved particularly harsh penalties because of their “ideological” commitment to the Palestinian cause.

Finally, the mutually reinforcing nature of university and government-level securitization was reflected in the ways they legitimated one another. During the covered period, universities’ intense and swift reactions to the pro-Palestine movement, along with their securitized depictions of movement members, likely gave credence to government claims that pro-Palestine advocates represented some kind of threat to those around them. Similarly, given government framings of Palestine activists as supporting terrorism and participating in terrorist activities, universities that sanctioned those activists with suspensions, expulsions, and other severe punishments likely appeared reasonable to some. In fact, for certain groups, including members of Congress, punitive responses from universities did not go *far enough* in addressing the national security threat supposedly posed by pro-Palestine advocates.⁴⁹⁸

3. Invoking National Security Concerns and Working with National Security Agencies

In some cases, universities did more than just treat pro-Palestine activists in ways reminiscent of government approaches to national security threats. In a number of instances, universities actually joined forces with or ostensibly supported components of the U.S. national security state, such as the FBI, in investigating, interrogating, and surveilling students during the

496. *Report of U.N. Special Rapporteur on Freedom of Opinion and Expression*, *supra* note 471, ¶ 42; Huddleston & Stahl, *supra* note 470.

497. Meckler & Natanson, *supra* note 484.

498. See Madina Touré & Irie Sentner, *Johnson Demands Biden Send in National Guard During Raucous Columbia Visit*, POLITICO (Apr. 24, 2024), <https://www.politico.com/news/2024/04/24/mike-johnson-columbia-national-guard-00154199> [<https://perma.cc/7HES-VXS9>] (“If [the Columbia student encampment] is not contained quickly and if these threats and intimidation are not stopped, there is an appropriate time for the National Guard [to be called in].” (quoting Speaker of the H. Mike Johnson)).

covered period.⁴⁹⁹ At times, universities also explicitly leveraged “national security” to condemn, quash, and/or punish pro-Palestine advocacy. Acting in their individual capacities, some university officials, as well as professors, publicly and broadly vilified pro-Palestine campus advocates as supporters of terrorist activities or groups. By and large, these efforts—whether to work with national security agencies or invoke national security concerns—were legally dubious and factually unsupported.

In one example of a university ostensibly working with or supporting U.S. national security agencies, Columbia University contacted the FBI in March 2024 after it learned that some of its students had held an “unsanctioned” online event, dubbed *Resistance 101*.⁵⁰⁰ Based on available reporting, specious national security concerns likely drove Columbia’s decision to call the FBI. One of those apparent concerns was that *Resistance 101* included a guest speaker who was accused of being a member of a designated FTO—something the speaker himself denied⁵⁰¹ and that was unsupported as a matter of U.S. law at the time.⁵⁰² The event’s purported content was likely another motivating concern. According to a Columbia administrator, *Resistance 101* featured “discourse that supported terrorism and violence.”⁵⁰³

499. *E.g.*, Chatelle, *supra* note 470; *UMN SDS Statement of Halimy Hall Occupation*, FIGHT BACK! NEWS (Oct. 26, 2024), <https://fightbacknews.org/articles/umn-sds-statement-of-halimy-hall-occupation> [https://perma.cc/ED5RJ3X6].

500. *See Second Hearing with University Presidents*, *supra* note 385, at 2:13:50–2:15:12 (responding to questions about the *Resistance 101* event, Columbia President Minouche Shafik stated that the administration called the FBI when it became aware of the event); Emily Forgash, *University Launches Investigation, Bans Speakers from Campus Following Unsanctioned ‘Resistance 101’ Event*, COLUM. SPECTATOR (Mar. 28, 2024), <https://www.columbia-spectator.com/news/2024/03/28/university-launches-investigation-bans-speakers-from-campus-following-unsanctioned-resistance-101-event> [https://perma.cc/P3ZH-VCEP].

501. Forgash, *supra* note 500.

502. While the guest speaker in question, Khaled Barakat, was subsequently designated by the Biden administration as a Specially Designated Global Terrorist, alongside Samidoun, that designation came months after the *Resistance 101* event and has been criticized as politically motivated. United States and Canada Target Key International Fundraiser for Foreign Terrorist Organization PFLP, *supra* note 411; NLG Statement on Samidoun, *supra* note 410.

503. Huddleston & Stahl, *supra* note 470.

While these factors were not legitimate national security grounds for alerting law enforcement to the event,⁵⁰⁴ subsequent developments further demonstrate the dubious nature of Columbia's concerns. In particular, while the university directed its own private investigators to question some students about *Resistance 101* and eventually suspended certain students purportedly involved in the event,⁵⁰⁵ no counter-terrorism or other criminal charges relating to the event have been publicly filed, as of this writing.

Exemplifying a university's use of national security to punish and condemn pro-Palestine advocacy, the Massachusetts Institute of Technology (MIT) sanctioned a graduate student in November 2024, in part, for writing an academic article, published in a student-run university zine, that featured two images related to the Popular Front for the Liberation of Palestine (PFLP).⁵⁰⁶ The primary image of concern depicted an armed person standing underneath the phrase "We Will Burn the Ground Beneath Your Feet" alongside the emblem of the PFLP.⁵⁰⁷ Citing this imagery as part of its justification for interim banning the student from campus and campus facilities, MIT's administration stated that "[t]he inclusion of symbolism from a U.S.

504. There is, for instance, no indication that Barakat's participation in *Resistance 101* was unlawful at the time of the event. Even if true, any "discourse" at the event that "supported terrorism and violence" was also almost certainly protected by the First Amendment or, at the very least, not prohibited by any terrorism-related laws. As mentioned earlier, while advocacy "coordinated with, or controlled by" designated FTOs is considered prohibited material support, "independent" speech acts are generally protected by the First Amendment even if those acts "benefit[] foreign terrorist organizations." See *Holder v. Humanitarian L. Project*, 561 U.S. 1, 36, 39 (2010). As of this writing, Columbia administrators have not publicly presented any evidence suggesting that *Resistance 101* was "coordinated with or controlled by" designated FTOs or that the event otherwise violated the material support prohibition or other counter-terrorism laws.

505. Huddleston & Stahl, *supra* note 470; Sarah Huddleston et al., *Four Columbia Students Suspended, Evicted from University Housing Following Unauthorized 'Resistance 101' Event*, COLUM. SPECTATOR (Apr. 5, 2024), <https://www.columbiaspectator.com/news/2024/04/04/four-columbia-students-suspended-evicted-from-university-housing-following-unauthorized-resistance-101-event> [<https://perma.cc/FNA6-TMVE>].

506. Prahlad Iyengar, *On Pacifism*, in V WRITTEN REVOLUTION 32 (2024), <http://www.writtenrevolution.com/#past> [<https://perma.cc/3TFD-GHT6>]. The article explored the limits of pacifism as a strategic commitment adopted by civil and political movements. *Id.* at 32–39.

507. *Id.* at 32. The last page of the article also featured PFLP imagery. *Id.* at 39.

designated terrorist organization containing violent imagery in a publication by an MIT-recognized student group is deeply concerning.”⁵⁰⁸ Notably, the MIT administration did not suggest that the article in question explicitly called for or incited violence against any person or group of persons or violated any counter-terrorism laws.⁵⁰⁹ In criticizing MIT’s decision to also ban the volume in which the article appeared, a preeminent First Amendment organization described the article itself as the kind of speech protected under both the First Amendment, as well as MIT’s own free speech policies.⁵¹⁰

As for campus officials and professors, some acted in their individual capacities to publicly and baselessly accuse the pro-Palestine campus movement of broadly supporting terrorism. In a *New York Times* op-ed published in October 2024, Erwin Chemerinsky, the Dean of the University of California, Berkeley School of Law and a revered First Amendment scholar, made the serious and unjustified claim—based primarily on a subjective interpretation of cherry-picked slogans and chants from protests at a handful of schools—that pro-Palestine demonstrators across U.S. campuses were “repeatedl[ly] glorif[ying]. . . the Hamas massacre” of October 7th and “celebrat[ing]. . . the coldblooded murder and torture of innocent civilians.”⁵¹¹ In his op-ed,

508. Letter from Mass. Inst. Of Tech. Div. Student Life to Prahlad Iyengar (Nov. 1, 2024) (on file with author).

509. *Id.* Instead, MIT claimed that the article made “several troubling statements” that “could be interpreted as a call for more violent or destructive forms of protest at MIT” and that “[n]umerous community members ha[d] expressed concern for their safety and well-being after learning of . . . [the] article.” *Id.*

510. Letter from Dominic Coletti, Program Off., Campus Rts. Advoc., Found. for Individual Rts. and Expression, to MIT President Sally Kornbluth (Dec. 17, 2024), <https://www.thefire.org/research-learn/fire-letter-massachusetts-institute-technology-december-17-2024> [<https://perma.cc/53Y6-3B6W>]. As the letter notes, “[w]hile MIT is a private institution,” and therefore is not obligated to uphold the First Amendment, the university “explicitly guarantees its community members freedom of expression for all speech except ‘speech which falls outside the boundaries of the First Amendment.’” *Id.* at 2 (quoting MIT Statement on Freedom of Expression and Academic Freedom, MASS. INST. TECH. 1 (Dec. 21, 2022), https://facultygovernance.mit.edu/sites/default/files/reports/20221221_MIT_Statement_on_Freedom_of_Expression_and_Academic_Freedom.pdf [<https://perma.cc/A7YJD6MW>])).

511. Erwin Chemerinsky, *College Officials Must Condemn On-Campus Support for Hamas Violence*, N.Y. TIMES (Oct. 20, 2024), <https://www.nytimes.com/2024/10/20/opinion/hamas-colleges-free-speech.html> [<https://perma.cc/G7VD-SKCV>]. To support his argument, Chemerinsky also cited reporting from a pro-Israel group, the Anti-Defamation League (ADL), that has assumed

Chemerinsky called on campus officials to respond to these “celebrations” as “they would to a Klan rally praising racist violence.”⁵¹² Similarly, at UCLA, in late 2023, a group calling itself “UCLA Faculty Against Terror” issued a letter accusing campus protestors—without any credible evidence—of “celebrat[ing]” the “massacres by Hamas” and of issuing “explicit calls for violence,” in part, by chanting “[i]ntifada.”⁵¹³ “Intifada” is a generic Arabic word, meaning “uprising,” that has been distorted by various pro-Israel politicians, individuals, and groups to smear pro-Palestine advocates, especially since October 7th.⁵¹⁴

Other university members were less explicit in accusing pro-Palestine campus protestors of supporting terrorism, but still strongly suggested that those activists were effectively participating in, and even facilitating, such violence. For example, a professor at the University of California, Berkeley School of Law published an op-ed in the *Wall Street Journal* on October 15, 2023, accusing pro-Palestine students at his school and elsewhere of reflecting “the broader attitude against Jews on university campuses that made . . . [the October 7th] massacre possible.”⁵¹⁵

a prominent role in smearing pro-Palestine campus advocates as terrorist supporters and falsely accusing them of violating anti-terrorism laws since October 7th. See, e.g., Arno Rosenfeld & Jacob Kornbluh, *Exclusive: ADL Chief Compares Students Protesters to ISIS and al-Qaida in Address to Republican Officials*, FORWARD (June 6, 2025), <https://forward.com/news/726133/greenblatt-adl-protesters-terrorists> [<https://perma.cc/VNG6-5CLS>]; Spencer Ackerman, *The ADL Is Defaming Palestinian Students as Terrorist Supporters*, NATION (Oct. 31, 2023), <https://www.thenation.com/article/society/adl-palestine-terrorism-letter> [<https://perma.cc/2AZU-8DK9>]; *infra* note 595 and accompanying text.

512. Chemerinsky, *supra* note 511.

513. Letter from Fac., UCLA (2023), <https://sites.google.com/view/uclafacultyagainstterror> [<https://perma.cc/52E6-BCCQ>]. The letter was first circulated in November 2023. *Report of Task Force on Anti-Palestinian, Anti-Muslim, and Anti-Arab Racism*, UCLA RACISM TASK FORCE 2 & n.2 (May 13, 2024), <https://www.dropbox.com/scl/fi/k6qkx97jdfgr61i6vlnxq/CORRECTED-MAY-15-REPORT-OF-TASK-FORCE-ON-ANTI.pdf> [<https://perma.cc/36G5-GUSM>].

514. E.g., Wadie Said et al., *Opinion: University of Colorado Regents’ Resolution on ‘Intifada’ Undermines Free Speech and Inclusivity*, COLO. SUN (Sept. 5, 2024), <https://coloradosun.com/2024/09/05/opinion-colorado-regents-resolution-intifada> [<https://perma.cc/N9QT-2EGX>].

515. Steven Davidoff Solomon, *Don’t Hire My Anti-Semitic Law Students*, WALL ST. J. (Oct. 15, 2023), <https://www.wsj.com/articles/dont-hire-my-anti-semitic-law-students-protests-colleges-universities-jews-palestine-6ad86ad5> [<https://perma.cc/6Q73-DDTD>].

From the federal government to state governments to university administrations, security-dominated rationales and responses have variously depicted the university and its community members as supporting terrorist groups or engaging in terrorist activities. While framing the university as an object of national security threat, many government-led efforts have also sought to compel the university's participation in achieving national security objectives related to the pro-Palestine campus movement. Though these approaches may be surprising to some, they comport with various national security trends, as discussed in the next and final Part of this Article.

III. REINFORCING EXISTING NATIONAL SECURITY TRENDS

Even if one appreciates higher education's historical relationship to the national security state and believes the university is once again being securitized, one might still think government-led efforts to treat pro-Palestine campus advocates and their universities as terrorist threats distort or manipulate traditional U.S. national security practice. In one sense, these efforts *are* a distortion—as described above, there is little to no evidence that activists are violating relevant U.S. counter-terrorism laws. That being said, the concerted push to frame pro-Palestine advocates, as well as universities, as threatening U.S. national security during the covered period aligns with and reflects some of national security's foundational premises and objectives.

Relying on my previous work, this Part examines how government-led efforts to securitize the university during the last fifteen months of the Biden administration broadly comported with various trends in U.S. national security, specifically: (1) its concern with maintaining U.S. global hegemony, including the economic and capitalist interests on which that hegemony depends; (2) its embrace of conceptions of terrorism that are deeply intertwined with anti-Palestinian animus; (3) its tendency to create “enemies,” especially along racial lines; and (4) the important role of private parties in enforcing and shaping U.S. national security laws and policies.⁵¹⁶ Each of these issues is addressed, in order, below.

516. This Section relies heavily on my Article, *A Transformational Agenda for National Security*. See generally Jamshidi, *supra* note 41.

Centering these trends is crucial to understanding the drivers behind this ongoing chapter in the university's securitization. Most importantly, focusing on these issues demonstrates how this moment is far from aberrational. Instead, current efforts to securitize the university are part and parcel and, to some extent, an inevitable consequence of the ways U.S. national security operates—an insight that has important implications for remediating this episode in the university's long history of securitization.

A. MAINTAINING U.S. GLOBAL HEGEMONY

While the relationship between the United States and Israel is far from straightforward, the U.S. government's hegemonic, capitalist interests in the Middle East are central to that dynamic. The pro-Palestine movement, including on university campuses, imperils that relationship and its political and economic upsides for the United States. It is in this sense that the campus movement is, indeed, a threat to U.S. national security.

In general, U.S. foreign policy and national security are informed in no small measure by the United States' hegemonic, imperialist ambitions, which are fueled by capitalism.⁵¹⁷ On this view of U.S. diplomatic history, "national security has been intentionally shaped, at least in part, by imperialist, expansionist, [and] capitalist . . . objectives since the beginning of the American republic" until the current moment.⁵¹⁸ Since the western frontier closed in the 1890s,⁵¹⁹ American imperialist expansionism has continued largely through the political and economic domination of weaker states and peoples.⁵²⁰ This hegemonic domination and control includes the use of proxies in order to achieve U.S. national security and foreign policy objectives, particularly when it comes to deploying military power.⁵²¹

517. *Id.* at 175.

518. *Id.*

519. See ANDREW J. BACEVICH, AMERICAN EMPIRE: THE REALITIES AND CONSEQUENCES OF U.S. DIPLOMACY 25 (2002); WILLIAM APPLEMAN WILLIAMS, THE TRAGEDY OF AMERICAN DIPLOMACY 21–23 (2009).

520. See, e.g., ELLEN MEIKSINS WOOD, EMPIRE OF CAPITAL 129–30 (2005) (arguing that since World War II the United States has administered an economic empire "sustained by political and military hegemony" over other states).

521. See BACEVICH, *supra* note 519, at 156 ("The aftermath of the Cold War . . . found the United States relying increasingly on . . . foreign armies or other proxies—to perform missions entailing substantial risk of large-scale

As many have argued, Israel is one of these American proxies,⁵²² and is “crucial to the maintenance of Western imperial interests—notably those of the U.S.—in the Middle East.”⁵²³ It is those interests and Israel’s role in securing them that help explain why national security framings applied to student-led, pro-Palestine activism are not just a cynical exploitation of the concept. They are also based in the long-held belief that Israel’s place and position in the Middle East is critical to maintaining U.S. hegemony in the region, particularly as it relates to oil.⁵²⁴ Pro-Palestine advocates, including at university campuses, have threatened those interests by contributing to Israel’s “delegitimization”⁵²⁵ and otherwise stalling U.S. efforts to economically and politically integrate the Israeli state into the broader Middle East.

casualties.”). With some notable exceptions, such as the U.S. invasions and occupations of Afghanistan and Iraq, the United States has preferred to work through proxies in the Middle East, which it primarily does by “providing financial aid and arms to its allies.” Katherine Arnold, *U.S. Proxy Warfare: Patterns in Middle Eastern Conflicts*, LSE BLOGS (Sept. 3, 2019), <https://blogs.lse.ac.uk/lseih/2019/09/03/u-s-proxy-warfare-patterns-in-middle-eastern-conflicts> [https://perma.cc/2ZPJTE9T].

522. Arnold, *supra* note 521.

523. Adam Hanieh, *Framing Palestine: Israel, the Gulf States, and American Power in the Middle East*, TRANSNAT’L INST. (June 13, 2024), <https://www.tni.org/en/article/framing-palestine> [https://perma.cc/487QQPMH].

524. *Id.*

525. While beyond the scope of this Article, the Israeli government has long-viewed pro-Palestine advocacy in the West—which brings attention to its repressive actions against the Palestinians—as threatening its “legitimacy.” *E.g.*, Jodi Rudoren, *Netanyahu Lashes Out at Criticism of Israel*, N.Y. TIMES (May 31, 2015), <https://www.nytimes.com/2015/06/01/world/middleeast/netanyahu-lashes-out-at-criticism-of-israel.html> [https://perma.cc/N35CQ3DM]. What this “legitimacy” entails is hard to say, but one can assume it revolves, at the very least, around Israel’s image as the “only” so-called “democracy in the Middle East,” with the most “moral army,” protecting all “civilized countries.” Neve Gordon, *The Problem with Israel’s So Called ‘Crisis of Democracy’*, AL JAZEERA ENG. (Feb. 22, 2023), <https://www.aljazeera.com/opinions/2023/2/22/the-problem-with-israels-so-called-crisis-of-democracy> [https://perma.cc/XHY3-HA4T]; Neve Gordon, *The Myth of Israel’s ‘Most Moral Army’*, AL JAZEERA MEDIA NETWORK (Oct. 16, 2023), <https://www.aljazeera.com/opinions/2023/10/16/the-myth-of-israels-most-moral> [https://perma.cc/4D9J KGRC]; *Netanyahu: ‘Israel Is Fighting the War of All Civilized Countries’*, NOVA.NEWS (Oct. 17, 2023), <https://www.agenzianova.com/en/news/netanyahu-israele-sta-combattendo-la-guerra-di-tutti-i-paesi-civili> [https://perma.cc/S49R 6FYF].

This relationship—between U.S. regional interests and support for Israel—began to take shape in June 1967, after the Israeli state’s swift victory over several Arab countries during the Six-Day War.⁵²⁶ For the United States, Israel’s stunning military achievement signaled that it could be a powerful defender and promoter of U.S. objectives in the region.⁵²⁷ Those objectives primarily revolved around—and continue to revolve around—the region’s crude oil supply,⁵²⁸ which constitutes over fifty percent of known global reserves.⁵²⁹ For the United States, “guaranteeing the stable supply of oil to the world market—denominated in US dollars—and ensuring that oil would not be used as a ‘weapon’ to destabilise the American-centered global system” are key interests⁵³⁰ that Israel helps preserve.

As one writer has described it, during the Cold War, Israel served U.S. interests by securing the “regional stability,” necessary for the free flow of oil, through the “curbing [of] Arab radicalism and checking [of] Soviet expansionism in the Middle East.”⁵³¹ Since the end of the Cold War, Israel has largely continued to serve those same objectives (with some modifications, including to the Soviet component).⁵³² And even though Israel has been a persistent, destabilizing force in the region both before and since the Cold War ended, the Israeli state’s “activist warring” tendencies and many interventions into the affairs of regional countries have arguably pushed “the geopolitical alignment of the Arab elite into the American sphere,”⁵³³ helping to ensure U.S. political and economic hegemony in the Middle East.

526. Hanieh, *supra* note 523; Kumar, *supra* note 230, at 41.

527. Hanieh, *supra* note 523; Kumar, *supra* note 230, at 41.

528. Hanieh, *supra* note 523; Bashir Abu-Manneh, *Israel in the U.S. Empire, in* TERROR AND THE POSTCOLONIAL 235–36 (Elleke Boehmer & Stephen Morton eds., 2010).

529. Statista Rsch. Dep’t, *Distribution of Proved Crude Oil Reserves Worldwide in Select Years in 1960 and 2023, by Region*, STATISTA (July 25, 2024), <https://www.statista.com/statistics/273497/distribution-of-global-proved-oil-reserves-since-by-region> [https://perma.cc/TB77-LVNE].

530. Hanieh, *supra* note 523.

531. Abu-Manneh, *supra* note 528, at 236–37 (quoting AVI SHLAIM, *THE IRON WALL* 309–10 (2001)).

532. *See id.* at 245 (quoting an Israeli military strategist as describing Israel’s role in U.S. global strategy after the Cold War as being “to protect the existing [Arab] regimes: to prevent or halt the processes of radicalization and to block the expansion of fundamentalist religious zealotry”).

533. *Id.* at 239–40.

By undermining its “legitimacy,” the pro-Palestine movement, including on college campuses, has threatened Israel’s continued role in securing this regional hegemony for the United States. While Israel’s “delegitimization” is first and foremost a result of its unlawful activities and falls squarely at its own feet, the pro-Palestine campus movement, in particular, has helped draw attention to those unlawful actions, which include countless crimes against the Palestinian people.⁵³⁴

By also putting Israel’s regional integration at risk, however, the movement’s promotion of Boycott, Divestment, Sanctions (BDS) has arguably been even more threatening to the United States’ Israel-dependent interests in the Middle East.⁵³⁵ Since the start of the post-October 7th, pro-Palestine protest movement, students and other campus activists have contributed to the rapidly accelerating global push to heed the BDS call and economically sanction, divest from, and embargo Israel for its crimes against the Palestinian people.⁵³⁶ In particular, campus advocates have persistently called on their universities to boycott and divest from the Israeli state and other entities directly or indirectly supporting or sustaining Israel’s unlawful actions in Gaza.⁵³⁷ These and other global efforts to divest from

534. See, e.g., Colum. L. Students for Palestine & CUNY L. Students Against Genocide, *supra* note 88 (providing examples of student movements that have drawn attention to Israel’s unlawful actions post-October 7th).

535. BDS is a “Palestinian-led movement for freedom, justice and equality” that promotes the “simple principle that Palestinians are entitled to the same rights as the rest of humanity.” *What Is BDS?*, BDS MOVEMENT, <https://bdsmovement.net/what-is-bds> [<https://perma.cc/CBG4-3TD9>]. For more on the BDS movement, see generally *id.*; Marjorie Cohn, *Outrage over Israel’s Human Rights Violations Is Fueling the Global BDS Movement*, TRUTHOUT (May 24, 2021), <https://truthout.org/articles/global-outrage-over-israels-human-rights-abuses-is-fueling-the-bds-movement> [<https://perma.cc/JL7P-B3UB>].

536. E.g., Press Release, Off. of the High Comm’r, States and Companies Must End Arms Transfers to Israel Immediately or Risk Responsibility for Human Rights Violations: UN Experts (June 20, 2024), <https://www.ohchr.org/en/press-releases/2024/06/states-and-companies-must-end-arms-transfers-israel-immediately-or-risk> [<https://perma.cc/J2XR-TESH>]; Astha Rajvanshi & Yasmeen Serhan, *What to Know About the Global Boycott Movement Against Israel*, TIME (Feb. 14, 2024), <https://time.com/6694986/israel-palestine-bds-boycotts-starbucks-mcdonalds> [<https://perma.cc/J3XL-R8JN>].

537. Colum. L. Students for Palestine & CUNY L. Students Against Genocide, *supra* note 88. While the pro-Palestine campus movement was calling on universities to heed the BDS call before October 7th, the scale of Israel’s unlawful actions since then has substantially energized that movement demand. *Student Solidarity*, BDS MOVEMENT, <https://bdsmovement.net/student-solidarity> [<https://perma.cc/L9F7-WCAH>].

and sanction Israel have both contributed to its further delegitimization and isolation⁵³⁸ and likely helped stall Israel's political and economic integration into the region.⁵³⁹

That integration is an important component of U.S. national security strategy in the Middle East.⁵⁴⁰ For decades, the U.S. government has attempted to create a regional geographic zone “tied to U.S. economic and political power” that would economically and politically integrate Israel (which helps to extend U.S. military power in the region) with the Arab Gulf states (which hold the oil reserves the United States wants to protect and preserve).⁵⁴¹ These efforts, which have been most recently reflected in the Abraham Accords,⁵⁴² have been halted by Israel's unlawful and criminal actions in Gaza, as well as by opposition to Israel's regional integration from global civil society, including the BDS movement.⁵⁴³

Given the very public and attention-grabbing calls for boycott and divestment coming from American campuses since October 7th,⁵⁴⁴ a securitized approach to universities and their pro-

538. *U.K. MP Jeremy Corbyn & EU MP Lynn Boylan on Europe Pressuring Israel to Halt Atrocities in Gaza*, DEMOCRACY NOW (May 22, 2025), https://www.democracynow.org/2025/5/22/uk_mp_jeremy_corbyn_eu_mp [<https://perma.cc/83AJ-7VQU>]; Majed al-Zeer, *Amid Genocide, the Tide Is Turning on Palestine*, AL JAZEERA MEDIA NETWORK (Jan. 10, 2025), <https://www.aljazeera.com/opinions/2025/1/10/amid-genocide-the-tide-is-turning-on-palestine> [<https://perma.cc/23J5-WKMT>].

539. H.A. Hellyer, *For Saudi Arabia, Normalization with Israel Doesn't Make Sense Now*, WAR ON THE ROCKS (Apr. 30, 2025), <https://warontherocks.com/2025/04/for-saudi-arabia-normalization-with-israel-doesnt-make-sense-now> [<https://perma.cc/4HZ4-93Q7>]; Hanieh, *supra* note 523.

540. Hanieh, *supra* note 523.

541. *Id.*

542. The Abraham Accords, which were initially pursued by the first Trump administration and continued by the Biden administration, are agreements between Israel and various Arab states aimed at “normalizing” relations between them—typically through economic and security arrangements. Branko Marčetić, *Forget ‘Peace,’ Did Abraham Accords Set Stage for Israel-Gaza Conflict*, RESPONSIBLE STATECRAFT (Oct. 20, 2023), <https://responsiblestatecraft.org/abraham-accords-peace-middle-east> [<https://perma.cc/C296-LSG7>].

543. H.A. Hellyer, *supra* note 539.

544. *Scenes from the Gaza Solidarity Encampments*, NATION (May 3, 2024), <https://www.thenation.com/article/activism/gaza-solidarity-encampments-student-protests> [<https://perma.cc/FDE7-22KJ>]; *Divest from Israel’: Decoding the Gaza Protest Call Shaking U.S. Campuses*, AL JAZEERA MEDIA NETWORK (Apr. 30, 2024), <https://www.aljazeera.com/news/2024/4/30/divest-from-israel-breaking-down-the-us-student-protesters-demands> [<https://perma.cc/QWW5-QX8B>].

Palestine campus advocates during the covered period comports with the national security state's interests in preserving Israel's role and position in the Middle East.

B. ANTI-PALESTINIAN ANIMUS IN U.S. TERRORISM LAWS

As some legal and non-legal scholars have shown, Israel and its allies have worked for decades both to associate the Palestinian liberation movement with terrorism and to incorporate that animus into U.S. law.⁵⁴⁵ Attempts to pass more terrorism-related legislation during the last fifteen months of the Biden administration and to otherwise depict pro-Palestine campus advocates, and even universities themselves, as involved in or supportive of terrorism—however cynical and false—align with this history.

While emerging in the late 1960s, Israeli-led, U.S.-supported efforts to paint Palestinians and their allies as terrorists gained steam in the United States in the late 1970s and early '80s.⁵⁴⁶ This success was due, in part, to two conferences convened in 1979 and 1984 by the Jonathan Institute.⁵⁴⁷ That institute, which was created by the Israeli-American Netanyahu family in honor of their fallen Israel Defense Force (IDF) soldier-son and brother, Jonathan,⁵⁴⁸ served as “an instrument of the Israeli state designed to justify a refusal to negotiate with the Palestinians by depicting them as terrorists.”⁵⁴⁹

The institute's two conferences—which were spearheaded by Benjamin Netanyahu, the now-six-time prime minister of Israel, and his father Benzion—brought Israeli military and political figures together with neoconservative U.S. politicians and groups to discuss the problem of “international terrorism.”⁵⁵⁰ At both conferences, speakers promoted an emerging and novel

545. See generally Li et al., *supra* note 291; Jamshidi, *supra* note 48; Kumar, *supra* note 230; Remi Brulin, *Compartmentalization, Contexts of Speech and the Israeli Origins of the American Discourse on “Terrorism,”* 39 DIALECTICAL ANTHROPOLOGY 69 (2015).

546. See Kumar, *supra* note 230, at 43–45, 48, 53–54.

547. Jamshidi, *supra* note 48; Kumar, *supra* note 230, at 34.

548. Jonathan Netanyahu was killed during an IDF raid on Entebbe International Airport in Uganda in 1976. Jamshidi, *supra* note 48.

549. Kumar, *supra* note 230, at 49.

550. Jamshidi, *supra* note 48; Kumar, *supra* note 230, at 49–54. The first conference was held in Jerusalem and the second was held in Washington, D.C. Kumar, *supra* note 230, at 49.

view of terrorist activity as the epitome of irrational evil, aimed at destroying the West and everything it stood for.⁵⁵¹

Though U.S. officials had been moving away from earlier, tactical approaches to understanding terrorism⁵⁵² and towards more normatively charged perspectives by the mid-1970s,⁵⁵³ the Netanyahus' two conferences aimed to associate that new understanding of terrorism with Arabs and Muslims generally, and Palestinians more specifically.⁵⁵⁴ In that effort, the Netanyahus were eventually successful. Both events, which were attended by members of President Ronald Reagan's administration, helped shape a new American narrative on terrorism that would, over time, be almost exclusively associated with Arabs, Muslims, and Palestinians.⁵⁵⁵

These and related efforts helped embed anti-Palestinian animus in federal terrorism law.⁵⁵⁶ Echoing the Jonathan Institute's framing, a number of these laws either explicitly or implicitly depict "Palestinians as 'terrorists' and treat certain kinds of support for the Palestinian cause as tantamount to supporting terrorist activity."⁵⁵⁷ These laws, most of which were established in the 1980s and '90s, serve as the foundation for the current U.S. legal framework on terrorism.⁵⁵⁸ They encompass public laws, wielded by the government, as well as private laws, which are used by private individuals and groups.⁵⁵⁹ These laws include "[t]he first government-issued terrorism blacklist," which "has been overwhelmingly used to pressure governments accused of supporting Palestinian resistance;" a law designating the Palestine Liberation Organization (PLO) as a terrorist group, which represents "[t]he first and only time Congress has labeled a non-state group a terrorist organization;" "[t]he first immigration law to include terrorism as a basis for exclusion and deportation," which "singled out the PLO in its definition of

551. Jamshidi, *supra* note 48.

552. These earlier approaches to terrorism, which often used the term "insurgency" instead, treated the concept as a morally neutral tactic used by both state and non-state actors alike. *Id.*; Kumar, *supra* note 230, at 45; STAMPNITZKY, *supra* note 81, at 49–50.

553. STAMPNITZKY, *supra* note 81, at 49–51.

554. Jamshidi, *supra* note 48.

555. Kumar, *supra* note 230, at 51–54; Brulin, *supra* note 545, at 107–08.

556. Li et al., *supra* note 291, at 1; Jamshidi, *supra* note 48.

557. Jamshidi, *supra* note 48.

558. See Li et al., *supra* note 291, at 1.

559. See Jamshidi, *supra* note 48.

terrorist activity;” “[t]he first law authorizing private terrorism lawsuits,” which was “drafted to target the PLO and has been heavily used by dual citizens of Israel and the United States against defendants accused of supporting Palestinian resistance;” and the creation of a “statute criminalizing ‘material support’ for terrorist organizations, the most commonly charged federal antiterrorism offense,” which was primarily motivated by concerns about funding flows to Palestinian groups.⁵⁶⁰

The post-October 7th push for more terrorism-related laws, alongside other efforts to target pro-Palestine campus activism and advocacy as terroristic or terrorist supporting, has leveraged, continued, and arguably expanded on this historical and racist American-Israeli practice of equating support for Palestine with terrorism. As discussed earlier, pro-Israel politicians exploited Hamas’s designation as an FTO, as well as the concept of material support, to depict campus activists as unlawfully providing support to that group during the covered period.⁵⁶¹ These accusations, however unfounded, were then used to push for *new* laws, targeting pro-Palestine advocates at U.S. universities.⁵⁶² As also discussed above, these efforts included attempts to import more expansive immigration law approaches to terrorist activity—which exceed the already broad scope of the material support prohibition—into other areas of U.S. law in order to repress the pro-Palestine movement at universities and beyond.⁵⁶³

As they have in the past, pro-Israel politicians and groups have exploited and will likely continue to exploit this moment of crisis to push for more terrorism-related legislation⁵⁶⁴ that frames “the Israeli state as the victim while reinforcing the subjugation of Palestinians living under Israeli control,”⁵⁶⁵ including by targeting the student-led movement in support of Palestine.

560. Li et al., *supra* note 291, at 1, 3–4, 16.

561. See *supra* notes 290–91 and accompanying text; *Reverberations of October 7*, *supra* note 258, at 12. As discussed in Part III.D, private pro-Israel groups also utilized this strategy during the covered period.

562. See generally Parts II.A.1, II.B.1.

563. See generally *id.*

564. Cf. Li et al., *supra* note 291, at 1, 15–17 (detailing how pro-Israel groups exploited the 1995 Oklahoma City bombing to pass laws creating the FTO designation and prohibiting material support to such groups).

565. Jamshidi, *supra* note 48.

C. U.S. NATIONAL SECURITY'S TENDENCY TO CONSTRUCT
"ENEMIES"

The "friend" vs. "enemy" binary is central to how the U.S. national security apparatus identifies and frames threats.⁵⁶⁶ As one commentator has described it, "[t]he heavy economic sacrifice and the inevitable infringement on traditional liberties demanded by the national security state are legitimized by the enemy."⁵⁶⁷ This reliance on enemies—who are often racialized—has been key to the securitization of the university since October 7th.

Generally, whether one is a friend or enemy is determined, in part, by "in-group" status.⁵⁶⁸ Members of the "in-group" subscribe to a set of "values, beliefs, attitudes, [and] norms"⁵⁶⁹ that are shaped by relevant power brokers. As a result, they are likely to be viewed as "friends" by the national security state. By contrast, those who question, challenge, or threaten the "rules of the game" are likely to be classified as potentially threatening to the nation's security and *even worse* than "enemies."⁵⁷⁰

Race plays an important role in the friend vs. enemy binary. For example, the U.S. government has often justified its use of military force abroad by claiming that racialized others from the Global South are a source of instability and threat to the nation.⁵⁷¹ In adopting this narrative, the government has relied on long-standing ethno-nationalist and racist tendencies within U.S. society that make violence against racialized, Global South persons broadly acceptable to mainstream audiences.⁵⁷²

566. Jamshidi, *supra* note 41, at 193. The first three paragraphs of Part III.C are drawn substantially from my previous article. *Id.*

567. Richard J. Barnet, *The Ideology of the National Security State*, 26 MASS. REV. 483, 491 (1985).

568. See DAVID L. ROUSSEAU, IDENTIFYING THREATS AND THREATENING IDENTITIES: THE SOCIAL CONSTRUCTION OF REALISM AND LIBERALISM 4 (2006) (equating "out-group" status with "enemy" status in threat construction).

569. See *id.* at 13.

570. Ay e Zarakol, *What Makes Terrorism Modern? Terrorism, Legitimacy, and the International System*, 31 REV. INT'L STUD. 2311, 2313–14 (2011).

571. Aziz Rana, *National Security Law and the Originalist Myth*, in RACE & NATIONAL SECURITY 58, 68 (Matiangai V.S. Sirleaf ed., 2023).

572. See NIKIL PAL SINGH, RACE AND AMERICA'S LONG WAR 31 (2017) ("American war craft remains perennially bound to American race craft as the politics of fear and lineaments of enemies without and within morph together . . .").

As discussed in Part II, members of the pro-Palestine student movement, as well as the university itself, were presumptively framed as national security “enemies,” namely, as terrorists, terrorist supporters, or advocates of terrorism threatening the United States, during the covered period. This enemy framing was driven by racialization in two ways.

The first way has to do with anti-Palestinian bigotry. Indeed, as one advocacy group has put it, the current spate of political repression has been “predicated on a . . . deeply rooted anti-Palestinian racism.”⁵⁷³ As discussed earlier, that racism has long conflated the Palestinian movement for self-determination with terrorism.⁵⁷⁴ Those participating in pro-Palestine activism inevitably fall victim to this long-standing racist trope. While this may not inevitably racialize all of those activists, it arguably subjects them to the effects of that racialization, by presumptively equating their advocacy with terrorism or terrorist support, as occurred during the covered period.

Second, certain pro-Palestine racial, ethnic, and religious groups were doubly racialized as enemies during the covered period. While the pro-Palestine movement is generally made up of a diverse coalition of peoples and groups,⁵⁷⁵ Palestinians, Muslims, Arabs, and other Black and Brown communities have typically constituted a significant portion of the support base, including after October 7th.⁵⁷⁶ Members of these groups have also

573. *Reverberations of October 7*, *supra* note 258, at 6.

574. *See supra* notes 546–55 and accompanying text.

575. ILAN PAPPE, LOBBYING FOR ZIONISM ON BOTH SIDES OF THE ATLANTIC 519–20 (2024). Intersectional mobilization has also been a core feature of the pro-Palestine movement since October 7, 2023, including on campuses. Chenoweth et al., *supra* note 3, at 10–11.

576. *See, e.g.*, Melissa Hellmann, *They Staged Protests for Palestine. The Consequences Have Been Life-Changing*, *GUARDIAN* (Apr. 26, 2025), <https://www.theguardian.com/us-news/2025/apr/26/university-student-protesters-discipline> [<https://perma.cc/2H4H-SKCV>]; Jewish Voice for Peace & Students for Just. in Palestine, *Columbia, You Are Failing Your Muslim, Arab, Black, Brown, and Jewish Student Activists*, *COLUM. SPECTATOR* (Oct. 16, 2023), <https://www.columbiaspectator.com/opinion/2023/10/17/columbia-you-are-failing-your-palestinian-muslim-arab-black-brown-and-jewish-student-activists> [<https://perma.cc/7PRU-86KA>]; Jaweed Kaleem & Caroline Petrow-Cohen, “I Can’t Focus on Anything but Rage.” *Pro-Palestinian Protests Roil Elite Pomona College*, *L.A. TIMES* (Apr. 12, 2024), <https://www.latimes.com/california/story/2024-04-12/pomona-college-palestine-gaza-activism> [<https://perma.cc/3CUJ-KJ5H>]. Members of the Jewish community, particularly anti-Zionist Jews, also represent a significant portion of the pro-Palestine student

long been targeted for racial discrimination and harassment, both as a general matter of U.S. national security policy⁵⁷⁷ and because of their particular involvement in pro-Palestine causes.⁵⁷⁸ As recounted in a recent report, when Arabs and Muslims, in particular, advocate for Palestinian rights in the United States, they are often subjected to the “racist trope[] that Muslims and Arabs innately hate Jews.”⁵⁷⁹ As a result of these dynamics, these groups have been racialized as enemies twice over: first, because of their already racialized status as presumptive national security threats, and, second, because of their support for Palestine—a trend reflected in university responses to campus activists during the covered period.⁵⁸⁰

Together, these dynamics have helped ensure that pro-Palestine advocates, and even universities themselves, have been viewed not just as enemies of the United States post-October 7th,

movement. See Azad Essa, *What Really Happened at College Campuses According to Jewish Students*, MIDDLE E. EYE (July 3, 2024), <https://www.middleeasteye.net/big-story/us-jewish-students-led-encampments-solidarity-gaza-palestine> [<https://perma.cc/SBS8-8K5Q>].

577. See Jamshidi, *supra* note 325, at 96–97 (demonstrating how U.S. national security laws and policies have discriminated against Arabs and Muslims).

578. For examples of historical targeting and discrimination by U.S. universities and others against Palestinian, Muslim, Black, and Brown persons advocating for Palestine and the rights and well-being of Palestinians, see *Anti-Palestinian Discrimination and Retaliation at GW University*, PALESTINE LEGAL (Jan. 28, 2022), <https://palestinelegal.org/case-studies/2022/1/28/anti-palestinian-discrimination-retaliation-at-george-washington-university> [<https://perma.cc/U863-5DJV>]; *Palestinian CUNY Law Student Viciously Harassed*, PALESTINE LEGAL (Aug. 20, 2021), <https://palestinelegal.org/case-studies/2021/8/20/palestinian-cuny-law-student-viciously-harassed> [<https://perma.cc/9NU5-4228>]. For some post-October 7th examples of targeting and discrimination against Palestinian, Muslim, Black, and Brown persons advocating for Palestine and the rights and well-being of Palestinians, see *Media Round Up: Palestine Legal Files 9 Title VI Complaints Since April 2024*, PALESTINE LEGAL (July 9, 2024), <https://palestinelegal.org/news/media-roundup-tvi-complaints> [<https://perma.cc/ZUM7-75GZ>]; Malaika Jabali, *Black Law Student Who Had Job Rescinded After Pro-Palestine Letter Shares Their Side of the Story*, ESSENCE (Oct. 19, 2023), <https://www.essence.com/news/black-law-student-ryna-workman-responds> [<https://perma.cc/3L3Z-DHVR>].

579. *Presumptively Antisemitic: Islamophobic Tropes in Palestine-Israel Discourse*, RUTGERS UNIV. L. SCH.: CTR. FOR SEC., RACE & RTS. 3 (2023), <https://csrr.rutgers.edu/wp-content/uploads/2023/11/csrr-presumptively-antisemitic-report.pdf> [<https://perma.cc/EJ99-AKVU>].

580. See, e.g., Hellmann, *supra* note 576.

but also as *racialized* threats, in line with the historical practices and trends of U.S. national security.

D. PRIVATE INVOLVEMENT IN U.S. NATIONAL SECURITY

Private persons are key participants in U.S. national security.⁵⁸¹ This includes private volunteers—consisting of unpaid individuals and organizations—who shape and enforce the government’s national security priorities and policies.⁵⁸² Since October 7th, these private volunteers have assumed a particularly important and public role in shaping the university’s securitization.

The U.S. government has expressly cultivated voluntary private participation in at least some areas of national security⁵⁸³ and implicitly acknowledged the importance of private volunteers to the sector more broadly.⁵⁸⁴ For example, the government has encouraged private persons to voluntarily surveil members of the public, including their own communities, and to report any “suspicious” behaviors to government authorities.⁵⁸⁵ It has convinced private companies to willingly turn over the data of private citizens to government agencies and actors.⁵⁸⁶ It has incentivized persons to voluntarily enforce U.S. sanctions and counterterrorism policies, in part, through federal statutes that allow private civil suits for terrorism-related injuries.⁵⁸⁷ In these and other ways, private volunteers have long served as “force multipliers,” benefiting the U.S. national security state by extending its reach into places where the government may not have the resources, inclination, or legal basis to venture.⁵⁸⁸ Private parties have also benefited from this relationship, which

581. Jamshidi, *supra* note 41, at 194.

582. *Id.* at 196.

583. Jon D. Michaels, *Deputizing Homeland Security*, 88 TEX. L. REV. 1435, 1441–42 (2010).

584. Jamshidi, *supra* note 46, at 788–89.

585. *See generally* Michaels, *supra* note 583 (describing various government programs that broadly encourage private parties to voluntarily engage in surveillance and intelligence gathering on the U.S. government’s behalf); Amna Akbar, *National Security’s Broken Windows*, 62 UCLA L. REV. 834 (2015) (discussing efforts to recruit Muslims in the United States to surveil and report on “radicalized” members of their communities).

586. Jon D. Michaels, *All the President’s Spies: Private-Public Intelligence Partnerships in the War on Terror*, 96 CALIF. L. REV. 901, 910–17 (2008).

587. *See generally* Maryam Jamshidi, *supra* note 46.

588. *Id.* at 792; Michaels, *supra* note 583, at 1438.

has often given them the opportunity to shape and influence U.S. national security laws and policies.⁵⁸⁹

It is difficult to capture the sheer volume of private volunteers involved in efforts to securitize the university during the last fifteen months of the Biden administration. From individuals to organizations, these private, pro-Israel actors leveraged existing terrorism laws, as well as national security concepts and policies, to shape government responses to and pressure universities to act against the so-called national security threat emanating from pro-Palestine campus advocacy, a “threat” which these private entities themselves helped to fabricate and concoct.⁵⁹⁰

These efforts relied on decades of work, by these and other pro-Israel actors, that laid the foundation for this post-October 7th mobilization. Some of these groups—most notably the ADL—played important roles in embedding anti-Palestinian animus in various U.S. counterterrorism laws, discussed in Part III.B, which were heavily leveraged after October 7th.⁵⁹¹ In close coordination with the Israeli government, a network of pro-Israel organizations—operating under an umbrella group known as the Israel on Campus Coalition—had also worked for years to repress and surveil pro-Palestine activism at U.S. universities,⁵⁹² placing those groups in an ideal position to collaborate

589. See, e.g., Maryam Jamshidi, *How Private Actors Are Impacting U.S. Economic Sanctions*, 15 HARV. NAT’L SEC. J. 119, 154 (2023) (describing how private actors both benefit from and shape U.S. sanctions regimes).

590. For example, private pro-Israel groups were among the first to vigorously insist that the pro-Palestine campus movement was providing support to Hamas and potentially violating the prohibition on material support after October 7th. *ADL and Brandeis Center Letter*, *supra* note 256.

591. See, e.g., Li et al., *supra* note 291, at 15–17 (discussing the ADL’s advocacy for the creation of the FTO designation and for a criminal prohibition on material support to such FTOs, prior to October 2023).

592. PAPPE, *supra* note 575, at 419–28; see James Bamford, *Israel’s War on American Student Activists*, NATION (Nov. 17, 2023), <https://www.thenation.com/article/world/israel-spying-american-student-activists> [https://perma.cc/2YTZ-9T3H] (discussing reports “indicating that Israel is illegally operating a secret nationwide campus spying operation” against pro-Palestine students and faculty largely by relying on private persons and groups in the United States, like the Israel on Campus Coalition). As some have suggested, it is entirely plausible that these private groups—whose activities are coordinated with the Israeli government—may report their intelligence to U.S. law enforcement as well. See, e.g., O’Rourke & Said, *supra* note 165 (“[T]he ADL itself may coordinate with groups connected to Israeli intelligence to conduct its own

with law enforcement to surveil the movement after its post-October 7th surge.⁵⁹³

During the covered period, some of these groups, such as the ADL, took advantage of U.S. national security's anti-Palestinian animus and lobbied Congress to pass various bills, mentioned earlier in this Article, in order to quash pro-Palestine campus advocacy.⁵⁹⁴ Some groups leveraged existing anti-terrorism laws to put direct pressure on universities to act against "terrorist supporting" pro-Palestine groups. For example, shortly after October 7th, the ADL together with the Louis D. Brandeis Center for Human Rights Under Law sent a letter to nearly 200 college and university presidents urging them to investigate chapters of SJP on the meritless claim that those chapter organizations had potentially violated the material support prohibition by "celebrat[ing] terrorism."⁵⁹⁵

The ADL and other pro-Israel groups took additional approaches aimed at securitizing the university during the covered period. For example, they called on universities and colleges to ensure the "safety and full inclusion" of their Jewish students post-October 7th.⁵⁹⁶ While these efforts were largely based on disputed reports linking pro-Palestine activism to increased

campus spying operations and report the information to law enforcement [in the United States].").

593. While it is unclear whether such collaboration actually occurred during the covered period, past trends make it possible. *See supra* note 592.

594. *See supra* note 333 and accompanying text for a discussion of the lobbying undertaken by pro-Israel groups, including the ADL, to reauthorize Section 702 of FISA. Pro-Israel groups and individuals also appeared at congressional hearings to advocate for passage of H.R. 6408/H.R. 9495, the proposed law stripping tax-exempt status from "terrorist supporting organizations," and specifically focused on smearing pro-Palestine campus advocacy during their presentations. *See generally Third Hearing on Non-Profit Bill, supra* note 375; *First Hearing on Non-Profit Bill, supra* note 375.

595. *ADL and Brandeis Center Letter, supra* note 256. In their letter, the ADL and Brandeis Center provided no credible evidence that the student speech in question was anything other than independent advocacy that did not violate the criminal material support prohibition. Indeed, in subsequently criticizing the ADL/Brandeis Center letter, the ACLU argued it "stifl[ed] free speech, free association, and academic freedom" ACLU Speech Letter to Universities, *supra* note 256, at 1.

596. *AJC, ADL, Hillel International, Jewish Federations, and CoP Urge Colleges and Universities to Prepare for Back-to-School*, AM. JEWISH COMM. (July 31, 2024), <https://www.ajc.org/news/ajc-adl-hillel-international-jewish-federations-and-cop-urge-colleges-and-universities-to> [<https://perma.cc/Y9E7NHWM>].

antisemitism on and off campus,⁵⁹⁷ they also implicitly framed Palestine advocates as security threats. Indeed, as part of these efforts, the Secure Community Network—described as the “official safety and security organization for the Jewish community in North America”—co-hosted at least one “campus safety roundtable” ahead of the 2024–2025 school year with the Major Cities Chiefs Association.⁵⁹⁸ Safety and law enforcement officials from ninety-two universities, as well as FBI representatives and law enforcement association leaders, among others,

597. See *id.* (“During the 2023–2024 academic year, schools saw more than 1,400 antisemitic incidents on college campuses. . . .”). While this Article cannot examine this issue in-depth, it is worth noting that reports of increased campus antisemitism, from the ADL and other pro-Israel groups, are based on data that has been challenged by various Jewish institutions, Jewish community members, and others. Some of these critics have highlighted how claims about surging campus antisemitism made by the ADL—the leading voice in this space—have been based on a “misdefin[ition]” of antisemitism that sweeps in criticism of Israel and opposition to Zionism. *Reject the ADL: The ADL’s Dangerous Approach Towards Antisemitism*, JEWISH VOICE FOR PEACE, <https://www.jewishvoiceforpeace.org/resource/adl-one-pager> [<https://perma.cc/H6QJ-UGCU>]; see Shane Burley & Naomi Bennett, *Examining the ADL’s Antisemitism Audit*, JEWISH CURRENTS (June 17, 2024), <https://jewishcurrents.org/examining-the-adls-antisemitism-audit> [<https://perma.cc/7UZQ-RQ5C>] (evaluating the ADL’s reporting on antisemitic incidents in the United States in 2023, including at college campuses, and concluding that more than 1,000 incidents out of 3,162 revolving around Israel or Zionism were “misclassified as antisemitic—all cases of speech critical of Israel or Zionism” and that the ADL’s data “included misapplications of the organization’s own standards and often did not provide enough information . . . to assess the group’s judgment” particularly when it came to “incidents of political conflict”); Emily Tamkin, *The Anti-Defamation League Has Abandoned Some of the People It Exists to Protect*, SLATE (Apr. 29, 2024), <https://slate.com/news-and-politics/2024/04/antisemitism-adl-defamation-league-greenblatt-jews-israel-encampments-ceasefire.html> [<https://perma.cc/WQ4W-TSZE>] (criticizing the ADL for “updat[ing]” the methodology it uses to generate its reports on antisemitism “to include certain anti-Israel incidents in its calculation of how much antisemitism has risen”). Similar criticisms have been leveled against polling from other pro-Israel groups purporting to show a surge in campus antisemitism during the covered period. See Essa, *supra* note 576 (noting that a post-October 7th poll—released in May 2024 by Hillel International, a pro-Israel organization—which showed that sixty-one percent of Jewish university students said there had been “antisemitic, threatening, or derogatory language toward Jewish people during [pro-Palestine] protests at their school,” did not actually “define antisemitism and ma[de] no differentiation between antisemitism and criticism of Israel”).

598. *Operation SecureOurCampuses*, HILLEL INT’L (Aug. 23, 2024), <https://www.hillel.org/operation-secureourcampuses-release> [<https://perma.cc/Y9E7-NHWM>].

participated in the event.⁵⁹⁹ Though it is unclear whether the “campus safety roundtable” depicted pro-Palestine advocates as threatening national security, what is clear is that it was responding to post-October 7th, pro-Palestine campus activism.⁶⁰⁰ What is also clear is that the event adopted a securitized orientation that harmonized with and reinforced the broader, post-October 7th narrative that the pro-Palestine campus movement posed a security threat of some kind.

Arguably, the most stunning private effort to securitize the university during the last fifteen months of the Biden administration came from the Heritage Foundation, a private conservative think tank. In its October 2024 report entitled, *Project Esther: A National Strategy to Combat Antisemitism*, the organization leveraged the language of terrorism to present a blueprint for eliminating what it called the “ Hamas Support Network.”⁶⁰¹ The report defined that network as a “terrorist support network” made up of “anti-Israel, anti-Zionist, and anti-American groups comprising the so-called Palestinian movement inside the United States” that is “pro-Palestine and—more so—pro-Hamas.”⁶⁰² To “dismantle the infrastructure” that supposedly sustains this network, the report recommended a partnership between the private and public sectors, with private organizations and individuals working alongside federal and state governments and officials.⁶⁰³

While the report aimed to dismantle the “ Hamas Support Network” across U.S. society, it placed the university at the heart of this work. In particular, the report accused various “ Hamas Support Organizations” that supposedly make up the network, including National SJP, of being “active on most university and college campuses.”⁶⁰⁴ Without any credible evidence, it described these “ Hamas Support Organizations” as “infiltrat[ing] their ideology into the U.S. education system across all levels” and effectively transforming that system into one that “fosters antisemitism under the guise of ‘pro-Palestinian,’ ‘anti-

599. *Id.* The Secure Community Network also reportedly provided briefings to campus police after October 7th. Chatelle, *supra* note 470.

600. Operation SecureOurCampuses, *supra* note 598.

601. *Project Esther*, *supra* note 286, at 3.

602. *Id.*

603. *Id.* at 3–4, 25–26.

604. *Id.* at 8.

Israel,’ anti-Zionist narratives”⁶⁰⁵ The report further alleged—again, without credible evidence—that foreign money supporting the Palestinian cause and influencing “curricula against Israel and Jews” was flowing into U.S. universities.⁶⁰⁶ It also dedicated several pages to describing the number of faculty members across U.S. campuses who had supposedly advocated for or supported “ Hamas Support Organizations” or participation in “anti-Israel demonstrations.”⁶⁰⁷

Among its first objectives—to be achieved in twelve to twenty-four months alongside other goals—the report listed eradicating the “propaganda” of the “ Hamas Support Network” from the “U.S. education system at all levels,” which would involve, among other things, removing or firing all faculty who “support” the network; denying access to university campuses by “ Hamas Support Organizations,” including to foreign members of those organizations; and ensuring that money from foreign supporters of “ Hamas Support Organizations” are not accepted by schools.⁶⁰⁸

While government-level efforts to securitize the university remain crucial—indeed, as demonstrated in this Part, many privately led securitization efforts have been pitched to government officials—*Project Esther* dramatically demonstrates the ways in which private actors have worked to shape, influence, and enforce national security laws and policies, both during the covered period and more broadly.⁶⁰⁹

CONCLUSION

In 1949, historian Bernard DeVoto, one of the few U.S. academics to speak out against the McCarthyite university purges of the early Cold War period, observed that “colleges . . . have got

605. *Id.* at 10.

606. *Id.* at 12.

607. *Id.* at 10, 12.

608. *Id.* at 3, 19–21.

609. According to reporting from the *New York Times*, since Donald Trump’s inauguration “the White House and other Republicans have called for actions that appear to mirror more than half of Project Esther’s proposals” Katie J.M. Baker, *The Group Behind Project 2025 Has a Plan to Crush the Pro-Palestinian Movement*, N.Y. TIMES (last updated May 20, 2025), <https://www.nytimes.com/2025/05/18/us/project-esther-heritage-foundation-palestine.html> [<https://perma.cc/6NUR-Q3WY>]. Project Esther’s creators also believe there are “clear parallels between their plan and recent actions against universities and pro-Palestinian demonstrators on both a state and federal level.” *Id.*

to say: on this campus all books, all expression, all inquiry, all opinions are free. They have got to maintain that position against the government and everyone else. If they don't, they will presently have left nothing that is worth having."⁶¹⁰

The securitization of the university has come a long way since DeVoto expressed those sentiments. While that securitization has ebbed and flowed, the university is more securitized now than it has ever been. Thanks to recent developments, the securitization of U.S. higher education is likely to increase even further and to be pernicious and difficult to unravel, especially if it is met with complacency from universities and their members. While this Article has not centered this issue, it seems quite clear that DeVoto's concerns are even more salient today. Will academia have left anything "worth having" if it sits by and allows the current phase of securitization to continue and metastasize? In my view, it absolutely will not.

610. Cumings, *supra* note 76, at 182.