

SENT VIA EMAIL

November 3, 2023

Dear College and University Leaders,

The undersigned legal organizations write to urge you to protect your students from the ongoing campaign to harass, defame, and silence supporters of Palestinian human rights—a campaign embodied in a joint letter (“Joint Letter”) that the Anti-Defamation League and the Louis D. Brandeis Center for Human Rights Under Law sent en masse to colleges and universities on October 25, 2023. The Joint Letter substitutes repressive reflexes for an even remotely plausible legal analysis, going so far as to demand investigations of chapters of Students for Justice in Palestine (“SJP”) for “material support for terrorism.”

The undersigned organizations share a long history of defending human and civil rights, drawing from extensive legal expertise and a deep commitment to social justice. Over our many years of advocacy defending dissent and challenging state-based and private forms of Islamophobia in the post 9/11 era—which the Joint Letter effectively replicates—we have come to understand all too well how the law can be leveraged and often abused to target and silence voices of racialized and historically marginalized communities across the United States. It’s an old and predictable dynamic that spikes in times of crisis, when critical dissent and protest by and for marginalized communities swell and threaten an entrenched and unjust status quo. We should not expect the hyperbolic charges in the Joint Letter to come from organizations claiming a commitment to civil rights and fighting discrimination.

The atrocities unfolding in the Gaza strip (“Gaza”) and throughout Palestine right now are undeniable. As of the date of this letter, the Israeli military has so far killed over [9,000](#) Palestinian civilians in Gaza, including [nearly 4,000 children](#). The Israeli government—through the promise and actuality of thorough and serial bombardment—has coerced the mass exodus of Palestinian civilians from northern Gaza to the south of the besieged strip, while [attacking](#) putatively safe and humanitarian exit-corridors. It has also struck [other civilian targets](#) and is [depriving](#) the entire civilian population in Gaza essential access to water, food, medical care, and electricity—even while remaining hospitals are [overrun](#) with critically ill patients. Israeli soldiers have been responsible for the bulk of over [120](#) Palestinian deaths in recent weeks in the occupied West Bank, as settler rampages drive Palestinians out of their lands and homes. All of these measures against Palestinian civilians [contravene](#) international law, rise to the level of [genocide](#) and ethnic cleansing, and flout the condemnation of the [World Health Organization](#) and [United Nations](#).

To condemn these state actions against Palestinians and demand their safety, hundreds of thousands of people have protested in solidarity with them [worldwide](#). High-ranking officials within the [U.S.](#) and [abroad](#) have, too, undertaken defiant and public resignations. Importantly, students around U.S. campuses have marked their steadfast opposition to the humanitarian crisis facing Palestinians, despite unprecedented attacks on student safety, wellbeing, academic freedom, academic standing, and access to academic and employment opportunities. To cast as anti-Semitic the criticisms that human-rights advocates globally have of Israeli state *policy*, which is infused with [racist and genocidal rhetoric](#), lacks rigor and cheapens the serious dangers of bona fide anti-

Semitism (meaning, animus against Jewish people because of their ethnic and/or religious identity)—an undeniably real and present danger that all of the undersigned take seriously and uniformly decry.

Some countries have undertaken blanket, discriminatory [repression](#) of dissent supporting the human rights of Palestinians. The United States, however, is required to honor its foundational commitment to freedom of speech embodied in the First Amendment. Both public universities bound by the First Amendment and private universities bound by their own free-speech codes and academic-freedom principles have a duty and compelling interest to preserve free expression on their campuses. Indeed, the bar for speech to fall below First Amendment protection is very high, particularly speech on matters of public concern.¹

It speaks volumes that the Joint Letter makes only one passing reference to the First Amendment and otherwise urges leadership of campuses nationwide to investigate SJP chapters for so-called “material support” of Hamas. Neither the letter’s inclusion of this plea nor its breezy lip-service to the First Amendment’s applicability to SJP students is surprising, given the [troubling histories](#) of the organizational authors of the Joint Letter. For many years, they’ve concertedly [attacked](#) speech critical of Israeli policy or advocating for Palestinian rights, and those attacks have [contributed](#) to anti-Palestinian, anti-Arab, and anti-Muslim animus and dehumanization.

A very recent and deeply tragic victim of the current climate of animus and dehumanization is [Wadea al-Fayoume](#), a six-year-old Palestinian-American boy repeatedly stabbed to death in front of his mother, who was also stabbed repeatedly—both at the hands of their landlord in Illinois. In the last few weeks in particular, there has been an avalanche of anti-Palestinian, anti-Arab, and anti-Muslim racism, discrimination, and censorship that should give you, as institutional leaders, serious pause as you respond to this moment and the vigorous debates happening on campus. A [broad base](#) across the legal community has warned institutions against contributing to this dangerous and hostile environment for Palestinians, Arabs, Muslims, other communities of color, and allies—amplifying its support and defense of the U.S. solidarity movement for justice in Palestine.

Don’t take the Joint Letter’s bait.

It’s devoid of any evidence to back its dangerous accusations, causing [public alarm](#) and chilling free expression. In urging campuses to investigate SJPs for putative material support of Hamas, the Joint Letter draws from a very old and dirty well of tactics aimed at [weaponizing](#) so-called terrorism laws and frameworks to repress dissent and protest protected squarely by the First Amendment.²

¹ Speech unprotected by the First Amendment is limited to the following categories: (1) true threats of violence, (2) statements inciting and likely to result in imminent action that’s unlawful, (3) defamation, and (4) obscenity. *Counterman v. Colorado*, 600 U.S. 66, 73–75 (2023) (elaborating categories of unprotected speech). In order for speech within any of these categories to be unprotected, a speaker must have a given, subjective understanding of, and/or intention behind, what they are saying. *Id.* at 75–83 (elaborating knowledge and state-of-mind requirements for assorted categories of unprotected speech).

² Nothing in the SJP materials referenced within the letter takes them out of the ambit of the First Amendment; and their contents don’t trigger material-support liability, because they reflect independent advocacy. *See Holder v.*

SJP is a longstanding and fully independent student association within a nationwide landscape of campus student groups. Across the U.S., student groups are the beating heart of essential dissent and demands for social justice that have punctuated U.S. history and hastened watershed advances in social justice for all of us. The critical role of all student political speech within our democratic system cannot be overstated, and neither can the dangerousness of the McCarthyist attack of it in the Joint Letter.

We urge you to safeguard the civil and human rights of all of your students, protect your campuses' crucial role within our democracy, and reject the repression of political speech and the policing, surveillance, and criminalization of your students who are speaking out against all odds for freedom and justice.

Respectfully,

American-Arab Anti-Discrimination Committee (ADC)
Center for Constitutional Rights
The Council on American-Islamic Relations (CAIR)
CLEAR Project
Defending Rights and Dissent
Law for Black Lives
Movement Law Lab
Muslim Advocates
National Lawyers Guild
Palestine Legal
Project South

Humanitarian Law Project, 561 U.S. 1, 23–36 (independent advocacy falls outside ambit of federal prohibitions on so-called “material support”).