


Submission to Ms.Irene Khan,
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

**Input to the thematic report of the Special Rapporteur on Freedom of Expression in Challenging Times**

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Submitted by Chip Gibbons, Policy Director
On behalf of Defending Rights & Dissent

Since October 7, 2023, the US has been undergoing one of the worst threats to freedom of expression in recent memory. At nearly all levels of government, policies have been enacted designed to chill, intimidate, or suppress speech in support of Palestinian human rights or in support of a ceasefire. Elected officials have demonized protesters, local police have violently dispersed assemblies, and intelligence agencies are being encouraged to surveil protesters. Individuals have also been fired from their jobs because of their support for Palestinian rights and social media companies appear to be engaged in censorship. Many of these attacks on free expression rights are rooted in the fact that, while within the US government there remains wide support for Israel's war in Gaza, increasingly large segments of the public support a ceasefire. Speech does not need majority support to deserve protection, but this growing disconnect between the government and the people explains the ferocity of these attacks on free expression rights.

## Legal Framework in the US

The First Amendment of the United States Constitution prohibits the federal government from restricting freedom of expression on the basis of viewpoint. The Supreme Court has interpreted the Fourteenth Amendment of the US Constitution as applying the First Amendment's restrictions to state and local governments. Additionally, states have their own constitutions that also guarantee freedom of expression. In some cases, state courts have interpreted their own constitutions to be more protective of speech than the Supreme Court has interpreted the First Amendment.

The Supreme Court has not extended the First Amendment's protections to overnight encampment and allowed for reasonable time, place, and manner restrictions to be placed on protests. The US system of time, place, and manner restrictions have been criticized by the previous United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association as noncompliant with international law.[1]

Neither the US First Amendment nor similar provisions in state constitutions have been applied to private actors. As the US practices "at-will employment," private employers have wide legal permission in the US to fire or otherwise retaliate against their employees for exercise of core free expression rights. Public employers, including public educational institutions, are bound by the First Amendment. Public employees have a right to comment on matters of public concern, though US courts have allowed the government when acting as employer to balance those rights against the interests in preventing workplace disruption.

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[1] *See July 27, 2016 statement by the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association at the conclusion of his visit to the United States of America, available at* https://www.ohchr.org/en/statements/2016/07/statement-united-nations-special-rapporteur-rights-freedom-peaceful-assembly-and

Although both supporters of Israel and Palestinian rights have equal free expression rights under the US Constitution, it is supporters of Palestians rights who are the subject of systematic violations of free expression rights from all levels of government.

## Congressional Efforts to Chill Speech

The United States Congress has been leading the way when it comes to attacks on the free expression rights of supporters of Palestinian rights. Multiple high profile members of Congress have publicly equated speech in defense of Palestine with terrorism and accused the protests of being the result of malign foreign influence.[2] While individual politicians have free speech rights to express their own political views, as discussed below many of these comments are part of attempts to influence law enforcement and intelligence agencies to surveil protesters.

In addition to passing non-binding resolutions demonizing the protests, Congress has pursued legislation that would severely curtail free expression rights. The House of Representatives passed a bill that would enact a de facto ban on TikTok. Supporters of the bill made clear they blame TikTok for public support for a ceasefire.[3] Similarly, the House of Representatives has also passed a bill that would allow non-profit organizations to be stripped of their tax exempt status if they are "terrorist supporting." US law already imposes harsh financial and criminal penalties on charities that support terrorism. These laws have been used to target supporters of Palestine and criminalize humanitarian assistance to the Palestinian people. This new law does not serve any legitimate purpose, but eliminates what due process protections exist. Supporters of this bill have made clear their targets are supporters of Palestinian rights.[4] [5]

Members of Congress have also used the bully pulpit of office to pressure private and local universities, as well as local and federal officials, to take actions to suppress student protest

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[2] *See e.g.* Ellie Quinlan Houghtaling, " "Pro-Terrorist": Dem Congressman Smears Protesters Calling for Cease-Fire in Gaza," *The New Republic* (November 16, 2023) *available at* https://newrepublic.com/post/176967/pro-terrorist-democratic-congressman-brad-sherman-dnc-ceasefire-protest, "Speaker Johnson says Congress will act if university officials won't crackdown on campus protestors," Associated Press, (April 30,2024) *available at* https://newsroom.ap.org/editorial-photos-videos/detail?itemid=83ede9d35640442b806f1f3d71c095d2&mediatype=video&source=youtube, Matthew Impelli, "Republican Blames China for Pro-Palestinian College Protests" *Newsweek* (April 24, 2024) *available at* https://www.newsweek.com/columbia-university-pro-palestinian-protests-1893714, Lauren Gambino "Pelosi condemned for suggesting pro-Palestinian activists have ties to Russia," *The Guardian* (January 29, 2024), *available at* https://www.theguardian.com/us-news/2024/jan/29/pelosi-condemned-pro-palestinian-russia-ties

[3] Seth Stern, "Israel is banning Al Jazeera, America is banning TikTok. We know why," *The Guardian* (May 7, 2024) *available at* https://www.theguardian.com/commentisfree/article/2024/may/07/israel-al-jazeera-us-tiktok-ban

[4] "Charity & Security Network Opposes Legislation that Targets Charities," *Charity and Security Network* (April 25, 2024), *available at* *https://charityandsecurity.org/news/charity-security-network-opposes-legislation-that-targets-charities/*

[5] Neither bill has passed the Senate

and even fire faculty due to their political speech. These include individual members of Congress, as well as Congressional committees such as the House Committee on Oversight and Accountability and the House Committee on Education and the Workforce.[6] The latter committee not only lobbies for the dispersal of student protesters and firing of professors, but has transformed itself into an investigatory body of pro-Palestine speech on campuses. The committee has subpoenaed information about funders of the Rutgers Center for Security, Race, and Rights due to the academic programing of the center.[7] Recently, both the Education and Oversight Committees announced they were jointly investigating the funding sources for college encampments. As part of this investigation, they have requested Suspicious Activity Reports from the Department of the Treasury on a number of civil society groups. Some of these groups engaged in protests, but the targets also include an organization that has provided legal support to Palestinian activists.[8] This indicates the investigation not only wishes to silence student protesters, but intimidate those who defend their legal rights.

## Law Enforcement Suppression of Campus Demonstrations

The most shocking abridgement of free expression rights have come in law enforcement's violent dispersals and illegal arrests of campus protesters. Police have arrested and assaulted both students and professors engaged in peaceful protests. They have arrested journalists covering the protests. Police have shown up to peaceful protests in riot gear and on horseback. They have used tear gas, projectiles, tasers, and batons against the protesters. Arrests have taken place on nearly thirty separate college campuses.

Private universities are not bound by the First Amendment, but when a local government declined requests for local police to shut down nonviolent protests they faced pressure from Congress. Public universities are bound by the Constitution. Some university administrators have tried to cite the existence of tents or encampments as a legal basis for their violent suppression of nonviolent assemblies. The decision to attack these encampments is anything but neutral. Riot police are not the typical response to tents on an open lawn. It is a choice to use excessive force against these nonviolent protesters, one that is being made because of their point of view.

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[6] *See e.g. April 24, 2024 press release of the House Committee on Education and Workforce available at https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=410478, and May 1, 2024 press release of the House Committee on Oversight and Reform available at https://oversight.house.gov/release/oversight-committee-republicans-dc-officials-must-take-action-against-pro-hamas-camp-and-restore-the-rule-of-law%EF%BF%BC/*

[7] For background see "Defending Rights & Dissent Stands Against McCarthyite Attacks on Center for Security, Race and Rights," *Defending Rights & Dissent* (May 30, 2024) *available at https://www.rightsanddissent.org/news/defending-rights-dissent-stands-against-mccarthyite-attacks-on-center-for-security-race-and-rights/*

[8] *See joint press release of the House Committee on Oversight and Reform and House Committee on Education and Workforce available at https://oversight.house.gov/release/comer-foxx-seek-information-from-treasury-secretary-yellen-on-groups-funding-pro-hamas-propaganda-and-antisemitic-harassment-on-college-campuses%EF%BF%BC/*

Police violence has by no means been exclusively limited to occupations or tents. When students at the University of Texas, Austin held a protest that was clearly protected by the First Amendment, police were called. Police illegally arrested students, protesters, and a photojournalist. The false charges brought by the arresting officers were dropped the next day due to a lack of probable cause.

## Potential "National Security" Surveillance of Political Speech

Although the United States Constitution protects freedom of expression, privacy, and freedom from unwarranted government intrusion, the United States has a long history of surveillance and monitoring of disfavored speech. Infamous historical examples include the FBI's Counterintelligence Program, which sought to disrupt and neutralize disfavored political organizations, and their intrusive surveillance of civil rights leaders Martin Luther King. Since the early 1980s, this surveillance has been increasingly justified as a counter terrorism measure. Citing the need to take a preventive approach to terrorism, law enforcement and intelligence agencies have selectively singled out disfavored speech for monitoring, even when there is no connection to terrorism or violence.[9]

National security surveillance in the United States is cloaked in secrecy and it is difficult to learn about intrusive spying in real time. Nonetheless, there is great cause for concern. Not only is there such a history of monitoring of political protest, there is a history of decades of such monitoring directed at supporters of Palestinian rights. Concerns are heightened by the fact that elected officials have publicly pressured intelligence agencies and law enforcement to investigate pro-Palestinian activism.[10] Less than a week into Israel's war on Gaza, Senator Josh Hawley publicly urged the Attorney General to investigate funding of leftwing opponents of the war.[11] Influential private organizations, some with a history of influencing US national security policy, have also pushed for the FBI to investigate protesters' funding.[12] During a closed door meeting, Rep. Mike Turner cited ceasefire protests as reasons for reauthorizing a foreign intelligence surveillance authority that has been used to facilitate illegal surveillance.[13] Turner is the chair of the powerful House Intelligence Committee. Civil society groups have reported an uptick of FBI questioning of individuals

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[9] Chip Gibbons, *Still Spying on Dissent: The Enduring Problem of FBI First Amendment Abuse available* at https://www.rightsanddissent.org/fbi-spying/

[10] Chip Gibbons, "US surveillance of pro-Palestinian speech has a direct line to McCarthyism," *The Guardian* (May 22, 2023).*Available at* https://www.theguardian.com/commentisfree/article/2024/may/22/surveillance-pro-palestine-protest

[11] *See October 16, 2023 press release of Senator Josh Hawley available at* https://www.hawley.senate.gov/hawley-urges-doj-investigate-outside-funding-far-left-anti-israel-student-groups/

[12] Mike Gonzalez, "FBI Should Uncover Who Organized, Funded Radical Student Encampments," *Heritage Foundation* (May 6, 2024) *available at* https://www.heritage.org/progressivism/commentary/fbi-should-uncover-who-organized-funded-radical-student-encampments

[13] Dell Cameron, "US Lawmaker Cited NYC Protests in a Defense of Warrantless Spying," *Wired* (March 24, 2024) *available at* https://www.wired.com/story/hpsci-us-protests-section-702-presentation/

about their views on Palestine.[14] At the border, Customs and Border Protection has been similarly inquiring about people's political speech.[15] On the local level, New York Mayor Eric Adams publicly told US media that the New York Police Department was monitoring a Pro-Palestine protest.[16] The NYPD, like the FBI, has a history of illicit intelligence gathering on political speech.

Potential national security surveillance is heightened by the fact opponents of the ceasefire protests, including government officials, have been trying to equate the protests with terrorism and have argued they are the product of malign foreign influence.

Many supporters of Israel consider any support, including political speech, in defense of Palestine to be terrorism. This view is clearly shared by many elected officials. Concerns about foreign influence function similarly. Many of the allegations about foreign influence seem to be predicated on government leaders' belief that support for Israel's war in Gaza is the only rational position. Therefore, the only situation under which people could express concerns about Israel's war or sympathy for the plight of the Palestinians, is the result of a malign influence. In such a worldview, mere utterance of the proscribed points of view becomes evidence of the foreign influence.

## Conclusion

Supporters of Palestinian rights have faced a variety of attacks on their basic free expression rights. This includes, but is not limited to, Congress pursuing legislation to punish speech, as well as using the bully pulpit of the legislature to lobby for repression of speech, law enforcement's violent suppression of campus protests, and potential national security surveillance of protesters.

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[14] "Rights group report spike in FBI interrogation of pro-Palestine activists," *Middle East Monitor* (January 25, 2024) *available at* https://www.middleeastmonitor.com/20240125-rights-group-report-spike-in-fbi-interrogation-of-pro-palestine-activists/

[15] Chip Gibbons, "US surveillance of pro-Palestinian speech has a direct line to McCarthyism," *The Guardian* (May 22, 2023) *available at* https://www.theguardian.com/commentisfree/article/2024/may/22/surveillance-pro-palestine-protest

[16] *A video of Mayor Adams' comments is available on Twitter at* https://x.com/FaceTheNation/status/1711048207046787527