

***Terrorizing Migrants:
Five Ways Post-9/11 Legal Precedents Paved the Way for Anti-Immigrant Actions in
the United States***

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Executive Summary

In his second non-consecutive presidential term, Donald Trump has ramped up aggressive immigration enforcement efforts to surveil, detain, harass, and deport foreign nationals inside the United States. For part of this agenda, the administration frequently frames unauthorized entry into the U.S. as “terrorism” and “irregular warfare” meriting a militarized response.

These language choices are not mere rhetoric; rather, they reflect specific law and policy options created and strengthened among all three branches of the U.S. government, on a bipartisan basis, since 9/11. These law and policy options place heightened unchecked discretionary authority within the administration and are particularly ripe for abuse against noncitizen persons of color by immigration authorities, law enforcement agents, and other executive branch officials.

The Trump administration is relying on laws and policies far beyond those described in this paper to effectuate its broader anti-immigrant agenda,² and justifying much of it in national security language.³ But rather than analyzing the entirety of the

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² Beyond the laws and policies discussed in this paper, the administration’s anti-immigrant agenda has so far included terminating Temporary Protected Status for people who cannot safely return to their home countries, deployment of troops and militarized immigration enforcement officers throughout U.S. cities, ramped-up immigrant detention operations, and deportations based on several different provisions of immigration law unrelated to terrorism or national security.

³ For example, President Trump has called what he perceives as overly-loose immigration policies “the single greatest national security threat facing our nation.” Megerian, C., Amiri, F. (2025, November 27). Trump says lax migration policies are top national security threat after National Guard members shot. *Associated Press*.

administration's crackdown on migration, this paper focuses narrowly on parts of that crackdown that involve legal precedent borrowed from the "War on Terror." The paper examines five key post-9/11 precedents in greater detail:

- Conflation of immigration enforcement and counterterrorism;
- Expanded and politicized "terrorist" designation lists;
- Deporting people as "terrorists" without proving actual violent conduct;
- Indefinite detention, torture, and rendition of noncitizens; and
- Anti-democratic concentration of executive national security powers.

These precedents illustrate that many of the Trump administration's anti-immigrant policies are enabled by practices created, tested, and normalized by all three branches of government on a bipartisan basis in the post-9/11 era. While the Trump administration is intensifying and stretching the law in novel ways, it is also following a familiar post-9/11 legal formula: the executive branch decides unilaterally who is and is not a "terrorist," nonwhite noncitizens are disproportionately framed as inherently suspicious and most likely to be treated as "terrorists," and accordingly are subject to abuses including indefinite detention, cruel treatment, and exclusion from the country, with little to no legal protections.

Introduction

In its second term, the Trump administration has launched more than 40 lethal strikes against small boats in the Caribbean Sea and Pacific Ocean that it says carry members of drug cartels, killing at least 157 people as of the time of this writing.⁴ At the start of 2026, the U.S. military also bombed the Venezuelan capital of Caracas and abducted President Nicolas Maduro, transporting him to New York to face U.S. criminal charges.⁵ These military actions are relevant to this discussion of post-9/11 legal precedent and consequences for immigrants for two reasons.

First, the Trump administration views its bombings and mass deportations as part of a unified war effort; namely, a new "war on terror." According to administration officials' public statements, they ascribe fault to transnational cartels and complicit Latin American heads of state for what they perceive as a crisis of unauthorized migration into the U.S.,

<https://apnews.com/article/trump-national-guard-washington-shooting-6548fcb4b6efce59a38eed32b4865>

⁴ Shane, L. (2026, March 17). Pentagon says lethal boat strikes are 'just the beginning' in South, Central America. *Politico*. <https://www.politico.com/news/2026/03/17/pentagon-boat-strikes-south-central-america-00832855>

⁵ Plantz, K. (2026, January 3). Analysis: Was Maduro's abduction legal? *CNN*.

<https://www.cnn.com/world/live-news/venezuela-explosions-caracas-intl-hnk-01-03-26>

framed as an invasion that requires a military response. This was made clear in several day-one Executive Orders signed by President Trump immediately after inauguration. These EOs signaled that the anti-immigrant agenda would be a top priority in President Trump's second term, and also made clear that he views immigration policy as a military and counterterrorism matter. These Inauguration Day Orders included:

- "Protecting the American People Against Invasion" declared that people within the U.S. unlawfully "present significant threats to national security" and are involved in "preparations for terror-related activities."⁶
- "Declaring a National Emergency at the Southern Border of the United States" declared a national emergency at the southern border pursuant to the National Emergencies Act, stating that the flow of "unvetted military-age males from foreign adversaries" and "known terrorists" across the border are among the threats causing "America's sovereignty" to be "under attack."⁷
- "Designating Cartels and Other Organizations as Foreign Terrorist Organizations and Specially Designated Global Terrorists" declared that international cartels and criminal gangs "constitute a national-security threat beyond that posed by traditional organized crime," "have engaged in a campaign of violence and terror," and are similar to "entities engaged in insurgency and asymmetric warfare" citing, among other reasons, the cartels' alleged role in increasing the unauthorized flow of people over the southern U.S. border.⁸
- "Protecting the United States from Foreign Terrorists and Other National Security and Public Safety Threats" states, "the United States must ensure that admitted aliens and aliens otherwise already present in the United States do not advocate for, aid, or support designated foreign terrorists and other threats to our national security," and calls for measures to "protect the American people from the actions of foreign nationals who...provide aid, advocacy, or support for foreign terrorists."⁹
- "Clarifying the Military's Role in Protecting the Territorial Integrity of the United States" described the need to protect against "[u]nchecked unlawful mass migration" and directed the Armed Forces to "prioritize the protection of the sovereignty and territorial integrity of the United States along our national borders."¹⁰ In this EO, President Trump also ordered United States Northern Command (USNORTHCOM, a "War on Terror"-era creation established to provide

⁶ Exec. Order No. 14159, Protecting the American People Against Invasion, 90 Fed. Reg. 8443 (Jan. 20, 2025).

⁷ Proc. No. 10886, Declaring a National Emergency at the Southern Border of the United States, 90 Fed. Reg. 8327 (Jan. 20, 2025).

⁸ Exec. Order No. 14157, Designating Cartels and Other Organizations as Foreign Terrorist Organizations and Specially Designated Global Terrorists, 90 Fed. Reg. 8439 (Jan. 20, 2025).

⁹ Exec. Order No. 14161, Protecting the United States from Foreign Terrorists and Other National Security and Public Safety Threats, 90 Fed. Reg. 8451 (Jan. 20, 2025).

¹⁰ Exec. Order. No. 14167, Clarifying the Military's Role in Protecting the Territorial Integrity of the United States, 90 Fed. Reg. 8613 (Jan. 20, 2025).

military support to homeland security efforts in the wake of the attacks of September 11, 2001¹¹) to come up with a “campaign” that includes “repelling forms of invasion, including unlawful mass migration.”

In its National Security Strategy released in November 2025, the Trump administration further articulated its theory of migration as warfare. Declaring “The era of mass migration is over,” the strategy states that “[b]order security is the primary element of national security” and that “[w]e must protect our country from invasion,” listing “unchecked migration” first as an example of “invasion.”¹² The Strategy further announced a “Trump Corollary to the Monroe Doctrine,” pledging to “restore American preeminence in the Western Hemisphere,”¹³ with an explicit goal of “control[ing] migration.”¹⁴ This is the same “Donroe Doctrine” referenced by the President after the kidnapping of Maduro.¹⁵

A second reason these acts of war are relevant to the present discussion is because of the wide-ranging deportation authorities that the administration potentially may call upon in times of war under current law. Indeed, even before actually initiating military force against cartels or in Venezuela, the Trump administration had already begun invoking wartime legal authority to conduct mass deportations without due process. Namely, President Trump invoked the Alien Enemies Act, a rarely-used law from 1798 that has allowed past presidents to intern or expel foreign nationals from an enemy state without a hearing or other due process, even if they were lawfully present in the U.S. and had committed no crime. This extraordinary deportation authority is permitted only during times that the U.S. is undergoing a declared war, an invasion, or a predatory incursion.¹⁶

President Trump has justified his use of the Alien Enemies Act by declaring that Tren de Aragua of Venezuela in alleged cooperation with “Cártel de los Soles, the Nicolas Maduro regime-sponsored, narco-terrorism enterprise based in Venezuela” is engaged in an “invasion” and “conducting irregular warfare against the territory of the United States” in part because the cartel is “engaged in... mass illegal migration to the United States.”¹⁷

¹¹ U.S. Northern Command. (n.d.). *Our Story*. <https://www.northcom.mil/About/>

¹² White House. (2025). *National Security Strategy of the United States of America*, 11. <https://www.whitehouse.gov/wp-content/uploads/2025/12/2025-National-Security-Strategy.pdf>.

¹³ National Security Strategy, 15

¹⁴ National Security Strategy, 16

¹⁵ Nicas, J. (2025, November 17). The “Donroe Doctrine”: Trump’s Bid to Control the Western Hemisphere. *The New York Times*. <https://www.nytimes.com/2025/11/17/world/americas/trump-latin-america-monroe-doctrine.html>

¹⁶ 50 U.S.C. 21. The best analysis on the Trump administration’s attempts to misuse the Alien Enemies Act is being done by the Brennan Center’s Liberty and National Security Program. See e.g. Ebright, K. (2024, Oct. 9, updated 2025, May 1). The Alien Enemies Act, Explained. *The Brennan Center for Justice*. <https://www.brennancenter.org/our-work/research-reports/alien-enemies-act-explained>.

¹⁷ Pres. Proclamation 10903, Invocation of the Alien Enemies Act Regarding the Invasion of the United States by Tren de Aragua, 90 Fed. Reg. 13033 (March 14, 2025).

Leaning on this authority, the Trump administration rounded up and deported 252 people to the Centro de Confinamiento del Terrorismo (CECOT) prison in El Salvador in the first 100 days of his second term, based on administration claims that those being deported were members of Tren de Aragua.¹⁸ Without a removal hearing or any other due process to which those being deported would normally be entitled, the administration made these determinations and carried out these deportations without presenting evidence in court of each person's alleged involvement with a cartel.¹⁹

It must be emphasized that the Alien Enemies Act is not a post-9/11 legal construction, far from it. Rather, the Trump administration's invocation of this law illustrates the degree to which warfare overseas is connected to immigration law within the U.S., and how the mis-application of a war paradigm, borrowing from and building upon post-9/11 era presidents' application of a war paradigm to address "terrorism," has associated implications for civil immigration enforcement. But, as this paper will demonstrate, the Alien Enemies Act is not the only way that domestic immigration law and policy are being misused by the Trump administration in its efforts to treat cartels like "terrorist groups" and to open a new front in the "War on Terror" as a result.

Five Post-9/11 Precedents Enabling the Trump Administration's Anti-Immigrant Agenda

1. Conflation of immigration enforcement and counterterrorism

In the post-9/11 era, the U.S. government has consistently authorized programs nominally for counterterrorism purposes that are then almost exclusively utilized by immigration agents and law enforcement personnel within the U.S. to surveil, harass, detain, ban or deport noncitizens on civil immigration grounds, unconnected from crimes of terrorism. These programs have set precedent that frames immigrants as inherently suspicious potential "terrorists" until proven otherwise.

The earliest example occurred in the immediate days after September 11, 2001 when the FBI, led by then-Director Robert Mueller, orchestrated a mass investigation into

¹⁸ Turkewitz, J., Romero, T., Urdaneta, S., Herrera, I., & Fernandez, A. L. (2025, November 8). Inside Trump's Deportation of Venezuelans: Four Months in a Salvadoran Prison. *The New York Times*.

<https://www.nytimes.com/2025/11/08/world/americas/el-salvador-prison-migrants.html>

¹⁹ Reichlin-Melnick, A. (2025, July 21). *United States Frees Venezuelans Held in El Salvador Following Prisoner Swap* - American Immigration Council. American Immigration Council.

<https://www.americanimmigrationcouncil.org/blog/united-states-frees-venezuelans-el-salvador-prisoner-swap>. The Supreme Court has since held that those being targeted for removal under the AEA are entitled to at least some level of due process. *Trump v. J. G. G.*, (Supreme Cour. 2025, April 7).

the attacks. Leaning primarily on the laws of immigration enforcement rather than those provided by criminal law and procedure, the FBI's Pentagon/Twin Towers Bombing Investigation ("PENTTBOM") exclusively targeted Arab, Muslim and South Asian immigrants in a dragnet roundup, subjecting them to secretive detention at locations inside the U.S.²⁰ The former George W. Bush administration disclosed the existence of about 1,200 detained individuals before ending the practice of publicly releasing such information about the program, and thus the true total of those impacted remains unknown.²¹ Many were held for weeks or even months without any charges at all.²² Rather than following an "innocent until proven guilty" standard, PENTTBOM allowed U.S. officials to mass detain the men until they were "cleared" of terrorism links by the FBI.²³ People who were swept up and detained during that time have alleged abuse and harsh conditions during their time of confinement. Some individuals who were guarding those detainees even explicitly stated they were abusing the immigrant detainees in retaliation for 9/11, despite no evidence of a connection between those rounded up and the attacks.²⁴ In the end, the program did not result in the conviction of anyone actually involved in 9/11 or any other act of terrorism but instead resulted in hundreds of arrests and closed-door trials for minor, technical immigration law violations such as taking too few academic credits under a student visa.²⁵

A second key example was the National Security Entry and Exit Registration System (NSEERS), launched in 2002 under the Bush administration.²⁶ This program, authorized in part by the USA PATRIOT Act,²⁷ required lawful noncitizen immigrants almost entirely from Muslim-majority countries²⁸ to register with the government, provide biometric data,

²⁰ U.S. Department of Justice Office of Inspector General. (2003). *The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks*. <https://oig.justice.gov/sites/default/files/legacy/special/0306/full.pdf>. ("OIG Report").

²¹ OIG Report, 1.

²² OIG Report, 35.

²³ OIG Report, 37.

²⁴ Wadhia, S. (2010). Business As Usual: Immigration and the National Security Exception *Penn State Law Review*, 114. <https://www.pennstatelawreview.org/articles/114/114%20Penn%20St.%20L.%20Rev.%201485.pdf>

²⁵ Amnesty International. (March 14, 2002). *USA: Amnesty International's concerns regarding post September 11 detentions in the USA*. <https://www.amnesty.org/en/documents/amr51/044/2002/en/>.

²⁶ For a helpful critical discussion of the NSEERS program, see, Penn State Law Immigrant's Rights Clinic and Rights Working Group. (2012). *The NSEERS Effect: A Decade of Racial Profiling, Fear, and Secrecy*.

²⁷ The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) of 2001, Pub. L. 107-56, 115 Stat. 272 § 414 (2001). Section 414 of the USA PATRIOT Act expanded and entrenched an entry-exit database system that was originally contemplated in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), Pub. L. No. 104-208, 110 Stat. 3009 (1996).

²⁸ Immigrants from 25 countries were targeted by NSEERS, 24 of them being Muslim-majority countries (Iran, Iraq, Libya, Sudan, Syria, Afghanistan, Algeria, Bahrain, Eritrea, Lebanon, Morocco, Oman, Qatar, Somalia, Tunisia, United Arab Emirates, Yemen, Pakistan, Saudi Arabia, Bangladesh, Egypt, Indonesia, Jordan, and Kuwait). The other designated country was North Korea.

and subject themselves to interrogation and tracking. A failure to comply fully with NSEERS requirements, whether through fear or ignorance or otherwise, caused many people to face consequences such as denial of future immigration benefits later in life, even after the expiration of the program itself.²⁹

Ultimately, zero NSEERS registrants were convicted of any terrorism crimes, but more than 13,000 were deported from the U.S., most for minor violations of immigration paperwork or process.³⁰ Although the Obama administration discontinued NSEERS enforcement in 2011, the program's infrastructure remained active, impacting many law-abiding immigrants for well over a decade until the program's defunct infrastructure was entirely gutted in the days before Donald Trump's first inauguration as president. This was due largely to urging by civil rights advocates³¹ concerned that NSEERS could easily be revived to help then-candidate Trump achieve his vision of a Muslim registry³² once in the White House.

Perhaps the most prominent example is the post-9/11 invention of the Department of Homeland Security and placement of Immigrations and Customs Enforcement (ICE) within that new department. Barely a week after the attacks of September 11, 2001, an Office of Homeland Security was created inside the White House.³³ In November 2002, Congress passed the Homeland Security Act, formally consolidating 22 separate agencies and departments into a single standalone Cabinet-level Department of Homeland Security. The statute creating DHS listed the first three mandates of the new department's mission as "prevent[ing] terrorist attacks within the United States; reduc[ing] the vulnerability of the United States to terrorism;" and "minimiz[ing] the damage, and assist[ing] in the recovery, from terrorist attacks that do occur within the United States."³⁴

Accordingly, the first director chosen to lead ICE was a former New York terrorism prosecutor who had been involved with the aforementioned PENTTBOM post-9/11 roundup of Muslim immigrants. But just as officials created that program nominally as a

²⁹ Wadhia, S. (2016, December 12). Shutting Down Special Registration. *Medium*.

<https://shobawadhia.medium.com/shutting-down-special-registration-e40d25e9177b#4j7bo4s3j>.

³⁰ Allam, H. (2016, December 8). Before Trump, there was a Muslim registry. It caught no terrorists. *Sacramento Bee*. <https://www.sacbee.com/news/article119755693.html>

³¹ Lin, J. (2016, December 9). Obama Can Stop the Trump Administration From Targeting and Discriminating Against Muslim and Arab Immigrants. *American Civil Liberties Union*.

<https://www.aclu.org/news/immigrants-rights/obama-can-stop-trump-administration-targeting>

³² Gabriel, T. (2015, November 21). Donald Trump Says He'd "Absolutely" Require Muslims to Register. *First Draft, The New York Times*. <https://archive.nytimes.com/www.nytimes.com/politics/first-draft/2015/11/20/donald-trump-says-hed-absolutely-require-muslims-to-register/>

³³ *Creation of the department of homeland security*. (2023). Department of Homeland Security.

<https://www.dhs.gov/creation-department-homeland-security>

³⁴ Homeland Security Act of 2002, P.L. 107-296

counterterrorism effort but then utilized it almost entirely to conduct routine immigration enforcement of people with no connection to acts of violence, the new ICE agency immediately went to work conducting raids “not on suspected terror cells, but on businesses employing undocumented immigrants.”³⁵ By moving immigration enforcement away from other departments such as Justice and Transportation and reclassifying it under the umbrella of “homeland security,” Congress and the executive worked in tandem to conflate counterterrorism with routine immigration enforcement, and to formalize in the law a framing of foreign nationals entering the U.S. as inherently suspicious potential terrorists.

The disconnect between DHS’ founding mission and its actual practices is clear from the numbers. One estimate calculates that DHS and its partner agencies have thwarted more than 200 terror attacks in the two decades after 9/11,³⁶ though these cases must be deeply scrutinized given the federal government’s longtime practice of entrapping people and claiming success in stopping attacks that were never actually going to occur without prodding by undercover agents.³⁷ Regardless, by comparison, DHS says it has removed more than 6 million people from the U.S. since its creation,³⁸ and the most recent data provided by ICE indicates that the U.S. government has not alleged links to terrorism or even conventional criminal records against most of the people removed.³⁹

These examples demonstrate how the very idea of a “terrorist” has come to be normalized not just in the public’s imagination⁴⁰ but also consistently in the law as foreign and nonwhite. Even in the early days of the Bush administration, one scholar noted that “[t]he new terrorism policy sends the message that immigrants of certain nationalities

³⁵ Ackerman, S. (2022, 90). *Reign of Terror*. Penguin. Spencer Ackerman’s *Reign of Terror* has by far the best available documentation of how DHS utilized counterterrorism language and rationale to instead terrorize immigrants from its very earliest days and is a seminal treatise on how the “War on Terror” laid the foundation for the Trump administration’s nativism and anti-immigrant agenda.

³⁶ Dahl, E. (2021). *Assessing the Effectiveness of the Department of Homeland Security, 20 Years After 9/11*. Costs of War Project, Watson School of International and Public Affairs, Brown University.

[https://costsofwar.watson.brown.edu/sites/default/files/papers/Assessing-DHS Dahl Costs-of-War.pdf](https://costsofwar.watson.brown.edu/sites/default/files/papers/Assessing-DHS%20Dahl%20Costs-of-War.pdf)

³⁷ Human Rights Watch. (2014). *Illusion of Justice*. <https://www.hrw.org/report/2014/07/21/illusion-justice/human-rights-abuses-us-terrorism-prosecutions>

³⁸ Office of Homeland Security Statistics. This number is tallied from the “removals” data available at <https://ohss.dhs.gov/topics/immigration/immigration-enforcement/monthly-tables> and <https://ohss.dhs.gov/topics/immigration/yearbook/2022/table39>. Firm data beyond the year 2024 has not been made available, and the Trump administration has made it more difficult than ever to access immigration statistics. Santana, R. (2026, March 15). As Trump pushes deportations, immigration data becomes harder to find. *Associated Press*. <https://apnews.com/article/trump-immigration-data-numbers-deportations-000a289890193c94474f19b877eb37d1>

³⁹ *ICE Statistics*. (2026). ICE. <https://www.ice.gov/statistics>

⁴⁰ See e.g. Gladstone, R. (2015, June 18). Many Ask, Why Not Call Church Shooting Terrorism? *The New York Times*. <https://www.nytimes.com/2015/06/19/us/charleston-shooting-terrorism-or-hate-crime.html>; Aziz, S. F. (2009). Sticks and Stones, The Words That Hurt: Entrenched Stereotypes Eight Years after 9/11. *CUNY Law Review*, 13(1), 33.

should be viewed as potential terror suspects first and as welcome newcomers second, if at all.”⁴¹ Africana Studies scholar Atiya Husan describes counterterrorism itself as “an organizing principle for delineating and managing problematic populations domestically and internationally,” saying that the term “terrorist” is inherently “a racial, epistemic, ideological, and material *other*.”⁴²

Legal scholar Shirin Sinnar had thoroughly documented the different ways that U.S. law treats “international” politically-motivated violence as opposed to “domestic terrorism,” with the effect of reinforcing the legal concept “terrorism” as inherently foreign. Because there are more powerful and coercive tools available in the law to fight “international” terrorism, this has the effect of subjecting people of color to more suspicion, surveillance, and state violence in the name of countering terrorism than that directed at white people. Sinnar concludes “These skewed representations - facilitated by the binary legal regime - fuel exclusionary and discriminatory policies, like President Trump’s travel bans, that target Muslims and immigrants while minimizing attention to racial violence afflicting communities of color.”⁴³

The aforementioned Muslim ban from President Trump’s first term formally barred the issuance of visas to people primarily from Muslim-majority countries, asserting that those countries had insufficient counterterrorism vetting processes.⁴⁴ The ban was the fulfillment of then-candidate Trump’s 2015 campaign promise to enact a “total and complete shutdown of Muslims entering the United States.”⁴⁵ This policy built upon the structures that came before it, but greatly expanded legal presumptions that people of particular races, religions and nationalities carry inherent danger.

Law and policy under the second Trump presidential term has extended this precedent to its logical conclusion by framing migration itself as terrorism. And nearly 25 years after its post-9/11 creation, ICE has been unleashed and empowered to roam

⁴¹ Tumlin, K. C. (2004). Suspect First: How Terrorism Policy Is Reshaping Immigration Policy. *California Law Review*, 92(4), 1173. <https://doi.org/10.2307/3481320>

⁴² Husain, A. (2025, June 10). Terror and Abolition. *Terror and Abolition*. *Boston Review*. <https://www.bostonreview.net/articles/atiya-husain-terror-and-abolition/>

⁴³ Sinnar, S. (2019). Separate and Unequal: The Law of “Domestic” and “International” Terrorism. *Michigan Law Review* (117), 1333.

⁴⁴ Holland, S. & Gibson G. (2016, June 13). Trump urges ban on immigration from countries with “history of terrorism.” *Reuters*. <https://www.reuters.com/article/legal/trump-urges-ban-on-immigration-from-countries-with-history-of-terrorism-idUSL1N1951QZ/>

⁴⁵ Colvin, J. (2015, December 7). Trump calls for ban on all Muslims entering U.S. *PBS NewsHour*. <https://www.pbs.org/newshour/politics/trump-calls-for-complete-shutdown-on-muslims-entering-u-s>

American streets, snatching and disappearing people they perceive as unlawfully present, often based solely on race, and often without verifying their immigration status.⁴⁶

2. Expanded and politicized “terrorist” designation lists

The label of “terrorist” is more than a powerful rhetorical tool, as it has become a legal term of art. Beginning in the late 1990s and expanding dramatically in the post-9/11 era, the executive branch of the U.S. government has consolidated and exercised nearly unchecked power to officially designate individuals and groups as “terrorist.”

The National Emergencies Act and the International Emergency Economic Powers Act (IEEPA) provide the president with authority to declare national emergencies and subsequently unlock the power to enact economic sanctions related to those national emergencies. Former President George W. Bush utilized these authorities to create the Specially Designated Global Terrorists (SDGT) list soon after the attacks of September 11, 2001, with the stated purpose of targeting and disrupting global terrorist networks.⁴⁷

The Foreign Terrorist Organization (FTO) list was not created post-9/11 and was instead a product of the Antiterrorism and Effective Death Penalty Act of 1996. Congress passed this law after Timothy McVeigh’s bombing of the Alfred P. Murrah Federal Building in Oklahoma City, killing 168 people, many of them children.⁴⁸ However, the law was expanded post-9/11 through the USA PATRIOT Act and the Intelligence Reform and Terrorism Prevention Act of 2004, creating the current iteration of the FTO list and its wide-ranging legal consequences.

Terrorist designation lists are particularly prone to politicization, weaponization and abuse, primarily because “terrorism” is a vague and unhelpful term of law.⁴⁹ To designate an FTO, the administration must find that the group engages in “terrorist activity,” with a definition that is wide-ranging enough to be regarded by at least one scholar as allowing “almost any group to be designated.”⁵⁰ To designate an individual or

⁴⁶ Cooper, R. (2026, January 15). Trump’s Ethnic Cleansing Campaign in Minneapolis. *The American Prospect*. <https://prospect.org/2026/01/15/trumps-ethnic-cleansing-campaign-minneapolis/>

⁴⁷ Exec. Order No. 13224, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, 66 Fed. Reg. 49079 (2001, September 23).

⁴⁸ Federal Bureau of Investigation. (2016). *Oklahoma city bombing*. <https://www.fbi.gov/history/famous-cases/oklahoma-city-bombing>

⁴⁹ For a broader critique of terrorism designation lists, see Beavers, E. (2025). The Danger in Designations: U.S. Terrorism Designation Lists in Gaza and Beyond. *American University National Security Law Brief*.

⁵⁰ Graber, S. (2003). Teaching Terrorists: How United States Counterterrorism Law Violates International Humanitarian Law. *Yale International Law Journal*, 48, 153. Indeed, so long as a group is foreign and engages in “any activity that is unlawful under U.S. law or the laws of the place where it was committed and involves: hijacking or sabotage of an aircraft, vessel, vehicle or other conveyance; hostage taking; a violent attack on an

group as “terrorist” on the SDGT list, the administration must find that a person or group has “committed, or pose[s] a significant risk of committing, acts of terrorism” as well as those who “assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of” terrorism, again defined broadly.⁵¹

As previously discussed, Donald Trump has elected to exercise these powers to target transnational cartels, explaining in part that “[t]he Cartels functionally control, through a campaign of assassination, terror, rape, and brute force nearly all illegal traffic across the southern border of the United States.”⁵² Groups that the administration has designated as “terrorist” include Tren de Aragua, Mara Salvatrucha (MS-13), Cartel de Sinaloa, Cartel de Jalisco Nueva Generación, Carteles Unidos, Cartel de Noreste, Cartel del Golfo, and La Nueva Familia Michoacana.⁵³ On November 25, 2025, Secretary Rubio announced that “Cartel de los Soles,” a group the administration alleges works with President Maduro, would also be designated as an FTO.⁵⁴

This is an unusual use of terrorist designation power, since even the vague definitions governing the terrorist designation lists include the requirement that designated groups engage in violence for a political purpose. By contrast, drug cartels use violence primarily for private gain.⁵⁵ Further, at least one of the designated groups appears to not even be an actual group at all. Experts say that “Cartel de las Soles” is a figure of speech in Venezuela referring to corrupt government officials, not a literal cartel.⁵⁶ Tellingly, in its pending court case against President Maduro, the Trump administration has dropped allegations that “Cartel de las Soles” is a terrorist group, likely to avoid litigating

internationally protected person; assassination; or the use of any biological agent, chemical agent, nuclear weapon or device, or explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain), with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property . . . [and] any threat, attempt, or conspiracy to do any of these activities,” they can be designated as a terrorist group. 8 U.S.C. § 1182(a)(3)(B)(ii).

⁵¹ Exec. Order No. 13224. “Terrorism” here is defined as “an activity that (1) involves a violent act or an act dangerous to human life, property, or infrastructure; and (2) appears to be intended to intimidate or coerce a civilian population; to influence the policy of a government by intimidation or coercion; or to affect the conduct of a government by mass destruction, assassination, kidnapping, or hostage-taking.”

⁵² Exec. Order No. 14157

⁵³ U.S. Department of State. (2025, February 20). *Designation of International Cartels*.

<https://www.state.gov/designation-of-international-cartels/>

⁵⁴ U.S. Department of State. (2025, November 17). *Press Statement: Terrorist Designation of Cartel de los Soles*.

<https://www.state.gov/releases/office-of-the-spokesperson/2025/11/terrorist-designations-of-cartel-de-los-soles>

⁵⁵ Rexton Kan, P. (2020). El Chapo Bin Laden? Why Drug Cartels are not Terrorist Organisations.

<https://icct.nl/publication/el-chapo-bin-laden-why-drug-cartels-are-not-terrorist-organisations>
International Centre for Counter-Terrorism (ICCT).

⁵⁶ Savage, C. (2025, November 18). Trump Team Calls Maduro a “Cartel” Boss. That Word Doesn’t Mean What You Think. *The New York Times*. <https://www.nytimes.com/2025/11/18/us/politics/trump-maduro-drug-cartel.html>

its accuracy.⁵⁷ Nonetheless, the group remains officially designated as “terrorist,” highlighting the degree to which U.S. law allows presidents wide latitude to name groups as “terrorists” consistent with their individual political agendas, without meaningfully demonstrating that the group either engages in political violence or is even a group at all. The next section explains why this politicized “terrorist” designation power is so significant for immigration law purposes.

3. *Departing people as “terrorists” without proving actual violent conduct*

After Afghan national Rahmanullah Lakanwal ambushed and shot two National Guard members in Washington, D.C. in 2025,⁵⁸ President Trump pledged to launch a “reverse migration” that “remove[s] anyone who is not a net asset to the United States,” a further ramping-up of the already-existing anti-immigrant agenda.⁵⁹ Echoing the earlier NSEERs program and Muslim Bans, U.S. Citizenship and Immigration Services (USCIS) subsequently released a policy memorandum outlining the criteria for this forthcoming “hold and review” of all immigration benefit requests from foreign nationals of 19 countries.⁶⁰ In a hearing before the House Committee on Homeland Security, National Counterterrorism Center Director Joe Kent testified that, through that review, the administration had already identified about 18,000 “known and suspected terrorists” inside the U.S. subject to deportation.⁶¹

This newly-announced “terrorist” deportation policy relies in part on immigration law provisions that were created after 9/11. Prior to 9/11, immigration law already contained provisions to exclude or remove noncitizens for counterterrorism purposes from

⁵⁷ Savage, C. (2026, January 5). Justice Dept. Drops Claim That Venezuela’s “Cartel de los Soles” Is an Actual Group. *The New York Times*. <https://www.nytimes.com/2026/01/05/us/trump-venezuela-drug-cartel-de-los-soles.html>

⁵⁸ Harvey, L. (2025, November 27). What is Operation Allies Welcome, the program officials say brought the DC shooting suspect to the US? *CNN*. <https://www.cnn.com/2025/11/27/us/operation-allies-welcome-dc-shooting-hnk>

⁵⁹ U.S. Citizenship and Immigration Services. (2025, December 2). *Policy Memorandum, Hold and Review of all Pending Asylum Applications and all USCIS Benefit Applications Filed by Aliens from High-Risk Countries*. <https://www.uscis.gov/sites/default/files/document/policy-alerts/PM-602-0192-PendingApplicationsHighRiskCountries-20251202.pdf>

⁶⁰ These countries had already been identified in a Presidential Proclamation on June 4, 2025, restricting migration from those countries in whole or in part as a follow-up to Executive Order 14161 pledging to protect the country from foreign nationals “who intend to commit terrorist attacks, threaten our national security, espouse hateful ideology, or otherwise exploit the immigration laws for malevolent purposes.” White House. (2025, June 4). *Restricting the Entry of Foreign Nationals to Protect the United States from Foreign Terrorists and Other National Security and Public Safety Threats*. <https://www.whitehouse.gov/presidential-actions/2025/06/restricting-the-entry-of-foreign-nationals-to-protect-the-united-states-from-foreign-terrorists-and-other-national-security-and-public-safety-threats/>

⁶¹ Joseph C. Kent, Dir., Nat’l Counterterrorism Ctr. (2025, December 11). *Worldwide Threats to the Homeland: Hearing before the H. Comm. On Homeland Sec., 119th Cong.* available at: <https://www.dni.gov/index.php/newsroom/press-releases/press-releases-2025/4127-pr-42-25>

the U.S. However, those provisions required that the people being excluded or deported from the U.S. be involved in specific acts of terrorism violence.⁶² Soon after 9/11, however, Congress included in the USA PATRIOT Act amendments to immigration law that allow deportations of foreign nationals otherwise lawfully present based not on any violent conduct, but rather based on their alleged connections to groups the U.S. government has designated as “terrorist,” as well as deportation authorities against people who say or do something the U.S. government considers to be supportive of “terrorist activity.”⁶³ This critical change expanded immigration’s counterterrorism provisions from a basis solely on violent conduct to include grounds based on otherwise lawful association and speech that could be loosely connected to designated “terrorists.”

These changes allowed noncitizens otherwise eligible for or in possession of lawful immigrant status to be excluded or deported from the U.S. if they were determined to be “representatives” or “members” of an organization officially designated as “terrorist” or unilaterally determined as such by immigration officials.⁶⁴ They can also be excluded or deported if they are determined to have provided “material support” to a designated terror organization, in certain cases even if they didn’t know the organization was designated as terrorist and even if the support was provided under duress.⁶⁵ These same criteria also potentially subject noncitizens undergoing removal proceedings for other purposes to indefinite detention in immigration custody without bond or opportunity to seek release, even if they are pursuing lawful status such as asylum.⁶⁶ People who have previously been affected by these post-9/11 counterterrorism changes to immigration law when trying to enter the country include Iraqi interpreters for U.S. troops,⁶⁷ victims of forced labor by violent armed groups in El Salvador,⁶⁸ and Nelson Mandela.⁶⁹

⁶² See Cole, D. (2002). *Enemy Aliens. Stanford Law Review*, 54(5), 953.

⁶³ Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001, Pub. L. No. 107-56 Sec. 411

⁶⁴ This provision allows a person to be excluded or removed from the U.S. even if a group they are alleged to associate with is not on an official “terrorism” list but is found by the immigration judge to have engaged in virtually any criminal use of a weapon or act of violence against persons or property. 8 U.S.C. § 1182(a)(3)(B)(vi)(III)

⁶⁵ § 1182(a)(3)(B)(i)-(iv). (“Material support” for these purposes is defined as “an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training”).

⁶⁶ 8 U.S.C. § 1226(c)(1)(D) (referencing § 1182(a)(3)(B) and § 1227(a)(4)(B), the counterterrorism inadmissibility and removability provisions, respectively).

⁶⁷ DeYoung, K. (2008, March 23). Stalwart Service for U.S. in Iraq Is Not Enough to Gain Green Card. *Washington Post*. <https://www.washingtonpost.com/archive/national/2008/03/23/stalwart-service-for-us-in-iraq-is-not-enough-to-gain-green-card/80683dcc-45b5-4dab-8925-d6f3b06561de/>

⁶⁸ Krajewski, J. (2019, June 12). A Victim of Terrorism Faces Deportation for Helping Terrorists. *The New Yorker*. <https://www.newyorker.com/news/news-desk/a-victim-of-terrorism-faces-deportation-for-helping-terrorists>

⁶⁹ Mandela required a high-level waiver to enter the United States until 2008, when Congress took action to stipulate that the African National Congress, which had once endorsed armed struggle against racist

Thus, if the Trump administration exercises a maximalist interpretation of these provisions, its announced “hold and review” of immigration cases could result in mass removal from the country of “terrorist” noncitizens who involuntarily paid money to cartels at some point in their lives, whose family remittances have crossed hands with cartel-controlled actors, who have family members or other connections to a designated cartel but no involvement themselves, or who have unwillingly been pressed into service of a cartel at some point.⁷⁰ In short, those fleeing cartel violence could be forced to return to it on a massive scale.

Even before the administration’s recent announcement that it would be specifically reviewing immigration cases from 19 countries for evidence of “terrorism” to justify deportations, there is evidence that the second Trump presidential term was already relying on the authorities discussed in this section in novel ways. It is difficult to holistically assess the frequency of this or any other administration’s use of these exact counterterrorism legal authorities to detain and deport, as immigration courts’ decisions are mostly hidden from public view.⁷¹

Nonetheless, limited quantitative data indicates that, compared to other post-9/11 presidents, the Trump administration has more frequently relied on terrorism charges to initiate deportations.⁷² Further, some immigration cases do make their way into federal courts and thus become public information. This can happen through an extensive and lengthy appeals process or when claims are made that exceed immigration courts’ scope, such as habeas petitions or constitutional grievances. In the first year of the Trump administration, there has been a flood of litigation around an administration policy that expansively interprets its authority to indefinitely detain “criminal aliens” including those categorized as “terrorists.”⁷³ Through these cases, as well as reporting by journalists who have gotten access to otherwise-hidden documents, there is anecdotal evidence about how the Trump administration is utilizing the counterterrorism immigration enforcement powers discussed in this section.

apartheid, no longer counted for purposes of a “terrorist group” despite otherwise meeting the definition in U.S. immigration law. See Waxman, O. B. (2018, July 18). The U.S. Government Had Nelson Mandela on Terrorist Watch Lists Until 2008. Here’s Why. *Time*. <https://time.com/5338569/nelson-mandela-terror-list/>

⁷⁰ The Brennan Center has a helpful analysis outlining some of these possibilities. Levinson-Waldman, R. The Dangerous Sweep of Trump’s Plan to Designate Cartels as Terrorist Organizations. *The Brennan Center for Justice*. (2025, February 6). <https://www.brennancenter.org/our-work/analysis-opinion/dangerous-sweep-trumps-plan-designate-cartels-terrorist-organizations>

⁷¹ See Sayed, F.W. (2023). The Immigration Shadow Docket. *Northwestern University Law Review*. 117, 893.

⁷² See Appendix 1, including important limitations on how to interpret this data.

⁷³ Cheney, K. (2025, November 28). More than 220 judges have now rejected the Trump admin’s mass detention policy. *Politico*. <https://www.politico.com/news/2025/11/28/trump-detention-deportation-policy-00669861>

In one case, the federal government is subjecting an undocumented immigrant with no criminal history to prolonged immigration detention pending deportation based in part on claims he provided illegal “material support” to terrorists. This individual fled El Salvador to escape mistreatment from MS-13 and, as evidence of its terrorism allegations, the government points to the fact that, as a child, he on a few occasions gave about \$25 to MS-13 gang members who harassed and threatened him for the money.⁷⁴ Another person from El Salvador was forced under threat of violence to join MS-13 for a brief time and fled to the U.S. to escape. He also had no criminal history since arriving in the U.S. and is challenging his lengthy immigration detention while the government seeks to deport him. The administration’s lawyers point to his involuntary membership in MS-13 as proof of his participation in terrorism to justify indefinite detention.⁷⁵ Many cases involve people from Venezuela who the Trump administration claims without evidence are members of cartel Tren de Aragua and thus indefinitely detainable without bond as members of a “terrorist” organization.⁷⁶

The administration is also deporting a Muslim community leader who has been in the U.S. lawfully for more than 30 years based on a decades-old charitable donation of about \$65 that he made to a Muslim organization that was later controversially designated as “terrorist” over claims that its humanitarian aid was processed by people with ties to designated terrorist organization Hamas.⁷⁷ The administration has also accused prominent Haitian politician and lawful permanent resident of the U.S. Pierre Boulos of ties to a Haitian armed group that the administration designated as “terrorist” in May 2025 as part of its justification for seeking to deport him, without publicly releasing evidence of those ties or otherwise charging him with a crime.⁷⁸ ICE raided a child’s birthday party and arrested several people present, claiming it was actually a terrorist gathering of Tren de Aragua members — a claim that the government has still not substantiated.⁷⁹ Multiple federal agencies participated in a militarized raid on an apartment building in Chicago, complete

⁷⁴ J.M.P. v. Arteta, No. 2025 WL 2984913 (S.D.N.Y. Oct. 23, 2025).

⁷⁵ M.P.L. v. Arteta, 2025 WL 3288354 (S.D.N.Y. Nov. 25, 2025).

⁷⁶ See e.g., J.G.O. v. Francis, 2025 WL 3040142 (S.D.N.Y. Oct. 28, 2025); W.M.M. v. Trump, 154 F.4th 207 (5th Cir. 2025).

⁷⁷ Ahmed, A. (2025, October 3). Trump’s ICE Has Arrested a Pillar of the Dallas Muslim Community. I Grew Up Hearing His Calls For Compassion. *Texas Observer*. <https://www.texasobserver.org/ice-marwan-marouf-dallas-trump/>; Hollander, N. (2014). The Holy Land Foundation Case: The Collapse of American Justice. *Washington and Lee Journal of Civil Rights and Social Justice*, 20, 45.

⁷⁸ Boulos was born in the U.S., renounced his citizenship in 2020 to pursue the presidency in Haiti, then re-applied for U.S. residency in 2024. Coto, D. (2025, July 21). US immigration agents arrest former Haitian presidential hopeful over alleged gang ties. *Associated Press*. <https://apnews.com/article/reginald-boulos-arrested-haiti-ice-florida-62a8fdaf44df21541a9eaac333462f51>

⁷⁹ D’Annunzio, F. (2025, September 22). Officials Said They Busted a Tren de Aragua Party. Attendees Beg to Differ. *The Texas Observer*. <https://www.texasobserver.org/officials-tren-de-aragua-party-attendees-differ>

with a Blackhawk helicopter and flash-bang grenades, based on assertions that designated terrorist organization Tren de Aragua members resided there.⁸⁰

There are other cases that have received media attention in which the administration asserted counterterrorism rationale publicly for deportation efforts, but may or may not have backed up these claims in the legal proceedings.⁸¹ Maryland resident Kilmar Abrego Garcia's case received media attention after he was removed from the U.S. to CECOT in El Salvador after the administration stated, and the Supreme Court concurred, that he had been deported "improperly" and in an "administrative error."⁸² After first conceding that there was no reason to deport him, the administration's publicly-available rationale for its continued efforts to remove Abrego Garcia have since shifted to an assertion that he was a member of MS-13 and thus removable as a terrorist. "When President Trump declared MS-13 to be a foreign terrorist organisation, that meant that (Abrego Garcia) was no longer eligible, under federal law ... for any form of immigration relief in the United States," White House Deputy Chief of Staff Stephen Miller said.⁸³ However, the administration did not make this or any other case in court before actually removing him to CECOT.⁸⁴

The post-9/11 immigration law changes also potentially open the door for deportations based on the immigrant's peaceful political speech and activity that the administration determines to amount to "support" for terrorism. The Trump administration is detaining and seeking to deport a man lawfully residing in the U.S. under DACA (Deferred Action for Childhood Arrivals) solely because of his pro-Palestine posts on Instagram, which the government characterizes as illegally "espousing terrorist activity."⁸⁵ There have been other well-publicized cases of the administration seeking to deport lawfully-present noncitizen students and scholars such as Mahmoud Khalil, Yunseo Chung,

⁸⁰ Sanchez, M., Cohen, J.S., Miller, T.C., Rotella, S., Elba, M. (2025, November 13). "I Lost Everything": Venezuelans Were Rounded Up in a Dramatic Midnight Raid but Never Charged With a Crime. *ProPublica*. <https://www.propublica.org/article/chicago-venezuela-immigration-ice-fbi-raids-no-criminal-charges>

⁸¹ Unless the administration has made public the specific grounds for deportation, it is unclear precisely which legal authorities it is relying upon in each removal case.

⁸² Demirjian, K., Cameron, C. (2025, August 25). What to Know About Abrego Garcia and His Second Detention. *The New York Times*. <https://www.nytimes.com/article/abrego-garcia-trump-deportations-el-salvador.html>

⁸³ Ramirez Uribe, M. (2025, April 13). Did US courts back Kilmar Abrego Garcia's El Salvador deportation? *PolitiFact*. <https://www.aljazeera.com/news/2025/4/15/did-us-courts-back-kilmar-abrego-garcias-el-salvador-deportation>

⁸⁴ Abrego Garcia has since been returned to the U.S., but the administration has persisted in its efforts to remove him. This time, the administration has dropped claims of involvement in terrorism. *United States of America, v. Kilmar Armando Abrego Garcia*, 2025 WL 1605630 (2025), Indictment (demonstrating the government has most recently charged him with crimes unrelated to terrorism).

⁸⁵ Ackerman, S. (2025, November 11). ICE Caged This Man For His Instagram Posts and Likes. *Forever Wars*. <https://www.forever-wars.com/ice-caged-this-man-for-his-instagram-posts-and-likes/>

Badar Khan Suri, and Rümeyşa Öztürk solely for their activities critiquing and protesting U.S. and Israeli military policies. For the infractions necessitating these deportations, the administration has pointed to these individuals' peaceful political activities such as organizing and participating in peaceful protests, signing an open letter, and writing an op-ed.⁸⁶

It appears that the administration is not currently utilizing the previously discussed post-9/11 counterterrorism provisions of immigration law in its attempts to revoke the visas of these students and scholars. Instead, they have leaned on a more obscure area of immigration law which allows noncitizens to be excluded or deported for the sole reason that the Secretary of State has "reasonable ground to believe [they] would have potentially serious adverse foreign policy consequences for the United States."⁸⁷ Nonetheless, this demonstrates the administration's willingness to push the outer limits of its discretionary national security authorities in the service of its deportation agenda. Additionally, since administration officials have explained these deportation efforts utilizing the rhetoric of counterterrorism, it stands to reason that they may increase their reliance on the post-9/11 counterterrorism authorities discussed in this section if courts continue to push back against the administration's use of the catch-all national security deportation authority or the Alien Enemies Act.⁸⁸

4. *Indefinite detention, torture and rendition of noncitizens*

Another place where militarized counterterrorism and immigration enforcement have coalesced is in the detention camp at Guantánamo Bay, perhaps one of the most notorious features of the U.S. government's post-9/11 "War on Terror." It is both a place where every post-9/11 president has detained Muslim men in connection with the post-9/11 counterterrorism wars, but it is also a place where unauthorized migrants are sometimes held.

⁸⁶ American Association of University Professors v. Rubio (2025).

⁸⁷ 8 U.S.C. § 1227(a)(4)(C)

⁸⁸ As of the time of this writing, a federal judge has recently ordered the Trump administration to restore Rumeysa Ozturk's lawful student status that was revoked due to her publication of an op-ed criticizing U.S. and Israeli policy in Gaza. Rowlands, L. (2025, December 9). US court orders Trump admin to restore Rumeysa Ozturk's student status. *Al Jazeera*. <https://www.aljazeera.com/news/2025/12/9/us-court-orders-trump-admin-to-restore-rumeysa-ozturks-legal-status>. Additionally, a federal court has determined that the Trump administration's visa-stripping and deportation efforts against immigrants solely for peaceful political speech using this catch-all national security deportation authority is unconstitutional. American Association of University Professors v. Rubio (2025). And, as previously discussed, the Supreme Court has held that Venezuelans deported under the Alien Enemies Act are subject to some level of due process. Trump v. J.G.G. (2025).

In November 2001, President Bush enacted a Military Order that ushered in the beginning of the U.S. government's claims not only to target and kill those they deemed to be "terrorist" under a war paradigm, but also to indefinitely detain them pursuant to wartime authority.⁸⁹ In initiating this program of indefinite detention and claiming extraordinary wartime powers to deprive those detained of due process, the George W. Bush administration assured the public those they had captured were "the worst of the worst."⁹⁰ Since the first post-9/11 detainees arrived at Guantánamo on January 11, 2002, about 780 men have been detained as "terrorists" at the prison run by the U.S. military on its naval base in Cuba.⁹¹

Instead of relying on the criminal law paradigm, and the constitutional protections that accompany that paradigm, to justify any arrests and imprisonment of those suspected of crimes of terrorism, the U.S. government insisted, and the Supreme Court validated,⁹² that it had the right to indefinitely detain without due process those individuals it unilaterally dubbed "enemy combatants" during its "War on Terror." The Obama administration discarded the "enemy combatant" justification but maintained claims to a law of war paradigm to continue indefinite detention at Guantánamo.⁹³

But even under the wartime authorities originally claimed by the Bush administration, such detention is only legally meant to last as long as the war. Yet after the U.S. ended its 20 years of war in Afghanistan, it did not end its "law of war detention" regime. Instead, the Biden administration continued to insist in court that the "Global war on Terror" more broadly was not over and therefore the U.S. could continue to indefinitely detain people without charge or fair trial at Guantánamo.⁹⁴ As of this writing, 15 individuals remain detained under this war paradigm, with 10 undergoing charges before ad hoc military commissions that lack constitutional procedures and protections.⁹⁵

⁸⁹ Executive Office of the President. (2001, November 16). Military Order: Detention, Treatment, & Trial of Certain Non-Citizens in the War Against Terrorism, 66 Fed. Reg. 57833.

⁹⁰ Associated Press. (2009, June 1). Cheney: Gitmo holds 'worst of the worst.' *NBC News*. <https://www.nbcnews.com/id/wbna31052241>.

⁹¹ New York Times. *The Guantánamo Docket*. (last accessed January 30, 2026).

<https://www.nytimes.com/interactive/2021/us/guantanamo-bay-detainees.html>

⁹² Hamdi v. Rumsfeld, 542 U.S. 507, 518 (2004) ("We conclude that detention of individuals...is so fundamental and accepted an incident to war as to be an exercise of the 'necessary and appropriate force' Congress has authorized the President to use."). The Obama administration discarded the "enemy combatant" justification but maintained claims to a law of war paradigm to continue indefinite detention at Guantánamo.

⁹³ Amnesty International. (2009, March 16). *Different label, same policy?* <https://www.amnesty.org/en/wp-content/uploads/2021/07/amr510382009en.pdf>

⁹⁴ Gul v. Biden, 573 F.Supp.3d 148 (D.D.C. 2021); Ackerman, S. (2022, August 25). The War on Terror Isn't Over, According to Biden's Justice Department. *Forever Wars* <https://www.forever-wars.com/biden-doj-prisoners-of-the-forever-war/>

⁹⁵ The New York Times. *The Guantánamo Docket*. (last accessed January 30, 2026). <https://www.nytimes.com/interactive/2021/us/guantanamo-bay-detainees.html>

Maintaining an offshore camp that is available for the President to indefinitely detain those it claims are associated with terrorist groups has become a normalized reality over the last 24 years due to a bipartisan lack of political will to close the facility. Although President Obama made a day-one commitment in his first term to shutter the detention camp and issued an Executive Order accordingly,⁹⁶ members of Congress of both the Republican and Democratic parties acted quickly and forcefully to close off pathways to accomplish this goal.⁹⁷ President Obama ultimately signed legislation that restricted transfer of detainees out of Guantánamo, making closure of the detention camp nearly impossible.⁹⁸ Further, when people imprisoned at Guantánamo have tried to challenge their detention in court, successive U.S. presidents have opposed those efforts and courts have largely sided with the executive branch and prolonging the detentions.⁹⁹ Thus, the camp remains open today.

The failure of presidents, Congress, and the courts to take steps to close the notorious detention camp and end the practice of indefinite military detention for counterterrorism purposes has meant it remains available for the Trump administration's use in its new iteration of the "War on Terror." Now, the Trump administration is detaining undocumented immigrants slated for deportation at Guantánamo and, in a familiar turn of phrase, assuring the American public that they are the "worst of the worst."¹⁰⁰ In the first week of his second term, President Trump directed the Secretaries of Defense and Homeland Security to expand Guantánamo's capacity to house migrants "in order to halt the border invasion."¹⁰¹ As of the time of this writing, more than 700 migrants have been sent to and from Guantánamo in President Trump's second term, detained there by ICE with support from the military.¹⁰²

⁹⁶ Exec. Order No. 13492, 74 Fed. Reg. 4897 (2009, January 22)

⁹⁷ Associated Press. (2009, May 20). *Senate overwhelmingly votes against Obama's plan to move Guantanamo detainees, close prison.*

<https://web.archive.org/web/20210416035041/https://www.nydailynews.com/news/world/senate-overwhelmingly-votes-obama-plan-move-guantanamo-detainees-close-prison-article-1.374027>

⁹⁸ The American Presidency Project. (2011, April 15). *White House. Statement on Signing the Department of Defense and Full-Year Continuing Appropriations Act.*

<http://www.presidency.ucsb.edu/ws/index.php?pid=90269&st=&st1=>

⁹⁹ Kadidal, S. (2012, June 11). What's Left of the Guantanamo Litigation? Nothing. *Huffington Post.*

https://www.huffpost.com/entry/supreme-court-guantanamo_b_1587581

¹⁰⁰ Noem, K. X (Formerly Twitter). (2025, February 4).

https://x.com/Sec_Noem/status/1886875324928938185

¹⁰¹ White House. (2025, January 29). Memorandum on Expanding Migrant Operations Center to Naval Station Guantanamo Bay to Full Capacity. <https://www.whitehouse.gov/presidential-actions/2025/01/expanding-migrant-operations-center-at-naval-station-guantanamo-bay-to-full-capacity/>

¹⁰² Rosenberg, C. (2025, December 5). Judge Rules Trump Exceeded Authority by Holding Deportees at Guantanamo. *The New York Times.* <https://www.nytimes.com/2025/12/05/us/politics/guantanamo-migrants-deportation-ruling.html>

This is not the first time that the civilian Migrant Operations Center (MOC) at Guantánamo has been used to detain migrants. In the 1990s, it was used to hold Haitian refugees while they were being screened for asylum and has since been used intermittently to process others picked up outside the U.S. What is new and different under the Trump administration is its practice of detaining migrants who have already been inside the U.S., and using a military-run counterterrorism prison to hold some of them. It is important to note that, for the most part, migrants deported from the U.S. and detained at Guantánamo by the Trump administration have not been housed in the same facility as the post-9/11 “law of war” detainees. The MOC is a different camp than the Department of Defense-run apparatus of camps that has housed “law of war” detainees in the post-9/11 era. The exception is Camp 6, a military-run facility that has previously been used to house post-9/11 terrorism detainees, which has been used to hold migrants that the Trump administration deems high-threat.¹⁰³

Plaintiffs who are challenging these detentions in court allege that the choice of the infamous post-9/11 locale is unlawful and unnecessary, and intended only to “instill fear in the immigrant population.” As of the time of this writing, the U.S. District Court for the District of Columbia has held that the Trump administration exceeded its authority by housing migrants being deported from the U.S. at the detention camp at Guantánamo. In that opinion, Judge Sooknunan wrote, “Over two decades ago, it was opened to hold suspected terrorists in the aftermath of the horrific terrorist attacks of Sept. 11, 2001. Since then, Guantánamo has been synonymous with pervasive mistreatment and indefinite detention.”¹⁰⁴

Another particularly grotesque feature of the “War on Terror” was the official policy of enforced disappearances and torture in the CIA’s Rendition, Detention, and Interrogation (RDI) program. From 2002 to 2009, the U.S. government partnered with foreign governments to put more than 100 men through a series of “black sites” around the world with the stated purpose of gathering counterterrorism information. At the black sites, detainees were held in secret and subjected to torture and other cruel treatment that included waterboarding, which simulates the excruciating experience of drowning, extreme sleep deprivation, mock executions, painful extended stress positions, forced confinement

¹⁰³ Aleaziz, H., Rosenberg, C. (2025, January 29). Trump Says U.S. Will Hold Migrants at Guantanamo. *The New York Times*. <https://www.nytimes.com/2025/06/12/us/politics/migrants-guantanamo-trump.html>

¹⁰⁴ Rosenberg, C. (2025, December 5). Judge Rules Trump Exceeded Authority by Holding Deportees at Guantanamo. *The New York Times*. <https://www.nytimes.com/2025/12/05/us/politics/guantanamo-migrants-deportation-ruling.html>

in a small box, and sexual assault.¹⁰⁵ Many were left with life-long psychosis or physical disabilities once released, and others died at the hands of their U.S. torturers.¹⁰⁶

These brutal practices were authorized at the highest levels of government during the George W. Bush administration, in direct violation of domestic and international law. The Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT),¹⁰⁷ the International Convention on Civil and Political Rights (ICCPR),¹⁰⁸ and Common Article 3 of the Geneva Conventions¹⁰⁹ have all been ratified by the U.S. and all unequivocally prohibit the practice of torture in both peacetime and war. These standards have been incorporated into domestic law by way of the War Crimes Act¹¹⁰ and the Torture Convention Implementation Act.¹¹¹ International¹¹² and domestic law¹¹³ also includes the principle of *non-refoulement*, forbidding the U.S. government from removing people from its territory and transferring them to a place where they are at risk of torture and other serious human rights abuses. The CAT defines torture as an official act intentionally inflicting severe physical or mental pain or suffering for such purposes as intimidation or discrimination.¹¹⁴

The Bush-era RDI program's abuses were ripe for investigation for violations of domestic and international law.¹¹⁵ Nonetheless, after the Bush administration ended, the new Obama administration declined to hold accountable or even comprehensively investigate any of the officials involved with these brazenly criminal acts, as part of a desire "to look forward as opposed to looking backwards."¹¹⁶ Thus, those who planned,

¹⁰⁵ Senate Select Committee on Intelligence. (2014). *Committee Study of the Central Intelligence Agency's Detention and Interrogation Program*. <https://www.aclu.org/publications/senate-torture-report>

¹⁰⁶ Hematyara, H. (2018, November 30). The CIA killed my father. What did they do with his body? *The Washington Post*. https://www.washingtonpost.com/opinions/the-cia-killed-my-father-what-did-they-do-with-his-body/2018/11/30/f743ba66-ed0811e8-96d4-0d23f2aaad09_story.html

¹⁰⁷ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 2.2, (1984, December 10) S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 ("CAT")

¹⁰⁸ International Convention on Civil and Political Rights, art. 7, (1976, March 23) 999 U.N.T.S. 171

¹⁰⁹ Geneva Convention Relative to the Treatment of Prisoners of War art. 3, (1949, August 12) 6 U.S.T. 3316, 75 U.N.T.S. 135.

¹¹⁰ 18 U.S.C. § 2441.

¹¹¹ 18 U.S.C. § 2340(a)

¹¹² CAT Art. 3

¹¹³ 8 USC § 1231

¹¹⁴ CAT Art. 1(1).

¹¹⁵ Amnesty International. (2015, April 21). *Crimes and impunity: Full Senate Committee report on CIA secret detentions must be released, and accountability for crimes under international law ensured*. <https://www.amnesty.org/en/documents/amr51/1432/2015/en/>

¹¹⁶ Johnston, D., Savage, C. (2009, Jan. 11). Obama Reluctant to Look into Bush Programs. *The New York Times*. <https://www.nytimes.com/2009/01/12/us/politics/12inquire.html>

perpetrated, and even attempted to cover up illegal acts of rendition, secret detention and torture went on to enjoy long lives and successful careers with full impunity.¹¹⁷

This precedent has been helpful for the Trump administration and its mass deportation agenda. Thus far, the administration has deported 252 men to El Centro de Confinamiento del Terrorismo (CECOT) in El Salvador, asserting they belonged to the designated terrorist organization Tren de Aragua, and that their presence in the U.S. constituted “irregular warfare.”¹¹⁸ Prior to becoming a holding center for people removed from the U.S., El Salvador had been well-known by the U.S. government to be a perpetrator of torture and other serious human rights abuses, as documented in the State Department’s own reports.¹¹⁹ Thus, transfers of people to be detained there to known torture and ill-treatment violates the aforementioned *nonrefoulement* legal requirements.¹²⁰ Indeed, reporting indicates that foreign nationals transferred from the U.S. to CECOT by the Trump administration were kept in squalid conditions, starved, beaten, sexually abused, deprived of essential medical treatment, and shot with rubber bullets, leaving many physically and psychologically scarred.¹²¹ One man detained at CECOT at the behest of the U.S. recalled being told by the prison officials, “You are all terrorists,” and “Terrorists must be treated like this.”¹²²

The District Court of Massachusetts ordered the Trump administration not to deport foreign nationals to third-party countries without giving them an opportunity to seek *non-refoulement* protections first.¹²³ Nonetheless, the administration deported eight foreign nationals first to a military base in Djibouti, then to South Sudan without affording them such an opportunity. The U.S. State Department has warned Americans not to travel to war-

¹¹⁷ See Beavers, E. (2021). Where Do They Go For Justice? The United States, The International Criminal Court, and Crimes Against Humanity in Afghanistan *California Western International Law Journal*, 52(1).

¹¹⁸ Turkewitz, J., Romer, T., Urdaneta, S., Herrera, I. (2025, November 8). ‘You Are All Terrorists:’ Four Months in a Salvadoran Prison. *The New York Times*. <https://www.nytimes.com/2025/11/08/world/americas/el-salvador-prison-migrants.html>

¹¹⁹ U.S. State Department. (2023). Country Reports on Human Rights Practices: El Salvador. <https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/el-salvador/>. See Rebecca Inger and Scott Roehm’s analysis of how the removal of people to CECOT violates the non-refoulement principle,

¹²⁰ See Inger, R., Roehm, S. (2025, March 29). The Trump Administration’s Recent Removals to El Salvador Violate the Prohibition on Transfers to Torture. *Just Security*. <https://www.justsecurity.org/109284/non-refoulement-alien-enemies-act/>

¹²¹ Bazail-Eimil, E. (2025, November 12). Venezuelans deported from the US to El Salvador were tortured, advocacy group alleges. *Politico*. <https://www.politico.com/news/2025/11/12/venezuelans-el-salvador-tortured-00646508>

¹²² Turkewitz, J., Romer, T., Urdaneta, S., Herrera, I. (2025, November 8). ‘You Are All Terrorists:’ Four Months in a Salvadoran Prison. *The New York Times*. <https://www.nytimes.com/2025/11/08/world/americas/el-salvador-prison-migrants.html>

¹²³ *D.V.D. v. U.S. Dep’t of Homeland Sec.*, 778 F. Supp. 3d 355 (2025).

torn South Sudan¹²⁴ and has previously documented “extrajudicial killings, forced disappearances, torture and cases of cruel, inhuman and degrading treatment or punishment” in that country.¹²⁵ Additionally, the administration deported a Guatemalan man to Mexico despite evidence he had been raped and tortured there previously due to his identity as a gay man.¹²⁶ The administration also attempted, before being thwarted by a court order, to deport 13 men to Libya, where civil unrest was elevated by reports of these deportations to “the most serious street fighting in Tripoli since 2022.”¹²⁷ But although the administration has faced minor tussles with the courts as it transfers people to countries to face certain torture and cruel treatment, officials have good reason not to fear serious risks of criminal or other professional accountability for any enforced disappearances and torture that results from their deportation policies. As reporter Spencer Ackerman notes, “More than a decade after the CIA got away with it, ICE will perform mass extraordinary renditions at scale.”¹²⁸

In addition to deporting people to other countries where they face a likelihood of torture and cruel treatment, the Trump administration has also ramped up its practice of disappearing people into secretive immigration detention, and reports indicate that abusive treatment in those facilities may amount to unlawful torture.¹²⁹ In particular, Florida’s governor Ron DeSantis has presided over creation of the first in a series of planned federally-funded, state-run immigration detention centers in the US., this one colloquially known as “Alligator Alcatraz.”¹³⁰ In keeping with the rapid increase of ICE detention under the second Trump term nationwide,¹³¹ this detention camp exists under a state-federal partnership and houses individuals the government alleges to be “illegal” but

¹²⁴ Department of State. *Travel Advisory: South Sudan* (last accessed 2026, Jan. 31).

<https://travel.state.gov/en/international-travel/travel-advisories/south-sudan.html>

¹²⁵ Department of State. (2024). *Country Reports on Human Rights Practices: South Sudan*.

<https://www.state.gov/reports/2024-country-reports-on-human-rights-practices/south-sudan>

¹²⁶ Helmore, E. (2025, May 24). US judge orders Trump administration to return wrongly deported gay man. *The Guardian*. <https://www.theguardian.com/us-news/2025/may/24/trump-administration-wrongly-deported-gay-man>

¹²⁷ Dep’t of Homeland Sec. v. D.V.D., 145 S. Ct. 2153 (2025)

¹²⁸ Ackerman, S. (2025, July 14). ICE is planning mass extraordinary renditions. *Forever Wars*.

<https://www.forever-wars.com/ice-is-planning-mass-extraordinary-renditions-when-we-look-forward-not-back-past-atrocities-scale-up-plus-another-american-killed-in-the-west-bank-without-consequence-and-anti-zionist-s/>

¹²⁹ Amnesty International. (2025, December 4). *Torture and Enforced Disappearances in the Sunshine State*.

https://www.amnesty.org/en/wp-content/uploads/2025/12/AMR5105112025ENGLISH.pdf?acrobatPromotionSource=embeddedpdfs_chrome-native_view

¹³⁰ Mazzei, P., Adams, D. C. (2025, August 21). Judge Orders That ‘Alligator Alcatraz’ Detention Center Be Shut Down for Now. *The New York Times*. <https://www.nytimes.com/2025/08/21/us/alligator-alcatraz-florida-ruling.html>

¹³¹ Muzaffar, C., Lacarte, V. (2025, October 29). U.S. Immigrant Detention Grows to Record Heights under Trump Administration. *Migration Policy Institute*. <https://www.migrationpolicy.org/article/trump-immigrant-detention>

without clear documentation that each foreign national it holds has actually been ordered to be deported.¹³²

Human rights organizations and people who have been detained in the facility report that the detention camp is rife with inhumane conditions, including prolonged crowded confinement in dirty quarters, a lack of adequate food, medical care, or clean water, no privacy even in the toilet areas, and exposure to dangerous bugs and snakes.¹³³ Further, in echoes of the CIA's post-9/11 practices, they report that people detained are subjected to verbal and physical abuse from the guards, shackles when removed from the cages, and periods of punitive time in a 2x2 foot cage called "the box" for small infractions.¹³⁴ An individual previously detained at "Alligator Alcatraz" calls the immigration detention camp "a copy of Guantánamo."¹³⁵

5. *Antidemocratic concentration of executive national security powers*

There is a strong post-9/11 tradition of congressional abdication and judicial deference when it comes to presidential actions regarding counterterrorism, immigration enforcement, and national security, eroding democratic checks and balances on those powers.

First, as demonstrated, Congress has delegated almost entirely to the executive branch the ability to unilaterally designate "terrorists" and determine who is deportable in connection with those designated. Further, federal courts have also opted not to second-guess the Executive's designations of individuals and groups as "terrorists." The law that authorizes the administration to maintain the Foreign Terrorist Organization list includes few guidelines. It simply requires the Secretary of State to find that a group is 1) foreign, and 2) engages in "terrorist activity." Finally, the Secretary must find that 3) such activity threatens U.S. national security or the security of U.S. nationals.¹³⁶ If a designated group wants to challenge the administration's choice to place it on a "terrorist" list, the lawsuit must be brought before the D.C. Circuit Court. But even before 9/11, that court chose to reduce its already-narrow role by deciding that it would defer entirely to the executive branch on the third factor regarding the group's threat to U.S. national security.¹³⁷

¹³² Associated Press. (2025, October 6). DOJ contradicts DeSantis: Some detainees at 'Alligator Alcatraz' likely never in removal proceedings. *Tampa Bay Times*. <https://www.tampabay.com/news/florida-politics/2025/10/06/alligator-alcatraz-immigrant-detention-legal-status-desantis-lawsuit-attorneys/>

¹³³ Amnesty International, p. 32-42.

¹³⁴ Amnesty International, p. 36.

¹³⁵ Amnesty International, p. 32.

¹³⁶ 8 U.S.C. § 1189(a)(1).

¹³⁷ *People's Mojahedin Org. of Iran v. U.S. Dept. of State*, 182 F.3d 17, 25 (D.C. Cir. 1999).

For the other major “terrorists” list, the Specially Designated Global Terrorist (SDGT) list, the Office of Foreign Assets Control (OFAC) within the Treasury Department is the agency with authority to list a person or group as “terrorist” if they “have committed, or pose a significant risk of committing, acts of terrorism” or provide various “support” for entities engaged in terrorism.¹³⁸ Here, too, courts have largely deferred to executive branch determinations. For example, in 2003, the D.C. Circuit Court of Appeals stated that courts are not meant to conduct their own substantive factfinding in reviewing “terrorist” designations, and that the court’s role is simply to confirm the executive has produced “substantial evidence” to support whatever designations the administration chooses to make.¹³⁹

Secondly, courts have shown similar deference to the executive on matters of immigration. In President Trump’s first term, courts were tasked with assessing the lawfulness of the “Muslim ban.” In *Trump v. Hawaii*, the Supreme Court’s majority declined to find that the Muslim ban was based in racial or religious animus, stating that immigration law “exudes deference to the President in every clause,” and “entrusts to the President the decisions whether and when to suspend entry, whose entry to suspend, for how long, and on what conditions,” and such decisions are “largely immune from judicial control.”¹⁴⁰

Additionally, courts have been hesitant to question presidential administrations when they assert that “state secrets” prevent transparency or accountability on matters of national security. The Obama administration made frequent use of “state secrets” privilege in order to thwart civil lawsuits on national security matters, including from those who experienced post-9/11 rendition and torture at the hands of the U.S. government.¹⁴¹ They asserted this privilege not only to prevent specific information from being unearthed in proceedings, but more broadly to have entire cases dismissed based on assertions that certain government policies, even if widely discussed by administration officials in the media, were “secrets.” They also intervened in cases where only private actors and not the government itself were parties to the underlying lawsuit to assert the state secrets privilege.¹⁴² Courts largely accepted these arguments from the Obama administration, allowing entire cases to be thrown out of court without reaching the merits because of the administration’s often spurious invocation of “state secrets.”¹⁴³ This led critics to conclude that the administration’s assertion of the “state secrets” privilege was more likely to have

¹³⁸ Exec. Order No. 13,224, 3 C.F.R. 786.

¹³⁹ *Holy Land Found. for Relief & Dev. v. Ashcroft*, 333 F.3d 156 (D.C. Cir. 2003)

¹⁴⁰ *Trump v. Hawaii*, 585 U.S. 667 (2018)

¹⁴¹ See, e.g., *Mohamed v. Jeppesen Dataplan, Inc.*, 579 F.3d 943 (9th Cir. 2009)

¹⁴² Setty, S. (2014, October 17). State Secrets Might Get a Little More Secret. *Just Security*. <https://www.justsecurity.org/16418/state-secrets-secret/>

¹⁴³ See, e.g., *El-Masri v. U.S.*, 479 F.3d 296, 306 (4th Cir. 2007)

the effect of helping the government escape scrutiny and accountability in court, rather than protecting legitimately sensitive information.¹⁴⁴

The effect of this post-9/11 jurisprudence is a widely deferential posture to the executive branch from federal courts in matters that the administration says involves “national security.” The second Trump administration has made prompt use of this latitude. This has included: manipulating the “terrorist” designation lists in novel ways to include drug cartels without needing court approval, which has expanded the scope of people who can be deported as “terrorists”; claiming a maximalist version of its immigration powers, daring courts to intervene; invoking the state secrets privilege to avoid accountability in cases challenging its deportation orders;¹⁴⁵ and indefinitely detaining and torturing migrants. They have taken each of these actions without fear they will be meaningfully held accountable in court.¹⁴⁶

Conclusion

In its wide-ranging abuse of the law to support its anti-immigration agenda, the Trump administration is in part utilizing rhetoric and legal precedent borrowed from the “War on Terror.” Indisputably, administration officials are weaponizing the law in new and particularly indefensible ways to effectuate a widespread harassment and mass deportation campaign that is more akin to ethnic cleansing than routine immigration enforcement.

The administration’s actions both represent a disturbing escalation of past precedent and are also enabled by that precedent. Since the earliest days after the attacks of September 11, 2001, Congress has created and expanded presidential powers to designate, detain, and deport people the administration unilaterally determines to be “terrorists.” Additionally, pre-Trump administration officials have long constructed official programs and policies to surveil, harass, detain, torture, and deport non-white noncitizens on the premise that they are inherently suspicious potential “terrorists” without actual

¹⁴⁴ Jaffer, J. (2013). Known Unknowns. *Harvard Civil Rights and Civil Liberties Law Review*. 48(1).

¹⁴⁵ See Goodman, R. (2025, May 28). The Absence of “State Secrets” in US-El Salvador Agreement: On Removal and Imprisonment of Non-US Citizen. *Just Security*. <https://www.justsecurity.org/113739/state-secrets-el-salvador/>.

¹⁴⁶ As discussed elsewhere in this paper, there have been signs of pushback on certain aspects of the Trump administration’s anti-immigrant agenda, particularly in the lower courts. This includes hundreds of judges denying the administration’s attempts to detain people without bond while their cases are pending (in some instances despite the administration’s insistence those people are “terrorists”), another court’s holding that deporting scholars for their peaceful political activities is unconstitutional even if the administration claims they are “terrorists,” and the Supreme Court’s unanimous conclusion that Venezuelans being deported under the Alien Enemies Act must receive some level of individualized due process.

evidence of wrongdoing. Neither Congress nor the courts have meaningfully checked presidents or held them accountable for their expansive and spurious claims of war authorities, national security powers, and counterterrorism mechanisms to justify harmful and discriminatory practices against noncitizens and especially against people of color. In these and many other ways, U.S. policymakers on a bipartisan basis built and sharpened the legal weapons that President Trump is now utilizing against immigrants.

Appendix 1

Presidential administration	Terrorism-related deportations initiated*
President Donald Trump to date (2017-2020, 2025)	58
President Joseph Biden (2021-2024)	43
President Barack Obama (2009-2016)	26
President George W. Bush (2001-2008)	30

*Data sourced from the Transactional Records Access Clearinghouse’s “New Proceedings Filed in Immigration Court” tool at <https://tracreports.org/phptools/immigration/ntanew/>, querying for Terrorism charges on NTAs (Notices to Appear) received by foreign nationals for deportation proceedings, catalogued by month and year initiated through December 2025. This data must be read with several caveats. For example, it should be noted that President Biden only served one term as compared to the two terms of every other post-9/11 president, and so there are limitations when comparing deportations that occurred during his presidency to those that occurred under the other two-term presidents. Even in President Biden’s first term, he used these authorities more frequently than the two-term presidents before him. Without more information about the individual cases, there is not much more that can be discerned from the raw data to explain the Biden-era increase. Importantly, another key caveat is that this raw data gives an incomplete picture. It is impossible to assess, for example, the merit of each case without any further information about precisely which terrorism-related allegations are involved or the underlying facts supporting those allegations. Further, it only captures removal cases in which one of the provisions discussed in the section (such as membership in a designated terror organization, material support to a terror organization, or statements espousing support for terror activity) are included in the original charges on the Notice to Appear (NTA) that initiates the removal process. Thus, it does not reflect cases in which those terrorism-related deportation charges appear later in the detention and deportation process. Neither does it reflect cases in which the administration has cited immigration law’s counterterrorism provisions to justify detention without bond but a different authority for the removal itself. Lastly, these numbers do not include deportations such as those under the Alien Enemies Act or that of students like Mahmoud Khalil or people like Kilmar Abrego Garcia, in which the administration rhetorically justifies its deportation efforts as “counterterrorism,” but leans on other deportation authorities to justify the cases in courts.