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Many thanks to the University of Georgia School of Law, Paige Medley, Taylor Cressler, and the editors at the Georgia Law Review for the opportunity to participate in the 2022 Symposium: "Immigrants and the First Amendment: Defining the Borders of Noncitizen Free Speech and Free Exercise Claims," as well as for the opportunity to contribute to this issue of the Georgia Law Review.

FEAR, FOREIGNERS, AND FREE EXPRESSION: A BRIEF REFLECTION ON IDEOLOGICAL EXCLUSION AND DEPORTATION IN THE UNITED STATES

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"Why should we be afraid of this man and his ideas?" asked Secretary of State William P. Rogers, referring to Belgian, Marxist economist Ernest Mandel.[1] In 1969, Mandel applied for a nonimmigrant visa to visit the United States after receiving invitations to speak at several American colleges and universities, including Amherst College, Columbia University, Princeton University, Massachusetts Institute of Technology, and the New School for Social Research.[2] Mandel had received visas to visit the United States twice before: one in 1962 and another in 1968.[3] Yet, this time, Mandel's application for a visa was denied.[4]

The State Department informed Mandel he was inadmissible under a provision in the McCarran-Walter Act of 1952 that barred foreigners who advocated, wrote, or published "the economic, international, and governmental doctrines of world communism."[5] Apparently Mandel was always inadmissible under this provision, but had received waivers of inadmissibility on the recommendation of the State Department and approval of the Attorney General.[6] This time, however, the State Department did not recommend a waiver.[7]

Unbeknownst to Mandel, he entered the United States under a conditional visa, which placed limitations on his activities.[8] The State Department claimed he strayed from his stated itinerary during his 1968 visit by attending a cocktail party, which included fundraising to support students involved in May 1968 protests in France.[9] Mandel assured the State Department that, if granted a visa, he would abide by its conditions.[10] The State Department agreed and recommended Mandel's visa under a waiver of

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[1] *The Pragmatist*, NEWSWEEK, Dec. 8, 1969, at 45.

[2] JULIA ROSE KRAUT, THREAT OF DISSENT: A HISTORY OF IDEOLOGICAL EXCLUSION AND DEPORTATION IN THE UNITED STATES 155 (2020).

[3] *See id.* at 156.

[4] *Id*. at 158.

[5] Immigration and Nationality Act of 1952 § 212(a)(28)(D), 8 U.S.C. § 1182(a)(28)(D) (1982) (amended 1990).

[6] KRAUT, *supra* note 2, at 157–58.

[7] *Id.* at 160.

[8] *See id.* at 159–60 (indicating Mandel only learned about the conditions of his waiver after he had violated them).

[9] *Id.* at 159.

[10] *Id.* at 160.

inadmissibility, but Attorney General John N. Mitchell refused to grant the waiver.[11]

Initially, Mitchell and the Justice Department did not provide a reason for the refusal, but they eventually cited Mandel's violation of his 1968 visa's conditions by attending the cocktail party as justification for refusing to grant the waiver and issue Mandel a visa.[12] The American professors who invited Mandel to come to the United States to speak on their campuses subsequently challenged the constitutionality of Mandel's visa denial as a violation of their First Amendment right to receive and hear information.[13]

In *Kleindienst v. Mandel*, the Supreme Court upheld Mandel's exclusion from the United States.[14] Writing for the majority, Justice Harry Blackmun recognized the professors' standing to challenge Mandel's exclusion as a violation of *their* constitutional rights.[15] Yet, the Court did not interpret Mandel's exclusion as a First Amendment issue, but rather as an immigration issue.[16] As such, Justice Blackmun applied immigration legal doctrine, which required judicial deference to Congress's power to pass the McCarran-Walter Act, as well as to the Attorney General's power to enforce the Act's provisions and discretion to grant or deny waivers.[17] The Court did not apply current First Amendment standards to evaluate the constitutionality of the McCarran-Walter Act and Mandel's expressions and associations.[18] Instead, Justice Blackmun held that while the Court would not look behind it, the Attorney General must provide a "facially legitimate and *bona fide* reason" for exercising his discretion to deny the waiver and refuse to grant a visa.[19] While this was a far lower standard than provided by the First Amendment, it was a standard the Attorney General

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[11] *Id.*

[12] *Id.* at 161.

[13] *Id.* at 166–67.

[14] Kleindienst v. Mandel, 408 U.S. 753, 769 (1972).

[15] *See id.* at 762–63 (recognizing a First Amendment right to receive information).

[16] *See id.* at 768–69 (stating that the Court need not reach the First Amendment issue argued by the parties).

[17] *See id.* at 765–66 (analyzing the plenary power doctrine and establishing the power of Congress to pass immigration restrictions and the authority of federal officials to enforce them).

[18] *See id.* at 767 (rejecting the invitation to overturn precedent that recognizes vast legislative power and executive discretion in immigration matters).

[19] *Id.* at 770 (emphasis added).

and government could be held to, and it introduced a pathway to challenge exclusion in the future.

I still remember the day I read this decision as a law school student. I was fascinated by the intersection of immigration and First Amendment law presented by Mandel's exclusion, which I learned was an example of what is referred to as "ideological exclusion": barring foreign noncitizens from the United States based on their political beliefs, expressions, and associations. I began to examine this intersection of immigration restrictions and the suppression of free expression. I discovered the confluence of the two topics, including in the form of ideological deportations, had a long history that I could trace through the twentieth century and into the twenty-first.

The history of ideological exclusion and deportation is also essential to understanding how immigration law and dissent functioned in the United States, including recent restrictions during the War on Terror. In fact, at the time I first started my research in 2004, I read in the newspaper about Swiss Islamic scholar Tariq Ramadan and how his visa to come to the United States to teach at the University of Notre Dame was revoked.[20] Lawyers working at the American Civil Liberties Union challenged his exclusion, arguing it violated Americans' First Amendment right to receive and hear information.[21]

After many years of archival research and legal analysis, I wrote a book, *Threat of Dissent: A History of Ideological Exclusion and Deportation in the United States*, which was the first social, political, and legal history of the prohibition and expulsion of foreign noncitizens based on their political expressions, beliefs, and associations.[22] I argued that Congress passed ideological exclusion and deportation laws—and public officials used them—as tools of political repression to suppress what I referred to as the "threat of dissent," including "criticism of the United States and its politicians, laws, and foreign and domestic policies; challenges to

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[20] *See Muslim Scheduled to Teach at Notre Dame Has Visa Revoked*, L.A. TIMES (Aug. 25, 2004, 12:00 AM PT), https://www.latimes.com/archives/la-xpm-2004-aug-25-na-visa25-story.html.

[21] *See* Am. Acad. of Religion v. Chertoff, 463 F. Supp. 2d 400, 403–04, 412 (S.D.N.Y. 2006) (identifying the basis for the plaintiffs' First Amendment claims).

[22] KRAUT, *supra* note 2, at 8 (identifying the book's significance and contribution to immigration law scholarship).

the status quo and capitalism; [and] calls for reform or revolution."[23] Ideological restrictions reflect a fear of subversion and a "perception of foreigners as the source of subversion."[24] These restrictions survived because the majority of the Supreme Court interpreted them as immigration issues and applied immigration legal doctrine, thus insulating the restrictions from substantive judicial review under strict scrutiny and protective speech tests under the First Amendment.[25]

This short Essay provides examples from my research for *Threat of Dissent* that illuminate some of the underlying dynamics behind ideological exclusion and deportation in the United States. These dynamics reveal how ideological restrictions have been used as tools of political repression and why these tools have endured; how denaturalization was used to exploit the vulnerability of foreign-born residents; and how revisions to restrictions closed loopholes in order to support more ideological deportations, including of specific individuals. Also, these dynamics show how ideological deportations include selective, retaliatory deportations; how public officials who sought to prevent or delay ideological deportations have faced impeachment; how those who represent foreign noncitizens have become targets of the government; how ideological exclusions and deportations suppress free expression and exchange through embarrassment and humiliation; and how such restrictions damage the nation's image as a strong, confident liberal democracy, as well as its identity as a nation of immigrants.

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Foreign noncitizens have been targets of both governmental suppression and efforts to politically repress citizens and noncitizens alike. While the threat of dissent has changed over time, ideological exclusions and deportations have lingered, and their use has endured because of the Supreme Court's analysis of such deportations and exclusions under immigration law.

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[23] *Id.* at 3.

[24] *Id.*

[25] *See id.* at 6 (identifying the persistence of ideological exclusion as a consequence of the Supreme Court's treatment of exclusion laws under immigration law rather than under the First Amendment's strict scrutiny analysis and legal precedent).

One example that illustrates this dynamic is the Alien Immigration Act of 1903, the first explicit ideological restriction passed in the United States. The Act barred anarchists from the United States and authorized their deportation within three years of entry.[26] Congress passed this restriction as a direct response to the assassination of President William McKinley by anarchist Leon Czolgosz in 1901 at the urging of the new President, Theodore Roosevelt, and amid calls for action by the public and public officials.[27] Although the Alien Immigration Act would not have applied to Czolgosz, who was an American citizen and born in Detroit, Michigan, the Act nonetheless represented the view of anarchism as a "foreign" threat and reflected a growing concern about anarchist violence.[28] Viewing anarchism as a foreign threat began with Chicago's Haymarket Affair in 1886 and intensified after anarchists assassinated a number of European leaders and monarchs throughout the 1890s.[29]

The Alien Immigration Act was also part of a national effort to extinguish anarchism in the United States through the use of existing local and state breach of the peace and unlawful assembly statutes and existing federal laws such as the Comstock Act of 1873, which restricted "obscene" material sent through the mail,[30] as well as the passage of new laws such as New York's Criminal Anarchy

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[26] *See* Alien Immigration Act of 1903, ch. 1012, §§ 21, 38, 39, 22 Stat. 1214, 1218–22 (repealed 1990) (prohibiting the entry of anyone "who disbelieves in or who is opposed to all organized government," and authorizing such person's deportation within three years of arrival).

[27] *See* Theodore Roosevelt, President, U.S., First Annual Message (Dec. 3, 1901), https://millercenter.org/the-presidency/presidential-speeches/december-3-1901-first-annual-message (lamenting the death of President McKinley at the hands of an anarchist, "the deadly foe of liberty," and advocating for Congress to ban anarchists' entry to the United States); *Penalty Should Be Death: State Laws Insufficient to Punish One Who Attempts to Kill a President, Senator Mallory Thinks*, N.Y. DAILY TRIB., Sept. 11, 1901 (relaying Senator Mallory's advocacy for new laws to criminalize anarchists such as Czolgosz).

[28] *See* KRAUT, *supra* note 2, at 36, 40 (discussing Czolgosz's heritage and the overarching view of anarchism as a foreign threat).

[29] *See* KRAUT, *supra* note 2, at 39–42.

[30] Comstock Act of 1873, ch. 258, 17 Stat. 598, 598–60.

Law.[31] State and federal law enforcement used these laws to arrest anarchists and suppress their lectures and newspapers.[32]

In *United States ex rel. Turner v. Williams*,[33] the Supreme Court considered the constitutionality of the Alien Immigration Act through the exclusion of John Turner, an English trades unionist and philosophical anarchist. After visiting the United States in 1896, Turner returned to deliver a series of lectures on anarchism and trades unionism in 1903.[34] Immigration officials knew Turner planned to come to the United States.[35] Although they hoped to exclude him when he attempted to enter, they decided to wait and subsequently arrested Turner after he delivered a speech in New York City.[36] Turner was detained on Ellis Island pending deportation after he identified himself as an anarchist and a Board of Special Inquiry deemed him inadmissible under the Alien Immigration Act.[37]

Clarence Darrow represented Turner, who agreed to be a test case to challenge his exclusion and the constitutionality of the Alien Immigration Act.[38] The Act barred any foreigner "who disbelieves in or who is opposed to all organized government."[39] The Act did not make any distinction between philosophical and violent anarchists, which Darrow argued violated the First Amendment.[40] He claimed that the Alien Immigration Act was not sufficiently narrow and did not solely exclude anarchists who advocated or committed violence, but rather extended to belief in anarchist philosophy. Congress

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[31] *See* N.Y. PENAL LAW § 240.15 (McKinney 2021) (classifying "criminal anarchy" as "a class E felony").

[32] *See* KRAUT, *supra* note 2, at 43–46 (recounting the state and federal reactions to anarchists after President McKinley's assassination through use of statutorily vague laws such as the Comstock Act of 1873 and by passing specific anti-anarchy laws that were used to chill publishing and speaking).

[33] United States *ex rel.* Turner v. Williams, 194 U.S. 279 (1904).

[34] *See* KRAUT, *supra* note 2, at 50 (providing background information on John Turner).

[35] *Id.* at 51.

[36] *Id.*

[37] *See id.* (discussing Turner's detainment and his Board of Special Inquiry hearing).

[38] *See id.* at 52 (describing Clarence Darrow's background and involvement in Turner's case).

[39] Alien Immigration Act of 1903, ch. 1012, § 38, 22 Stat. 1214, 1221 (repealed 1990).

[40] *See* KRAUT, *supra* note 2, at 53 (discussing Darrow's defense strategy).

could not restrict entry based merely on one's belief and expression of that belief.[41]

The Supreme Court rejected Darrow's argument and upheld the constitutionality of the Alien Immigration Act and Turner's exclusion under it.[42] The Court applied the plenary power doctrine: an immigration legal doctrine established by the Court in the late nineteenth century in its decisions upholding Chinese exclusion and other federal restrictions on immigration.[43] Under the plenary power doctrine, which was derived from a nation's sovereignty and inherent right of self-preservation, Congress had the absolute power to regulate immigration. Under the doctrine, federal officials in the Executive Branch hold the power to enforce legislation, and the Judiciary should defer to the judgements of Congress and of these federal officials.[44]

In the decades since its decision in *United States ex rel. Turner v. Williams*, the Supreme Court has upheld ideological exclusion and deportation under the plenary power doctrine, deferring to Congress and federal officials to decide who should be deported or excluded and why.[45] This decision paved the way for the passage and enforcement of new ideological exclusion and deportation laws and for the Supreme Court to interpret them under immigration law principles, applying the plenary power doctrine. It also set the stage for the use of ideological restrictions as part of efforts to suppress the threat of dissent posed by citizens and noncitizens.

As part of these efforts, Congress not only passed the Espionage Act of 1917, but also passed new ideological restrictions for federal officials to use to deport and exclude foreign noncitizens to suppress the threat of dissent in the United States during and after World War I. Those targeted included individuals who opposed the war, anarchists, members of the Industrial Workers of the World (IWW),

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[41] *See* Brief and Argument for Appellant at 40–41, 76, United States *ex rel.* Turner v. Williams, 194 U.S. 279 (1904).

[42] *Turner*, 194 U.S. at 294.

[43] *See, e.g.*, Chae Chan Ping v. United States, 130 U.S. 581 (1889); Nishimura Ekiu v. United States, 142 U.S. 651 (1892); Fong Yue Ting v. United States, 149 U.S. 698 (1893).

[44] *See* Carlson v. Landon, 342 U.S. 524, 534 (1952) (referring to this power as "plenary").

[45] *See* United States *ex rel.* Knauff v. Shaughnessy, 338 U.S. 537, 542 (1950) (explaining how exclusion of foreign noncitizens is a fundamental act of sovereignty); Harisiades v. Shaughnessy, 342 U.S. 580, 590 (1952) (refusing to substitute the political judgment of Congress and executive officials with that of the Court).

Bolshevik supporters, and members of communist organizations.[46] During the Cold War, federal officials used the Alien Registration Act of 1940 and the Internal Security Act of 1950 to suppress communism within the United States, relying on guilt by association, targeting subversive and communist-front organizations and their members, and investigating present and former members of the Communist Party. These laws also included ideological exclusion and deportation provisions that officials used against foreign noncitizens.[47]

In its decision in *United States ex rel. Turner v. Williams*, the Supreme Court held John Turner had no standing to challenge his exclusion under the Alien Immigration Act, reasoning that foreign noncitizens seeking entry had no recourse to challenge the constitutionality of their exclusion because they held no constitutional rights.[48] Years later, Leonard Boudin and David Rosenberg found a way to circumvent this decision and challenge ideological exclusion by representing the American professors who invited Ernest Mandel to come to the United States.[49] They used legal precedent set in the 1960s establishing the right to receive information and to hear under the First Amendment to argue that the American professors had standing and that Mandel's exclusion violated their constitutional rights.[50]

In *Kleindienst v. Mandel*, the Supreme Court accepted this method of challenging ideological exclusion and established the legal precedent that would enable others to use this method in the future.[51] In his opinion, Justice Blackmun had the chance to provide more protection against ideological exclusion and apply the current First Amendment standards. Yet, by creating the lesser "facially legitimate and *bona fide* reason" standard, Justice Blackmun helped perpetuate ideological exclusion and its use as a tool of

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[46] *See* KRAUT, *supra* note 2, at 66–70 (detailing the passage and enforcement of the Espionage Act and other federal legislation to suppress "dissenters").

[47] *See id.* at 122–27 (outlining the use of immigration laws to target suspected Communists).

[48] United States *ex rel.* Turner v. Williams, 194 U.S. 279, 292 (1904).

[49] *See* KRAUT, *supra* note 2, at 166 (tracking how Boudin and Rosenberg came to represent Mandel and the American professors).

[50] *See id.* at 165–68 (discussing Boudin's litigation strategy, including how he navigated around the unfavorable precedent set in the *Turner* case).

[51] Kleindienst v. Mandel, 408 U.S. 753, 770 (1972) (holding against Mandel and the American professors on substantive, rather than standing, grounds).

political repression to suppress the threat of dissent within the United States, just as the Supreme Court did in its decision upholding the Alien Immigration Act in *United States ex rel. Turner v. Williams*.[52]

Denaturalization was an important tool used by federal officials to support ideological deportation efforts by stripping foreign-born residents of their citizenship and exploiting their vulnerability to deportation. In the Naturalization Act of 1906, Congress authorized the revocation of citizenship if it was illegally procured through fraud, misrepresentation, deception, or the individual's lack of attachment to the principles of the Constitution at the time of naturalization.[53]

Federal officials argued that being an anarchist, or a member or affiliate of, an organization advocating the overthrow of government by force or violence demonstrated a "lack of attachment to the principles of the Constitution."[54] They used denaturalization and ideological deportation during and after World War I to expel anarchists, IWW, and members of communist organizations.[55] During the Cold War, the Justice Department announced denaturalization and deportation drives, targeting members or former members of the Communist Party.[56] It announced these drives as part of an effort to suppress communism within the United States and to intimidate foreign-born residents.[57]

Perhaps the best example of a concerted effort to use denaturalization to ideologically deport was the deportation of anarchist Emma Goldman.[58] In 1885, Goldman emigrated from Lithuania, which was part of the Russian Empire, to join her family in Rochester, New York.[59] Goldman became radicalized and interested in anarchism during the Haymarket Affair, and by the

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[52] *Id.*

[53] *See* Naturalization Act of 1906, ch. 3592, § 15, 34 Stat. 596, 601.

[54] KRAUT, *supra* note 2, at 68.

[55] *See id.* at 68–74 (describing the use of denaturalization during World War I and deportation after the "Palmer Raids").

[56] *See id.* at 122–23, 133–36 (describing the efforts to expel members and former members of the Communist Party from the United States).

[57] *See id.* at 70, 133–34 (detailing the discretion that exclusion laws granted the Attorney General, the resulting arrests and deportations, and the threat of arrests and deportations).

[58] *See id.* at 72–73 (describing Emma Goldman's deportation).

[59] *Id.* at 40.

late 1890s, she was a leader of the anarchist movement in the United States.[60]

When Leon Czolgosz shot and killed President McKinley in 1901, Czolgosz stated that Goldman's speeches "set [him] on fire."[61] While law enforcement arrested Goldman, they could not hold her.[62] Czolgosz clarified his statement and explained that he acted alone and that Goldman had nothing to do with his assassination of McKinley.[63] Yet, local and federal officials were indefatigable in their search to find a way to suppress Goldman, and they used her vulnerability as a foreigner living in the United States as a tool to do so.[64]

In 1907, when Goldman left the United States to travel to Europe on a lecture tour, immigration officials sought to prevent her reentry under the Alien Immigration Act of 1903, but they discovered she was an American citizen through marriage.[65] Officials then sought to denaturalize her husband, which they did, claiming he illegally obtained his citizenship through fraud and misrepresentation.[66] Because Goldman's citizenship was derivative citizenship through marriage, once her husband was no longer a citizen, Goldman lost her citizenship. Officials succeeded in denaturalizing her by 1909 with the intention of leaving Goldman vulnerable to deportation.[67]

Ten years later, in 1919, Goldman was deported to Soviet Russia.[68] Her deportation, orchestrated by J. Edgar Hoover, was the culmination of nearly twenty years of efforts by local and federal officials to muzzle Goldman for speaking on anarchism and anti-militarism.[69] In 1917, Goldman founded the "No-Conscription League" and was convicted and sent to prison for conspiracy to

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[60] *Id.* at 39–40.

[61] *The Assassin Makes a Full Confession*, N.Y. TIMES, Sept. 8, 1901.

[62] *See No Evidence Against Emma Goldman*, N.Y. TIMES, Sept. 13, 1901 (reporting that Illinois would have to release Goldman unless evidence against her turned up).

[63] *See id.* (reporting that the police had no evidence connecting Goldman to the assassination of President McKinley).

[64] *See* KRAUT, *supra* note 2, at 58–60 (tracing the subsequent efforts to denaturalize Goldman).

[65] *Id.* at 58–59.

[66] *Id.* at 59.

[67] *See id.* at 58–60 (describing the events and motives leading to Goldman's deportation).

[68] *Id.* at 62, 73.

[69] *See id.* at 72 (stating Goldman was "Hoover's number one target").

obstruct the draft.[70] After serving her sentence, Hoover arranged for Goldman to be arrested and subsequently deported under the Anarchist Exclusion Act of 1918.[71]

The United States was able to deport Goldman because the Anarchist Exclusion Act of 1918 closed loopholes in previous ideological exclusion and deportation provisions by authorizing the deportation of anyone who identified as an anarchist or advocated for the overthrow of government by force or violence, no matter how long the individual had lived in the United States.[72] While Hoover was particularly interested in deporting Goldman under the Anarchist Exclusion Act, its provisions proved insufficient to deport Australian-born labor leader Harry Bridges.[73]

In 1938, Congressman Martin Dies, Jr. (D-TX), Chairman of the House Un-American Activities Committee, pressured the Roosevelt Administration to deport Harry Bridges, the director of the West Coast Congress of Industrial Organizations.[74] Dies believed Bridges was a communist and a labor agitator who presented a threat through his advocacy for workers, union leadership, and participation in West Coast strikes.[75] Dies's efforts to deport Bridges failed.

In *Kessler v. Strecker*, the Supreme Court held the ideological deportation provision in the Anarchist Exclusion Act applied only to individuals who were presently members of or affiliated with a subversive organization that advocated the overthrow of government by force or violence, including the Communist Party.[76] Bridges's subsequent deportation hearing in 1939, shortly after the Court's decision, found that Bridges was not presently a member of

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[70] *Id.* at 67.

[71] *See id.* at 67, 72–73 (stating that Goldman was in prison when Congress revised the Anarchist Exclusion Act to include deporting "persons who believe in or advocate the overthrow by force or violence" of the United States government any time after entry).

[72] Immigration Act of 1918, ch. 186, §§ 1–2, 40 Stat. 1012 (repealed 1990) ("The provisions of this section shall be applicable to the classes of aliens mentioned in this Act irrespective of the time of their entry into the United States").

[73] KRAUT, *supra* note 2, at 108.

[74] *See id.* at 100–02 (detailing Representative Dies's nativist campaign and investigations into Roosevelt Administration programs).

[75] *Id.* at 102.

[76] Kessler v. Strecker, 307 U.S. 22, 29–30 (1939) (noting "the statute deals not only with membership in an organization of the described class, but with affiliation therewith and, as well, with belief and teaching").

or affiliated with the Communist Party.[77] Therefore, Secretary of Labor Frances Perkins cancelled Bridges's deportation warrant under the Anarchist Exclusion Act.[78]

In response, Congress passed the Alien Registration Act of 1940, which revised the Anarchist Exclusion Act and authorized the deportation of any foreign noncitizen based on present *or* past membership in or affiliation with a subversive organization.[79] Federal officials again attempted to deport Bridges under this new provision, and again they failed. In *Bridges v. Wixon*, the Supreme Court held Bridges was not, and had never been, a member of or affiliated with such a subversive organization, including the Communist Party, and thus could not be deported under the Alien Registration Act.[80]

While the use of explicit ideological restrictions to target a particular individual like Harry Bridges is one form of selective ideological deportation, another form is retaliatory deportation, where individuals are targeted and deported under other immigration laws because of their political expressions, beliefs, and associations. Perhaps the most famous example of retaliatory deportation is the Nixon Administration's abuse of power in attempting to deport British musician John Lennon in 1972.[81] Lennon was a vocal critic of the war in Vietnam, and the Nixon Administration feared the New Left would harness Lennon's popularity to attract young voters, disrupt the Republican National Convention, and threaten Nixon's campaign for reelection.[82] Lennon obtained a visa on a waiver of inadmissibility because of his conviction for drug possession in England.[83] The Nixon

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[77] KRAUT, *supra* note 2, at 105.

[78] *Id.* at 105–106.

[79] Alien Registration Act of 1940, ch. 439, sec. 23, §§ 1–2, 54 Stat. 670, 673 (amending the Immigration Act of 1918).

[80] Bridges v. Wixon, 326 U.S. 135, 156 (1945) ("Since Harry Bridges has been ordered deported on a misconstruction of the term 'affiliation' as used in the statute and by reason of an unfair hearing on the question of his membership in the Communist Party, his detention under the warrant is unlawful.").

[81] *See* KRAUT, *supra* note 2, at 179–80 (describing the Nixon Justice Department's pretextual motivation for attempting to deport Lennon).

[82] *Id.* at 180.

[83] *Id.* at 179.

Administration decided not to renew Lennon's visa and ordered him to leave the United States or be deported.[84]

Lennon believed his deportation had nothing to do with his drug conviction but instead was a form of retaliation for his views and expressions. "The real reason is that I'm a peacenik," he replied when asked the reason why his visa was not renewed.[85] Lennon's immigration lawyer, Leon Wildes, filed a Freedom of Information Act request and discovered the Nixon Administration's retaliatory motivation for Lennon's selective deportation.[86] In 1975, the Second Circuit Court of Appeals overturned Lennon's deportation order, citing the evidence that the Nixon Administration was abusing its power and using Lennon's deportation as a tool to silence political expression that was protected under the First Amendment.[87]

While some public officials used and abused their power to ideologically deport more individuals, others exercised their power and prosecutorial discretion to deport fewer. Yet, those officials faced impeachment efforts by other officials and members of Congress.

As he recounted in his memoir, *The Deportations Delirium of Nineteen-Twenty: A Personal Narrative of an Historic Official Experience*, Louis F. Post was called before Congress and threatened with impeachment for his failure to deport more foreign noncitizen radicals rounded up and arrested in the 1920 raids ordered by Attorney General A. Mitchell Palmer and referred to as the "Palmer Raids."[88] The Immigration and Naturalization Service (INS) fell under the Department of Labor until it was transferred to the

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[84] *Id.*

[85] JON WIENER, COME TOGETHER: JOHN LENNON IN HIS TIME, 233 (Univ. of Ill. Press 1991) (1984).

[86] LEON WILDES, JOHN LENNON VS. THE U.S.A.: THE INSIDE STORY OF THE MOST BITTERLY CONTESTED AND INFLUENTIAL DEPORTATION CASE IN UNITED STATES HISTORY 140–43 (2016) (revealing the political motivation for investigating and trying to deport Lennon).

[87] *See* Lennon v. INS, 527 F.2d 187, 195 (2d Cir. 1975) (condemning the use of executive discretion to engage in "selective deportation based upon secret political grounds" even though the factual issue was not before the court); *see also* Arnold H. Lubasch, *Deportation of Lennon Barred by Court of Appeals*, N.Y. TIMES, Oct. 8, 1975, at 42 (reporting that the underlying "secret political grounds" were that Nixon feared Lennon would "promot[e] opposition to the then President").

[88] *See* LOUIS F. POST, THE DEPORTATIONS DELIRIUM OF NINETEEN-TWENTY: A PERSONAL NARRATIVE OF AN HISTORIC OFFICIAL EXPERIENCE 271–74 (1923).

Justice Department in 1940.[89] As Assistant Secretary of Labor, Post used his authority to review each deportation order and applied his interpretation of the law to determine whether that individual fell under the provisions of the Anarchist Exclusion Act.[90] Post then exercised his discretion not to deport if he determined the individual's views or associations did not fall under the Act's provisions.[91] He estimated he cancelled almost 3,000 arrests for deportation through this process.[92] Consequently, Post came under fire from Palmer and members of Congress who accused him of abusing his power, but he proved he had the authority to interpret the law and apply it and was not impeached.[93]

In 1939, Secretary Perkins faced impeachment by members of Congress when she used her prosecutorial discretion to defer action and delay deporting Harry Bridges under the Anarchist Exclusion Act.[94] Perkins was successful in defending herself against impeachment, insisting she had not refused to deport Bridges.[95] Perkins explained that she intended to follow the law and would initiate deportation proceedings once the Supreme Court issued its opinion in *Kessler v. Strecker* interpreting the meaning of the Anarchist Exclusion Act.[96] Congressman Dies, a longtime foe of Perkins, argued not only for stricter immigration restrictions but also to eliminate prosecutorial discretion.[97]

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[89] U.S. CITIZENSHIP & IMMIGR. SERVS. HIST. OFF. & LIBR., OVERVIEW OF INS HISTORY 7–8 (2012) (outlining the administrative history of INS through the 1930s and 1940s).

[90] *See* KRAUT, *supra* note 2, at 76 (detailing how Post used his position to limit deportations under the Anarchist Exclusion Act).

[91] *See* POST, *supra* note 88, at 276–77 (providing a contemporaneous account of Post's approach to the Act).

[92] *Id.* at 187 (crediting himself for cancelling 2,700 warrants).

[93] KRAUT, *supra* note 2, at 75–76 (describing the failed attempt to impeach Post).

[94] *See Miss Perkins Tells Committee Bridges Gets No Favoritism; Denies a Conspiracy to Block Deportation of C.I.O. Man—Criticizes Communists Use of 'Restraint' Upheld Group Weighing Impeachment Hears Secretary Say Full Onus in Case Is on Her*, N.Y. TIMES, Feb. 9, 1939, at 1 (describing Perkins's defense in the face of possible impeachment).

[95] KRAUT, *supra* note 2, at 103.

[96] *See Miss Perkins Tells Committee Bridges Gets No Favoritism*, *supra* note 94 (reporting that Perkins gave the appeal to the Supreme Court "as a reason for withholding action in the Bridges case").

[97] KRAUT, *supra* note 2, at 101; *see also* Representative Martin Dies, The Alien Menace to America (June 21, 1935), *in* 74 CONG. REC. 10, 227–32 (1935) (extolling the anti-immigrant virtues of a bill sponsored by Dies).

Lawyers and advocates who represented those facing ideological deportation also became targets of federal officials. J. Edgar Hoover ordered an investigation of both Harry Bridges and his lawyer, Carol Weiss King, in an effort to obtain evidence to undermine and disparage her and Bridges.[98] King was General Counsel for the American Committee for Protection of Foreign Born (ACPFB), the primary organization representing those facing deportation, including ideological deportation, in the United States during the 1930s, 1940s, and 1950s.[99] In the 1950s, the Justice Department targeted Rose Chernin, an emigrant from Russia and founder and executive director of the Los Angeles Chapter of the ACPFB.[100] She was convicted of conspiring to overthrow the government under the Alien Registration Act, and while serving her sentence, faced denaturalization and deportation.[101] These efforts ultimately did not succeed, but challenging them created hardship for Chernin.[102]

Though Chernin was never deported, the threat of deportation and the lingering fears of being forced to leave home and be separated from family members are part of the politically repressive efforts to suppress the threat of dissent. During the Cold War, many foreign noncitizens were humiliated by the questions consular officials asked about their political beliefs, associations, and opinions to obtain a visa to come to the United States, and Americans were consequently embarrassed and ashamed.[103] Some foreign visitors were frustrated by these interrogations and long delays in obtaining visas, as well as fearful of being denied a visa.[104] Some simply chose not to apply for visas to enter the United States to avoid being subject to ideological exclusion.[105] For example, Nobel laureate and Colombian novelist Gabriel García Márquez was

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[98] KRAUT, *supra* note 2, at 106.

[99] *See id.* at 95–97 (describing the American Committee for Protection of Foreign Born and King's involvement in the organization).

[100] *Id.* at 134.

[101] *Id.*

[102] *Id.* (indicating that Chernin's legal battles hindered her work in the ACPFB).

[103] *See id.* at 128, 131–32 (describing the "international tension" that followed the widespread exclusions early in the Cold War).

[104] *Id.* at 128–32 (describing how the policies of the era and those enforcing immigration laws reflected a presumption of foreigners as posing a potential threat to the United States).

[105] *See id.* at 194 (discussing the testimony of Morton Halperin, a foreign policy expert in the Johnson and Nixon Administrations, suggesting the number of excluded foreigners does not include people who chose not to apply for a visa due to embarrassing questioning).

deemed inadmissible under the McCarran-Walter Act.[106] He refused to be interrogated about his ideas and associations and refused, for "reasons of principle and personal dignity," to enter the United States if he had to do so under a conditional visa.[107]

In 1952, British-born actor Charlie Chaplin left the United States to promote his new film *Limelight* in Europe.[108] Attorney General James P. McGranery revoked Chaplin's reentry permit and accused Chaplin of having a "leering, sneering attitude toward a country whose hospitality has enriched him."[109] McGranery demanded Chaplin, a foreign noncitizen, "prove his worth and right to enter the United States" in an interview about his morals, beliefs, and associations.[110] Chaplin refused and relocated with his family to Switzerland.[111] Chaplin returned twenty years later to accept an honorary Academy Award in 1972—the same year the Supreme Court upheld the constitutionality of Ernest Mandel's ideological exclusion and the Nixon Administration attempted to deport John Lennon.[112]

While public officials argued that ideological exclusions and deportations were necessary to preserve and protect the United States and America's liberal democracy and values, those excluded or deported and those who challenged their exclusion or deportation argued that such restrictions functioned as a type of censorship that contradicted America's liberal, democratic values and damaged the nation's reputation and identity as a nation of immigrants.[113] Rather than project an image of the United States as strong, confident, and tolerant, ideological exclusions and deportations depicted a repressive, weak nation that feared foreigners and free expression.[114]

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[106] *See id.* (explaining Márquez's "conditional visa under a waiver of inadmissibility").

[107] Jeri Laber, *Why Some Writers Aren't Welcome Here*, N.Y. TIMES, Apr. 29, 1984 (§ 7), at 28.

[108] KRAUT, *supra* note 2, at 130.

[109] *M'Granery Lashes Comedian Chaplin*, L.A. TIMES, Oct. 3, 1952, at 25.

[110] *Chaplin Must Prove Case*, N.Y. TIMES, Oct. 29, 1952, at 32.

[111] *See Chaplin Plans Swiss Stay*, N.Y. TIMES, Dec. 10, 1952, at 49 (reporting Chaplin's move to Switzerland).

[112] KRAUT, *supra* note 2, at 179–80.

[113] *See id.* at 7, 128, 131, 164–65, 189, 226 (describing criticism and arguments against ideological exclusion and deportation justifications over the years).

[114] *See id.* at 132 ("[Exclusionary policies based on ideology] gave the impression that there was no difference between the United States and the Soviet Union. . . .").

After the Supreme Court's decision upholding his exclusion, Ernest Mandel wrote to his supporters in the United States and those who helped bring the legal challenge before the Court. He reflected on the futility of using ideological restrictions to suppress the threat of dissent: "No revolutionary change was ever prevented by trying to suppress free circulation of ideas . . . . If anything, such measures of suppression always in the end hasten radical social change rather than stop[] it."[115]

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I completed *Threat of Dissent* during the Trump Administration, which served as a reminder of the relevance of the United States' history of ideological exclusion and deportation. During his presidential campaign in 2016, Donald Trump called for "extreme vetting," including an "ideological screening test," like the United States used during the Cold War.[116] After Trump became President, the State Department required all visa applicants to disclose their social media handles and identifiers, which may have had the effect of chilling speech and using guilt by association through social media to ideologically exclude foreign noncitizens during the visa process and inspections at the border.[117] Trump also turned to a provision in the McCarran-Walter Act of 1952 to support his travel ban, and in *Trump v. Hawaii*, the Supreme Court upheld the ban, deferring to the President's authority to suspend entry of foreign nationals and citing the legal precedent established in *Kleindienst v. Mandel*.[118] Federal officials also used selective, retaliatory, and ideological deportation to target activists who were outspoken

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[115] *Id.* at 179.

[116] Tessa Berenson, *Donald Trump Proposes 'Extreme Vetting' for Immigrants*, TIME (Aug. 15, 2016, 03:50 PM), https://time.com/4452970/donald-trump-immigration-isis-terrorism/.

[117] *See Collection of Social Media Identifiers from U.S. Visa Applicants*, U.S. DEP'T OF STATE (June 4, 2019), https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/visas-news-archive/20190604_collection-of-social-media-identifiers-from-U-S-visa-applicants.html (explaining the new requirement mandated by the Department of State); *see also* Jameel Jaffer, *Censorship at the Border Threatens Free Speech Everywhere*, JUST SEC. (Apr. 14, 2017), https://www.justsecurity.org/39986/censorship-border -extreme-vetting-free-speech./ (placing the social media policy and its consequences in historical context by describing ideological exclusions that occurred under the McCarran-Walter Act).

[118] Trump v. Hawaii, 138 S. Ct. 2392, 2419 (2018) (applying the holding of *Mandel* to former President Trump's ban of travelers from mostly predominantly Muslim countries).

critics of the Trump Administration's immigration policies, exemplified by the attempt to deport New Sanctuary Coalition executive director Ravi Ragbir.[119]

What I discovered through researching the intersection of immigration and First Amendment law and writing a long history of ideological exclusion and deportation in the United States is that this intersection is vital to understanding how and why the use of immigration restrictions as tools to suppress the threat of dissent has persisted. By examining the underlying dynamics behind ideological exclusions and deportations, we can also better understand how to challenge them in the courts, how to reform and repeal the underlying legal provisions supporting them through federal legislation, and how to raise public consciousness about their use as tools of political repression.

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[119] Derek Hawkins, *Federal Judge Blasts ICE for 'Cruel' Tactics, Frees Immigrant Rights Activist Ravi Ragbir*, WASH. POST (Jan. 30, 2018, 6:19 AM), https://www.washingtonpost.com/news/morning-mix/wp/2018/01/29/federal-judge-blasts-ice-for-cruel-tactics-frees-immigrant-rights-activist-ravi-ragbir/ (discussing Ragbir's release and U.S. District Judge Katherine B. Forrest's "stinging rebuke of the [Trump] administration's crackdown on immigration"); Editorial, *ICE Tried to Deport an Immigration Activist. That May Have Been Unconstitutional*, N.Y. TIMES (Apr. 27, 2019), https://www.nytimes.com/2019/04/27/opinion/sunday/ice-deportation-activists.html ("[Ragbir's] lawyers have presented evidence of what they say is a pattern of retaliatory conduct against immigrants' rights advocates . . . exercising their 'fundamental First Amendment rights . . . .'").