

United States Senate  
WASHINGTON, DC 20510

February 13, 2025

The Honorable Denise L. Carter  
Acting Secretary  
U.S. Department of Education  
400 Maryland Avenue SW  
Washington, D.C. 20202

Dear Acting Secretary Carter:

We write regarding Executive Order 14188. We believe this Order raises grave First Amendment concerns, and, depending on how it is implemented, could violate your obligations under the Constitution.

On January 29, President Donald Trump issued Executive Order 14188, which directed you to provide guidance to institutions of higher education to help them “monitor for and report activities by alien students and staff relevant to [grounds for inadmissibility under 8 U.S.C. 1182(a)(3)].” That Order also instructed you to ensure that such reports yield “investigations and, if warranted, actions to remove such aliens.”<sup>1</sup> The Administration released an accompanying fact sheet, which explained that any noncitizen “who joined in the pro-jihadist protests” will be “deport[ed]” and pledged to clear out college campuses that “have been infested with radicalism like never before.”<sup>2</sup>

President Trump’s Order purportedly advances these speech restrictions in pursuit of “combat[ting] anti-Semitism.” Though a commendable aim, the Order’s vaguely written directives appear to exceed your statutory authority, and, on their face, could restrict constitutionally protected speech. Through their implementation, they could sweep even further.

Congress has authorized the Executive Branch to protect the homeland from noncitizens who support terrorist organizations or advocate for the overthrow of the United States government.<sup>3</sup> However, Congress has not authorized the Executive Branch to surveil students engaged in the free expression of ideas on college campuses. Nor could Congress have adopted such a measure without running afoul of the First Amendment.

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

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<sup>1</sup> Exec. Order No. 14188, 90 Fed. Reg. 8847 (Jan. 29, 2025).

<sup>2</sup> The White House, *Fact Sheet: President Donald J. Trump Takes Forceful and Unprecedented Steps to Combat Anti-Semitism* (Jan. 30, 2025) (online at <https://www.whitehouse.gov/fact-sheets/2025/01/fact-sheet-president-donald-j-trump-takes-forceful-and-unprecedented-steps-to-combat-anti-semitism/>).

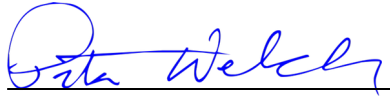
<sup>3</sup> 8 U.S.C. § 1182(a)(3).

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

Sincerely,



Peter Welch

United States Senator



Richard J. Durbin

United States Senator