



TIM GRIFFIN
ATTORNEY GENERAL

June 17, 2024

Sent via First Class Mail

The Honorable Joseph R. Biden, Jr.
President of the United States
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Re: Letter from the State of Arkansas and 17 other States opposing Deferred Enforced Departure for Palestinians

Dear President Biden,

You have recognized that since October 7 the world has witnessed the worst atrocities committed against the Jewish people since the Holocaust and a “ferocious surge” of antisemitic activity on American university campuses. *Remarks by President Biden at the U.S. Holocaust Memorial Museum’s Annual Days of Remembrance Ceremony*, The White House, (May 7, 2024), <https://perma.cc/L3HN-9YQS>. In the wake of these events, the States of Arkansas, Alabama, Alaska, Florida, Georgia, Indiana, Iowa, Kansas, Louisiana, Missouri, Montana, Nebraska, South Carolina, South Dakota, Texas, Utah, Virginia, and West Virginia urge you to reverse the recently announced decision to defer removing certain Palestinians from the United States.

Deferred Enforced Departure for Palestinians

Last November Arkansas led a coalition of 20 States urging the Department of Homeland Security to vigorously renew vetting of foreign-student visa holders and to promptly remove anyone who has endorsed or espoused terrorist activity or provided material support to foreign terrorist organizations. The Department’s response, although recognizing that visa holders are “subject to recurrent vetting,” did not commit to taking any action.

In the meantime, you ordered the Department to *cease* removing certain Palestinians from the United States. President Joe Biden, *Deferred Enforced Departure for Certain Palestinians*; Presidential Memorandum of February 14, 2024, 89 Fed. Reg. 12742 (Feb. 20, 2024) (“Presidential Memorandum”), <https://perma.cc/UJ3Y-CC5E>. The Department institutes Deferred Enforced Departure, or DED, “based upon issues that may include, but are not limited to, ongoing civil strife, environmental disaster, or other extraordinary or temporary conditions.” U.S. Citizenship and Immigr. Servs., *Affirmative Asylum Procs. Manual*, sec. III.B.5. (May 2016) (“Asylum Manual”), <https://perma.cc/5RM3-6CTG>.

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“An alien does not need to apply for and be granted DED in order to benefit”; rather, it “is automatic.” *Id.*; see U.S. Citizenship and Immigr. Servs., Implementation of Emp. Authorization for Individuals Covered by Deferred Enforced Departure for Certain Palestinians, 89 Fed. Reg. 26167, 26170 (April 15, 2024), <https://perma.cc/28LB-PZ9W> (“Since DED is a directive to defer removal of an individual, rather than a specific immigration status like Temporary Protected Status, there is no DED application form required for an individual to be covered by DED.”).

“DED is not considered to be a valid immigrant, nonimmigrant, or Temporary Protected Status.” Asylum Manual, *supra*, sec. III.B.5. Rather, it simply “prevents DHS from executing” lawful orders of removal, *id.*, and it directs that persons—here, Palestinians—“who are eligible for DED must be released from DHS detention.” U.S. Citizenship and Immigr. Servs., Adjudicator’s Field Manual, sec. 38.2(j), <https://perma.cc/W7QL-YYNM>. The President’s DED order even makes employment available to “non-U.S. citizens of any nationality, or without nationality, who are Palestinian.” Presidential Memorandum, *supra*, 89 Fed. Reg. at 26167.

Pro-Hamas Chaos on College Campuses

Now, in recent weeks, American universities have been rocked by campus takeovers, displays and chanting of antisemitic slogans, shouts of “We are Hamas,” calls for genocide of the Jewish people, and actual physical violence against Jewish students. See, e.g., Lawrence Richard, *Columbia Univ. Anti-Israel Protests: 5 Dramatic Moments from a Week of Chaos*, New York Post (April 22, 2024), <https://perma.cc/7AUA-NKZA>; Michael Starr, “October 7 is About to Be Every Day”: *Columbia Rally Sees Hamas Support*, Jerusalem Post (April 21, 2024), <https://perma.cc/XJR7-JVCM>. The campus turmoil and inability of law enforcement to protect Jewish students’ safety prompted a Rabbi at Columbia University to “strongly” recommend that the students return home and stay there. Celina Tebor, *Columbia Univ. Faces Full-Blown Crisis as Rabbi Calls for Jewish Students to “Return Home,”* CNN (April 22, 2024), <https://perma.cc/R7NG-7VCJ>. Hundreds have been arrested, and colleges have been forced to cancel or change classes, finals, and graduation ceremonies due to continuing threats. See, e.g., Steve Leblanc and Nick Perry, *USC Cancels Graduation Ceremony and Dozens are Arrested on Other Campuses as Anti-War Protests Grow*, Associated Press (April 25, 2024), <https://perma.cc/J463-4HPK>.

You reportedly “broke [your] silence,” recognizing that “order must prevail.” Steve Holland, *Biden Breaks Silence on College Protests over Gaza Conflict*, Reuters (May 2, 2024), <https://perma.cc/S9E7-YTLP>. This came two weeks after a White House spokesperson recognized that “calls for violence and physical intimidation targeting Jewish students and the Jewish community are blatantly Antisemitic, unconscionable, and dangerous” and “have absolutely no place on any college campus, or anywhere in the United States of America.” Miranda Nazzaro, *White House Condemns ‘Blatantly Antisemitic’ Protests Amid Ongoing Unrest at Columbia*, The Hill (April 21, 2024), <https://perma.cc/8RTD-EAZE>.

Campus Chaos is Fomented by Groups with Ties to Terrorism

This anarchy is neither an accident nor an organic upswell of grassroots activism. See Patrick MacDougald, *The People Setting America on Fire*, Tablet Magazine (May 6, 2024), <https://perma.cc/9QUU-6K8V>. In the months before the lawless demonstrations erupted on colleges across the nation, the national chapter of Students for Justice in Palestine (SJP), which described Hamas's October 7 attack as "a historic win for the Palestinian resistance," issued a "call to action" asking students to protest and consulted student organizers on tactics to sow campus chaos. Tawnell D. Hobbs, et al., *Activist Grps. Trained Students for Months Before Campus Protests*, The Wall Street Journal (May 3, 2024), <https://perma.cc/BD3F-FS72>; Brian Flood, *Here's Where Students for Justice in Palestine Held College Protests this Week*, Fox News (October 13, 2023), <https://perma.cc/XK6Q-FPBE>. SJP is linked to Hamas and Palestinian Islamic Jihad, groups that the U.S. Department of State has designated "foreign terrorist organizations." Dan Diker, *Students for Justice in Palestine Unmasked*, Jerusalem Ctr. for Pub. Affairs (2018), <https://perma.cc/ECB8-2SEA>; *Foreign Terrorist Orgs.*, U.S. Dep't of State, <https://perma.cc/88LJ-J7Y6>; see 8 U.S.C. 1189. Yet the FBI has reportedly declined to say whether it is investigating those who claim to be Hamas. Brianna Lyman, *FBI Won't Say if It's Investigating Self-Declared "Hamas" Terrorists Protesting at U.S. Universities*, The Federalist (April 23, 2024), <https://perma.cc/KG5U-TGKN>.

Deferred Enforced Departure is Lawless and Must Be Reversed

Your deferral of removal of Palestinians is an effort to circumvent the Constitution. Congress—not the President—has "plenary power to make rules for the admission of aliens and to exclude those who possess those characteristics which Congress has forbidden." *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972) (quoting *Boutilier v. Immigr. and Nat. Serv.*, 387 U.S. 118, 123 (1967)). That includes aliens who are in the United States illegally as well as those who are legally present but "endorse[] or espouse[] terrorist activity or persuade[] others to endorse or espouse terrorist activity or support a terrorist organization," 8 U.S.C. 1182(a)(3)(B)(i)(VII), or "knowingly provide[] material support or resources to a foreign terrorist organization, or attempt[] or conspire[] to do so." 18 U.S.C. 2339B(a)(1). Thus, previously admitted foreign students attending American universities who endorse or espouse terrorist activities or support terrorist organizations such as Hamas, are in violation of federal law and deportable for engaging in "terrorist activities." 8 U.S.C. 1227(a)(4)(B). Congress's "power to make policies and rules for exclusion of aliens has long been firmly established." *Kleindienst*, 408 U.S. at 769-70.

Through the Immigration and Nationality Act, 8 U.S.C. 1101 et seq., Congress has created multiple avenues for the Executive Branch to protect aliens whose lives or freedoms would be threatened if they were to return to their home countries. See, e.g., 8 U.S.C. 1158 (asylum); 8 U.S.C. 1254a (temporary protected status); 8 U.S.C. 1231(b)(3) (withholding of removal). Congress has charged the Department with enforcing these laws, 8 U.S.C. 1103(a), and the Supreme Court has permitted it to exercise "prosecutorial discretion" in so doing. See, e.g., *Dep't*

of Homeland Sec. v. Regents of the Univ. of California, 140 S. Ct. 1891 (2020) (holding that rescission of DACA was arbitrary and capricious).

But DED, on the other hand, “has no statutory basis,” U.S. Citizenship and Immigr. Servs., Adjudicator’s Field Manual, sec. 38.2(a), <https://perma.cc/U8VQ-CZCB>, and it does not even purport to be an exercise of prosecutorial discretion. Rather, you have claimed to defer the removal of Palestinians solely under a purported “constitutional authority to conduct the foreign relations of the United States.” Presidential Memorandum, *supra*. But there is no “Foreign Relations Clause” in the Constitution granting you such freewheeling power, *see* U.S. Const., art. 2, and even the *New York Times* recognizes that you have, at most, only “an obscure immigration authority” to defer the removal of Palestinians. *See* Hamed Aleaziz, *Biden Shields Palestinians in the U.S. from Deportation*, N.Y. Times (Feb. 14, 2024), <https://perma.cc/E4SM-9R3C>. Indeed, you have not even asserted any interests bearing on the national security or foreign affairs of the United States, but only the deteriorating “humanitarian conditions in the Palestinian territories” as warrant for the order deferring removal. Presidential Memorandum, *supra*. That is no legal justification.

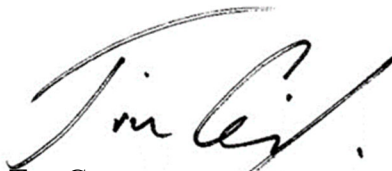
Your deferral of the removal of Palestinians is, quite literally, lawless. “[O]ne does not have to be an originalist to accept the proposition that the Framers, having just gone through a revolutionary war to depose a monarch, did not create a constitution that, in the name of national security or foreign policy, would vest unchecked power in the hands of a single individual.” William P. Marshall, *Eleven Reasons Why Presidential Power Inevitably Expands and Why It Matters*, 88 B.U. L. Rev. 505, 522 (2008). Because DED is a unilateral assertion of presidential fiat, the Executive is “in the least favorable of possible constitutional postures”; your “power is at its lowest ebb,” and such actions will be “scrutinized with caution.” *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637, 638, 640 (1952) (Jackson, J., concurring); *see Dames & Moore v. Regan*, 453 U.S. 654, 668-669 (1981).

To be sure, you have declared DED for Palestinians only for a period of 18 months. Presidential Memorandum, *supra*. But that is of no moment because that order can be extended indefinitely, as DED declarations frequently are. To cite only what is perhaps the most egregious example, Liberian nationals have been either granted Temporary Protected Status or had removal deferred continually for over three decades—since March 27, 1991. *See* U.S. Citizenship and Immigr. Servs., Implementation of Emp. Authorization for Individuals Covered by Deferred Enforced Departure for Liberians, 87 Fed. Reg. 54515, 54516 (Sep. 6, 2022), <https://perma.cc/7XKH-N7GJ>. Indeed, reports that you are considering resettling even more Palestinians in the United States belies any suggestion that DED will be temporary. *See* Colleen Long, *Biden Admin. Weighing Measures to Help Palestinians to Bring Family from Region*, Associated Press (May 1, 2024), <https://perma.cc/BQR8-RK4Z>.

Conclusion

Although certainly not every Palestinian would agree, “[a]lmost three in four Palestinians believe the Oct. 7 attack by Hamas on Israel was correct.” Dan Williams, *Poll Shows Palestinians Back Oct. 7 Attack on Israel, Support for Hamas Rises*, Reuters (Dec. 14, 2023), <https://perma.cc/CSX4-ST55>. Permitting Palestinians who are subject to removal to remain here is both contrary to the will of Congress and may very well fuel the antisemitic conflagration burning on university campuses and across our Nation. Therefore, we urge you to reverse the decision to defer their removal from the United States.


Sincerely,



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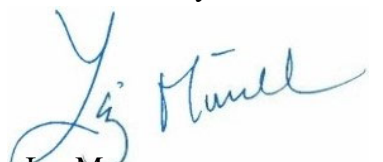
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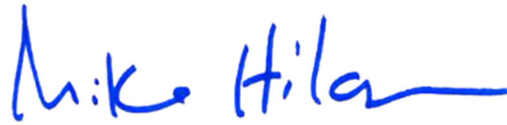
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