

Arab and Muslim Student Freedom of Expression

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Submitted by: Asian Americans Advancing Justice – Asian Law Caucus (Advancing Justice – ALC); Center for Constitutional Rights (CCR); Council on American Islamic Relations – San Francisco Bay Area (CAIR – SFBA); American Muslims for Palestine (AMP); National Lawyers Guild International Committee (NLG – IC)

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Advancing Justice – ALC seeks to promote, advance, and represent the legal and civil rights of Asian Pacific Islander communities. As part of its mission, ALC challenges national laws, policies, and practices that lead to racial and religious profiling of African, Arab, Middle Eastern, Muslim, and South Asian communities in the United States. Based in the state of California, ALC addresses these issues at local and national levels.

CCR is dedicated to advancing and protecting the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights. CCR uses litigation proactively to advance the law in a positive direction, to empower poor communities and communities of color, to guarantee the rights of those with the fewest protections and least access to legal resources, to train the next generation of constitutional and human rights attorneys, and to strengthen the broader movement for constitutional and human rights.

CAIR-SFBA is an office of CAIR, America's largest Muslim civil liberties and advocacy organization. Its mission is to enhance the understanding of Islam, encourage dialogue, protect civil liberties, empower American Muslims, and build coalitions that promote justice and mutual understanding.

AMP's mission is to educate the public about the Palestine cause and the rights of self-determination, liberty, and justice. Through providing information, training, and networking with like-minded individuals and organizations that support peace, AMP aims to raise awareness of the issues pertaining to Palestine and its rich cultural and historical heritage.

NLG IC supports legal work around the world to the end that human rights shall be regarded as more sacred than property interests. NLG IC seeks to change U.S. foreign policy that threatens, rather than engages, or is based on a model of domination rather than respect. NLG IC provides assistance and solidarity to movements in the U.S. and abroad that work for social justice.

Report endorsed by all the organizations listed in the submission field above, September 5, 2014.

I. SUMMARY

1. We are a coalition of civil rights and community organizations, which works closely with Arab and Muslim and other college students whose freedom of expression has been and continues to be censored or chilled, in violation of their free speech and expression rights under the U.S. Constitution's First Amendment and international law. We write concerning the misuse of U.S. civil rights laws to harass and intimidate Arab and Muslim and other college students seeking to speak in support of Palestinians' human rights, in opposition to Israeli government policies and practices, or concerning the United States' role in the conflict. Pro-Israel organizations in the U.S. have been filing and threatening to file complaints with the U.S. Department of Education (DOE) alleging that speech critical of the state of Israel is inherently anti-Semitic and must be censored to protect Jewish students' civil rights. In response, the DOE has opened investigations that have sprawled many years, and though it has eventually closed several investigations on the ground that activities complained of were protected by freedom of expression, the DOE has not taken proactive measures to prevent recurrence of these problems or to clarify to universities that speech opposing, criticizing, or supporting the policies of the United States, or a foreign government, is protected expression. The continued abuse of the DOE process has resulted in infringement of the free expression rights of Arab and Muslim college students and others who wish to express their views about this topic.

2. The U.S. should respect its obligation to protect freedom of expression under its own Constitution and laws, the Universal Declaration of Human Rights (UNDHR), and the International Covenant on Civil and Political Rights (ICCPR) by confirming that violations under Title VI of the Civil Rights Act of 1964 (Title VI) cannot be based solely on political speech opposing, supporting, or criticizing government policies or practices. The U.S. should timely address and dismiss pending investigations and appeals so as to end the continuing chilling effect on freedom of expression that is caused by the pendency of these open investigations. The U.S. should also direct affirmative relief remedying the chilling effects of complaints found to be meritless.

II. LEGAL FRAMEWORK

3. The First Amendment to the U.S. Constitution provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

4. Title VI of the Civil Rights Act of 1964¹ prohibits programs that receive federal financial assistance (which represents most universities in the U.S.) from discriminating against persons on the basis of race, color or national origin. It is an important law designed to protect racial, ethnic, and national group minorities from unequal treatment. The DOE, an agency of the U.S. federal government, is responsible for investigating colorable complaints of Title VI violations by all public and private schools and universities that receive federal funds.

¹ 42 U.S.C. §§ 2000d *et seq.*

5. Article 19 of the UNDHR provides that “[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

6. Article 19 of the ICCPR provides that “[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

7. The Human Rights Committee General Comment 34 discusses the importance of Article 19 of the ICCPR, and points to the broad scope of the rights enshrined by it, in the interest of preserving free and democratic societies. It also specifically states that ICCPR Article 19 freedom of expression provision includes political discussion of human rights, which encompasses the human rights speech Arab and Muslim students seek to engage in.

8. During the March 2014 review of U.S. compliance with the ICCPR, Committee Member Lezhari Bouzid from Algeria admonished the U.S. delegation for violating Article 19 of the ICCPR by permitting the harassment and censorship of Arab and Muslim students.² The U.S. delegation acknowledged that criticism of the state of Israel’s policies was not inherently anti-Semitic and was protected by U.S. law and international law.³

III. U.S. COMPLIANCE WITH ITS INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

9. In recent years, there has been a rise in coordinated campaigns to silence expression on college campuses of viewpoints in favor of Palestinian rights. One alarming component of those efforts is use of U.S. laws designed to end discrimination – Title VI of the Civil Rights Act – in a manner that singles out speech that is critical of Israel, branding that expression as anti-Semitic and thereby worthy of censorship.

10. Title VI protects racial and national minorities from unequal treatment by the institutional recipients of federal funds. In the case of Arab and Muslim college students and others advocating for Palestinian rights, Title VI is not being used for its intended purpose. Instead it is being used to conduct extremely lengthy investigations that exacerbate the unconstitutional impact of bad faith and frivolous complaints against students for their speech and expression in support of Palestinian human rights. The Title VI investigations are lengthy, harmful to students’ reputation and future career endeavors, and chill speech and expression.

11. In the last decade, at least four lengthy DOE investigations were opened: U.C. Irvine, which after nearly a decade of pendency was dismissed in 2013; U.C. Berkeley, which after a year of

² Human Rights Committee considers report of the United States, Mar. 14, 2014, *available at* <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=14383&LangID=E>.

³ Supra note 2.

pendency was dismissed in 2013; U.C. Santa Cruz, which after two years of pendency was dismissed in 2013; and Rutgers University which was opened in October 2011 and is still pending.

12. These lengthy investigations are notable, since DOE Title VI investigations are usually resolved in 180 days.⁴

13. The DOE published three of the dismissal letters: in the U.C. Berkeley, U.C. Santa Cruz, and U.C. Irvine cases.⁵ In all three, the DOE held that the speech and expressive activity at issue was protected by the First Amendment of the U.S. Constitution. In at least two of those cases, appeals have been undertaken and have been pending now for a year, continuing indefinitely the chilling effect on student criticism of Israel and related activism.⁶

14. We have informed the DOE that there exists a pattern of abuse of Title VI in this manner that has chilled protected student expression. Advocates have called on the DOE to resolve the pending appeals in a transparent and expeditious manner in order to avoid even further chilling of speech and expression, as well as to affirm that expression opposing, criticizing, or supporting government policies is not a basis for a Title VI violation. To date, the DOE has failed to act.

15. The DOE's failure to act encourages attacks on Arab and Muslim students and others who express support for Palestinian human rights through frivolous complaints, or threatened complaints, under Title VI. For example, in a July 2013 letter, the Zionist Organization of America wrote to Northeastern University President Joseph Aoun accusing the school of tolerating a hostile environment for Jewish students in violation of Title VI based on pro-Palestinian student activism and advocacy on campus, and the airing of views critical of Israel in the classroom. This was the beginning of a year-long controversy, causing great intimidation of peaceful student activism and culminating, in spring 2014, with Northeastern University suspending a student group, Students for Justice in Palestine (SJP), after it leafleted dorms with "mock eviction notices" drawing attention to the demolition of Palestinian homes by Israel. The suspension prompted strong criticism from a number of civil rights groups. After sustained protest, the SJP group was reinstated, but not before great harm had been done to student members of SJP who, rather than engaging in the expression to which their group is dedicated and focusing on their academic pursuits, had to redirect their time and energy to defending their free expression rights.⁷

16. In March 2014, student group Columbia Students for Justice in Palestine (CSJP) hosted

⁴ See, e.g., <http://www2.ed.gov/about/offices/list/ocr/gpra.html> (noting the 180-day benchmark and that 80% of cases are resolved within that time frame).

⁵ See Department of Education dismissals, Aug. 2013, available at <http://bit.ly/doeucsc> (U.C. Santa Cruz); <http://bit.ly/doeucirvine> (U.C. Irvine); <http://bit.ly/doeuch> (U.C. Berkeley).

⁶ Michelaina Johnson, Lawyers ask Department of Education to revisit anti-Semitism complaint, The Daily Californian, Oct. 21, 2013, available at <http://www.dailycal.org/2013/10/21/lawyers-ask-department-education-revisit-anti-semitism-complaint>.

⁷ Peter Bonilla, Free speech concerns swirl around Northeastern University's Suspension of pro-Palestinian group, The FIRE, Mar. 14, 2014, available at <http://www.thefire.org/free-speech-concerns-swirl-around-northeastern-universitys-suspension-of-pro-palestinian-group/>.

a week of events called “Israeli Apartheid Week” at Columbia University. To advertise the week, they sought and received administrative authorization to post a banner stating “Stand for Justice, Stand for Palestine” and depicting a pre-1948 map of Palestine. The President of Barnard Hillel, Hannah Spellman, complained that the banner “was offensive and threatening” because use of a pre-1948 map “can be deeply threatening to many Jewish students.” In response to similar complaints, Barnard removed the banner and is revising the permissive standards under its existing and longstanding banner policy.⁸

17. In May 2014, New York University students leafleted dorms with “mock eviction notices” and organized other theatrical demonstrations to protest Israeli policy. The founders of the Amcha Initiative (the complainant in the DOE’s investigation of U.C. Santa Cruz) called on NYU to punish the students, with language reminiscent of their overbroad interpretation of Title VI: Because of campus speaking events, academic conference panels, leafleting, and protests criticizing Israeli policies, they claimed Jewish students felt “attacked, threatened, and unsafe.”⁹

18. When pro-Israel lobby groups threaten a university with a complaint with the DOE, or use language suggesting such a filing, many universities believe they have to make concessions to the complaining group, even if doing so censors or chills protected student expression. Because the DOE has not dealt quickly with the appeals from the frivolous complaints that it dismissed, many universities succumb to pressure to crack down on lawful student expression. The DOE should resolve ambiguity over whether student political expression gives rise to a Title VI violation.

III. CONCLUSION

19. The U.S. is violating the freedom of expression of Arab and Muslim and other college students who engage in advocacy supporting Palestine human rights. The DOE should affirm that expressive speech that condemns governments or nation states for committing human rights violations is protected by the U.S. Constitution and therefore provides, in itself, no basis for Title VI investigation. The DOE should also expeditiously dismiss the pending appeals and investigations and new complaints resting on such protected grounds, so as to address the ongoing chilling effect on Arab and Muslim and other college students’ speech and peaceful activism for human rights. Finally, the DOE should seek to address the effects of the chilling of speech and expression caused by the misuse of Title VI.

⁸ Sean Augustine-Obi, SJP hangs pro-Palestine Apartheid Week banner on Barnard Hall, prompting response from DSpar, Columbia Lion, Mar. 2014, *available at* <http://columbialion.com/blog/sjp-hangs-pro-palestine-apartheid-week-banner-on-barnard-hall-prompting-response-from-hillel-board-member/>; Samantha Cooney and Christian Zhang, Students for Justice in Palestine banner removal sparks debate on free speech, display policy, Columbia Spectator, Mar. 11, 2014, *available at* <http://columbiaspectator.com/news/2014/03/11/students-justice-palestine-banner-removal-sparks-debate-free-speech-display-policy>.

⁹ Tammi Rossman-Benjamin, Does NYU have a Jewish problem?, New York Daily News, June 1, 2014, *available at* <http://www.nydailynews.com/opinion/nyu-jewish-problem-article-1.1811838>.