

Intent Over Effect: Title VI Rollback and U.S. Treaty Obligations



Students walking through the Quad at the University of Washington. While UW has enrolled over 8,000 international students in 2025, that number is the [lowest it has been](#) in eight years.

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On December 10, 2025, the U.S. Department of Justice [rescinded four disparate-impact provisions](#) from its [regulations implementing Title VI of the Civil Rights Act of 1964](#). These provisions had prohibited conduct with *discriminatory effects regardless of intent*. Section 42.104(b)(2) barred federal funding recipients from utilizing criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, or national origin. Section 42.104(b)(3) prohibited the selection of sites for federally funded facilities if such location decisions had a discriminatory effect. Section 42.104(c)(2) barred employment practices that tend to exclude persons in program delivery. Lastly, Section 42.104(b)(6) required recipients to take affirmative action to overcome the effects of prior discrimination.

This rule implements [Executive Order 14281](#), which expressly directs the Attorney General to repeal or amend Title VI regulations to the extent they contemplate disparate-impact liability under Section 5. The DOJ now limits Title VI enforcement across all federally funded programs to intentional discrimination, requiring proof that decision-makers intended to discriminate rather than merely produced discriminatory outcomes. This eliminates administrative remedies for facially neutral policies in program administration, facility siting, employment, and remediation that disproportionately harm protected groups.

This shift from effects-based to intent-based enforcement affects domestic civil rights enforcement, U.S. treaty compliance, and protections for foreign nationals. The rule directly conflicts with Article 1 of the [International Convention on the Elimination of All Forms of Racial Discrimination](#) (ICERD), which defines racial discrimination as acts having a discriminatory purpose or effect. The new rule also eliminates federal protections for [1.2 million international students](#), who contributed \$55 billion to the U.S. economy in 2024, when visa revocations and hostile climate measures have already left international students facing unprecedented exposure to discrimination. It also places American civil rights enforcement at odds with the international consensus, which recognizes disparate impact discrimination without requiring proof of discriminatory intent.

Treaty Obligations and the ICERD Remedial Gap

The December rollback creates a fundamental enforcement gap that violates binding U.S. treaty obligations. Article 1 of the [ICERD](#) defines racial discrimination as any measure “which has the purpose or effect of nullifying or impairing” equal rights. This definition explicitly encompasses both intentional discrimination (purpose) and disparate impact (effect). By eliminating DOJ administrative enforcement of the effect prong while maintaining only purpose-based enforcement, the U.S. has created a remedial gap that directly conflicts with the treaty’s two-pronged definition.

This gap is critical because of the U.S. Supreme Court’s 2001 ruling in *Alexander v. Sandoval*, which eliminated the private right of action to enforce Title VI disparate-impact regulations. After *Sandoval*, administrative enforcement by federal agencies became the only mechanism for addressing disparate-impact discrimination in federally funded programs. Under [Executive Order 12250](#), the DOJ coordinated Title VI enforcement across all federal agencies, each of which promulgated regulations prohibiting disparate impact discrimination. However, Executive Order 14281 directed all federal agencies to eliminate disparate-impact liability from their Title VI regulations. Since both private enforcement and administrative enforcement are now eliminated, no federal enforcement mechanism remain for an entire category of discrimination that ICERD obligates states parties to address.

The enforcement gap specifically undermines treaty obligations in education. [Article 2 of the ICERD](#) requires states parties to amend, rescind, or nullify any laws and regulations that have the effect of creating or perpetuating racial discrimination. Article 5 guarantees equality in the right to education and training, and Article 6 mandates effective protection and remedies through competent tribunals. The rollback makes these obligations unenforceable. When educational policies lack provable discriminatory intent but produce racially disparate outcomes, no federal administrative mechanism exists to fulfill these requirements.

The UN Committee on the Elimination of Racial Discrimination (CERD) has acknowledged this problem. In their [2022 Concluding Observations](#), CERD expressed concern about the continuing de facto segregation and racial achievement gap in U.S. education. It recommended that the U.S. strengthen enforcement mechanisms to address discriminatory effects of school funding policies, disciplinary practices, and other facially neutral education policies that produce disparate impacts on students based on race, color, or national origin.

However, the December 2025 rollback moved in the opposite direction, weakening these mechanisms. In a [February 2025 statement](#) from the Office of the High Commissioner for Human Rights, UN experts expressed concern about measures by the new U.S. administration that could weaken domestic human rights protections, including safeguards for equality and non-discrimination. The retreat from combating disparate impact discrimination in education policy exemplifies the kind of policy that would undermine the U.S.’s ability to meet its international human rights obligations.

The rollback is not a purely domestic choice about enforcement policies because it implicates the obligations that the U.S. assumed by ratifying ICERD to address both discriminatory purpose and effect. By eliminating the administrative mechanism for effect enforcement, the rollback fails to comply with binding international obligations that cannot be superseded by domestic statutory interpretation.

International Students and the Collapse of Federal Protection Mechanisms

Title VI's prohibition on discrimination based on national origin has historically protected all persons, [regardless of their citizenship status](#). The rollback eliminates the DOJ's ability to investigate policies that disproportionately harmed students based on national origin, absent proof of discriminatory intent. This leaves only intentional discrimination claims, which is significantly harder to prove, particularly for facially neutral policies that produce discriminatory effects.

American colleges and universities hosted [1,177,766 international students](#) during the 2024-2025 academic year. However, Fall 2025 shows the [first overall decline](#) in four years, with undergraduate enrollments plunging 17% and graduate enrollments dropping 12%. NAFSA: Association of International Educators documented over [800 visa revocations](#) and SEVIS (Student and Exchange Visitor Information System) terminations by April 2025, creating an atmosphere of fear and confusion, a projected loss of [\\$1.1 billion in revenue, and nearly 23,000 jobs](#).

Alternative legal protections remain, including constitutional claims under the [Fourteenth Amendment's Equal Protection Clause](#). The Supreme Court has applied strict scrutiny to state discrimination against permanent resident aliens (green card holders) in higher education (*Nyquist v. Mauclet, 1977*). It has not yet addressed whether international students on temporary visas receive the same protections. State anti-discrimination laws and [Title VII employment claims](#) under the Civil Rights Act of 1964 (Title VII) offer additional recourse. However, the combination of federal enforcement retreat and heightened visa enforcement fundamentally alters the risk calculus for international students by removing the federal backstop. Meanwhile, they face [unprecedented immigration enforcement actions](#).

U.S. Divergence from the International Consensus on Indirect Discrimination

An international consensus has emerged to address systemic discrimination by recognizing that neutral policies can produce discriminatory outcomes. This framework places the burden on institutions to justify those outcomes and provides remedies without requiring proof of intent.

Section 19 of the UK's [Equality Act 2010](#) prohibits indirect discrimination when a provision, criterion, or practice puts persons with a protected characteristic at a particular disadvantage, unless the respondent proves it is a proportionate means of achieving a legitimate aim. Once claimants show a statistical disadvantage, Section 19(2)(d) shifts the justification burden to respondents.

Article 2(2)(b) of the [European Union's Race Equality Directive](#) (2000/43/EC) similarly defines indirect discrimination as occurring when "an apparently neutral provision, criterion, or practice would put persons of a racial or ethnic origin at a particular disadvantage" unless it is "objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary." In *D.H. and Others v. Czech Republic* (2007), the European Court of Human Rights applied this framework to education, holding that statistical evidence of disproportionate student placement created a prima facie case of discrimination, thereby shifting the burden to the state to justify the system. When the Czech Republic failed to explain the system, the Court found violations of the prohibition of discrimination under Article 14 of the [European Convention on Human Rights](#).

Finally, Canada follows a comparable effects-based model. Section 15(1) of the [Canadian Charter of Rights and Freedoms](#) guarantees equality without discrimination based on race, national or ethnic origin, or other protected grounds. In *Fraser v. Canada* (2020), the Supreme Court interpreted Section 15(1) to require only proof of disproportionate impact on a protected group. The government bears the burden to show that "the law is not arbitrary in its justificatory submissions" under Section 1.

The post-rollback U.S. stands virtually alone among its peer democracies in requiring plaintiffs to prove discriminatory intent without shifting the burden in light of statistical disparities. For example, a U.S. university with 90% white enrollment despite diverse applicant pools would have to justify its neutral criteria in other democracies, but would face no such burden in the U.S. unless the plaintiffs prove that

decision-makers intended to discriminate. Ironically, the U.S. invented the disparate impact doctrine in *Griggs v. Duke Power Co.* (1971), which was subsequently translated internationally as indirect discrimination. Now, the U.S. retreats from the doctrine, though it is maintained elsewhere.

This divergence creates practical compliance complications. Universities with U.S. and international campuses must maintain dual systems: burden-shifting frameworks that require contemporaneous justification documentation abroad, and intent-based frameworks that require no such documentation domestically, making a coherent institutional policy impossible. This gap reflects fundamentally different understandings of discrimination itself. The international consensus recognizes that discrimination operates through structures and systems, not only through individual animus, while the U.S. post-rollback approach rejects this framework entirely.

Conclusion

The Title VI rollback reshapes civil rights enforcement by eliminating the DOJ's ability to investigate policies with discriminatory effects and requiring proof of discriminatory intent instead. This regulatory shift creates three significant consequences. First, it conflicts with U.S. treaty obligations under the ICERD. Second, it withdraws federal protections for international students during a period of heightened vulnerability. Last but not least, it places the U.S. outside the international consensus among comparable democracies that recognize effects-based discrimination.

In the future, effective enforcement will depend on litigants' and institutions' capacity to connect statistical patterns to decision-makers' knowledge, navigate divergent domestic and international frameworks, and build governance practices that anticipate the risks of discriminatory effects even when federal law no longer requires agencies to act on them. For universities competing in global education markets while operating under overlapping treaty commitments and regulatory regimes, the stakes extend well beyond a single domestic litigation.