

LEGAL AND TACTICAL GUIDE

Palestinian
Human Rights
Advocacy
in the
U.S.

PALESTINE
SOLIDARITY
LEGAL SUPPORT

www.PalestineLegalSupport.org

 center for
constitutional
rights www.CCRjustice.org



Palestine Solidarity Legal Support (PSLS) engages in coordinated and strategic legal advocacy to advance the Palestine solidarity movement in the US. We work with a network of partners to develop legal resources, and support advocacy and litigation. We aim to build the power of activists to withstand the concerted assault on free speech and continue advocating for Palestinian human rights.

The Center for Constitutional Rights is dedicated to advancing and protecting the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights. Founded in 1966 by attorneys who represented civil rights movements in the South, CCR is a non-profit legal and educational organization committed to the creative use of law as a positive force for social change.

A NOTE ABOUT THIS GUIDE

This guide is meant to provide basic information on legal issues that Palestinian rights activists may face, and tips on how to navigate them. It provides some generally applicable information and some campus-specific information for student activists. This guide is **NOT a substitute for legal advice** — state and local laws differ greatly, *laws may change*, and the application of all laws depends on the specific facts of a case.

For further information on any of these topics, for legal advice on your campaign or about a specific issue you are facing, or to report incidents of repression of your activism, please go to:

PalestineLegalSupport.org
call 312-212-0448, or
email info@palestinelegalsupport.org

We're also glad to provide workshops or schedule meetings to discuss your particular needs, whenever possible.

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TABLE OF CONTENTS

PRACTICAL TIPS FOR ACTIVISM	4
FIRST AMENDMENT FREE SPEECH RIGHTS	5
General Principles	5
Spotlight: Fighting Back Against Offensive Speech	6
Time, Place and Manner (TPM) Regulations	7
Spotlight: Unequal Application of TPM Rules Can Be Challenged	7
On Campus	7
What About Mock Checkpoints?	9
CRIMINAL ISSUES YOU MAY FACE	10
Common Protest Charges	10
Disrupting Speech Statutes	10
Spotlight: Disrupting Speech — The Irvine 11	11
Material Support	11
Spotlight: Material Support — Donating Money	12
What About Advocacy Related to a FTO?	13
Conspiracy	13
POTENTIAL LAWSUITS BY OR AGAINST YOU	14
Defamation	14
Spotlight: The Problem with Defamation Cases — A Tool for Legal Bullying... ..	14
Spotlight: Successful Assault Claim	15
Assault/Battery	15
Civil Rights and Civil Liberties Violations	15
Benefits and Problems with Litigation	15
Spotlight: Case Against Co-op’s Boycott Resolution Dismissed as a SLAPP Suit ..	16



CAMPUS SPECIFIC ISSUES..... 17

 Complaints Under Title VI of the CRA..... 17

Spotlight: Title VI Complaint Against UC Berkeley..... 18

 Engaging with University Administrations..... 18

 University Discipline Issues 19

SURVEILLANCE AND LAW ENFORCEMENT..... 20

Spotlight: Surveillance 21

QUESTIONS ABOUT THE LEGALITY OF BOYCOTT, DIVESTMENT, AND SANCTIONS (“BDS”) 22

 Boycotts..... 22

 Divestment 22

What About Divestment Resolution Language? 23

AVAILABLE RESOURCES..... 24

 Organizational Support 24

 Existing Know Your Rights Materials 25

Practical Tips For Activism

- **PREPARE** **Plan your activities in advance** to ensure that you have the necessary permits and authorizations from local and/or campus authorities, that you understand what regulations may apply, and that you're prepared for possible backlash, with supporters lined up to back you, a media strategy, and any necessary legal advice in advance, when possible.
- **THINK** **Consider the potential legal implications** of your activities, including possible civil or criminal sanctions. Review this guide for information about issues that might arise in your activism, and contact us with questions.
- **RECORD** **Create a record of incidents** that you believe target your speech activities — such as attempts to repress your speech by government/ university officials / private groups. Record details, such as date, time, location, witness names and contact information, law enforcement names and badge numbers, what was said/done, pictures and other evidence. Confirm in writing any understanding reached in in-person meetings by emailing and asking for a response. Make notes while the event is fresh in your mind. Record all incidents — big and small.
- **FOCUS** **Focus on your activism!** Media work, public actions, advocacy campaigns and legislative work are most effective in getting your message out. Legal action is a last resort in most cases.
- **GET SUPPORT** **Contact us** when you or your group needs legal or advocacy support, and to report incidents. We may be able to provide you with additional resources and connect you with organizational support or other lawyers in your area who understand the political and legal issues, if necessary. Call 312-212-0448, email info@palestinelegalsupport.org, or go to palestinelegalsupport.org for help.

First Amendment Free Speech Rights

GENERAL PRINCIPLES

- **The First Amendment to the US Constitution limits how government actors can restrict your speech.** Generally, it does not apply to private actors. First Amendment protections apply to all individuals in the United States, regardless of citizenship or immigration status.
- **Expressive conduct** (like wearing a t-shirt with a message, holding a banner, or performing street theatre) is also considered protected speech activity. There are different levels of protection, with pure political speech getting the highest level, and commercial speech getting the least protection from government and court interference. Some forms of speech and expressive conduct are unprotected from government restrictions (see below).
- **Generally, you can say WHAT you want,** but not necessarily WHEN, WHERE and HOW you want to say it.
- **A government regulation that restricts speech based on WHAT it's expressing (i.e., its CONTENT or its VIEWPOINT,) is highly likely to be struck down in court if challenged.** This is because it's unusual for the government to be able to meet its high burden of showing that a rule targeting a certain viewpoint serves a "compelling" government interest and is narrowly focused on achieving that interest. It takes an extremely important reason, and a rule that is focused enough that it does not sweep in more speech than it intends to restrict, for a court to accept it. Courts are also suspicious of rules that require prior review (censorship) by government officials of any form of speech or expression. For example, permits are unconstitutional "prior restraints" when they are granted or denied based on the content of the speech rather than on other "content-neutral" reasons (see Time, Place and Manner Regulations).
- **Some types of speech are NOT protected by the First Amendment,** and can be restricted or punished:
 - 1 **incitement, or "fighting words,"** that are intended and likely to provoke others to immediately commit illegal acts that "breach the peace," or that



SPOTLIGHT: Fighting Back Against Offensive Speech

A racist and provocative ad, stating “In any war between the civilized man and the savage, support the civilized man. Support Israel. Defeat Jihad”, went up on buses and in train stations in several U.S. cities. City transportation agencies are responding differently because they have different



San Francisco’s Transportation Agency put disclaimers next to the offensive “savage” ads. Source: www.usmessageboard.com/israel-and-palestine/242122-sfmta-bus-ads-2.html

policies about the kinds of ads allowed. Even while they denounce the ads as hateful, the ads have been displayed in most cities. The MTA in NY rejected the ad, but a court decided that the MTA’s policy prohibiting ads that demean groups based on race or religion was unconstitutional because it was a rule based on the CONTENT of the ad (i.e., it prohibited ads demeaning some groups but not others). The ad was allowed to run in NY subway stations. Responses to the ads have included counter ad and media campaigns, community mobilization to protest the ads, demands for disclaimers or alterations to ad policies, and legal challenges in some circumstances.

provoke others to immediately react violently to the speaker’s invective. Speech that creates a public emergency, such as a stampede from a theater after a person falsely yells, “FIRE!” is also not protected. These doctrines are narrowly interpreted and rarely used;

- 2 **defamation**, which means spreading damaging information about others that is false, and for which the defamed individual can sue for money damages (see more below);
- 3 **obscene speech or conduct** that a reasonable person would find has no literary, artistic or scientific value; and
- 4 speech that shows an **agreement with others to commit an illegal act** can be the basis for criminal charges of conspiracy (see more on page 7).

- **“Hate speech”** is a term used to describe speech aimed at an individual or group that is offensive or even hateful and may have no value other than to disparage the person or group based on their identity, such as race, national origin, religion, etc. **Even such speech that is offensive and hurtful cannot be prohibited** or punished unless it is incitement, defamation, obscenity, or amounts to harassment. Courts have struck down laws that attempt to ban “hate speech” on college campuses and otherwise.
- **Speech critical of Israeli policies is not “hate speech”** aimed at disparaging a religious or ethnic group’s identity, as many detractors claim. Rather, criticism of Israel is political speech addressing an issue of domestic and international importance. Speech that condemns Israel as an apartheid state is not **anti-Semitic**. Criticism of Jewish people as a whole because of Israel’s actions is, on the other hand, anti-Semitic. Disparagement of an individual based on stereotypes of Jewish people may also be anti-Semitic “hate speech.” Similarly, a generalized denunciation of Palestinians or Muslims as “terrorist” may be Islamophobic “hate speech.” But criticism of Israeli policies is not hateful towards Jewish people.
- **Consider responding to racist and offensive speech** in ways that expose it for what it is and reveal the effect it has on the targeted community. An effective direct response to a message of hate can have a big positive and educational public impact.

TIME, PLACE AND MANNER REGULATIONS

- **Local governments can place reasonable restrictions on when, where, and how you express your views** (time, place and manner (TPM) regulations). These

restrictions must be justified by a substantial government interest (e.g. security, public safety), and can’t restrict speech more than necessary to protect that interest.



SPOTLIGHT: Unequal Application of TPM Rules Can Be Challenged

A court rejected Chicago’s arrests of Occupy protesters for violating closure hours of a city park because the closing hours were not enforced in other circumstances, e.g., for the Obama victory rally in 2008, during which thousands were gathered in the same park for hours after the park “closed.”

- If TPM regulations or laws prevent you from getting your message to your intended audience or **if they are applied differently to you than to others, you may be able to challenge them in court.**
- **Where, when, and how you protest matters. Public forums** (public sidewalks, public parks, etc.) are open to protests/speeches without permits if they're not too big, but speech activity can still be limited by reasonable and focused TPM rules (e.g., you may be barred from protesting noisily at a late hour, blocking a street, sidewalk, traffic or store entrance, harassing passers-by, using amplification equipment, etc.). If authorities have allowed public property that is not a public forum to be used by others as a public forum in the same manner that you seek to use it, you may also use it that way (e.g. steps of City Hall, or a Federal Plaza where demonstrations often take place).
- **Generally, there are no First Amendment rights on private property.** You must have the owner's permission to do anything on private property. You could be liable for trespass if you don't get permission first. Even if you enter a private place that is open to the public, you may be asked to leave or charged with trespassing for using that space for something different than its intended purpose — for example, by staging a sit-in at the Ahava counter of a department store. States have different laws about what kinds of expressive activities are allowed at shopping malls, so check the law in your state. Be aware of any such risks when planning protest activities and be prepared if you decide to do them anyway.

ON CAMPUS

- **Public universities**, like other government entities, are limited in the ways they can restrict speech, but they can restrict speech activities that constitute a substantial disruption to the educational mission, such as speech that disrupts classes or blocks school buildings. Sit-ins or “occupations” of school buildings, for example, may be subject to discipline if the school claims they are disruptive to the learning environment. Some schools prohibit and punish “disruptive behavior,” which could include protesting inside an event. This is arguably unlawful under the First Amendment if it is applied in an overly restrictive way that punishes disruptions that aren't “substantial.” Some universities' speech codes that attempt to restrict racist/ hate/ discriminatory/ uncivil speech have been struck down by courts because they are too broad, and would either restrict protected speech or intimidate people from exercising their free speech rights (i.e., have a “chilling effect”).
- **Private universities** are not required to protect students' free speech rights

WHAT ABOUT MOCK CHECKPOINTS?

Restriction of Speech on Campus

A mock checkpoint on a public university campus is protected 1st Amendment activity but the university can restrict where you do it (e.g. so it doesn't block passageways or entrances/exits), when you do it, and how you do it (e.g. no realistic toy guns).

On both public and private campuses, you may avoid problems by checking your university's policies and getting permission for the event when required. Engaging passersby as part of the checkpoint is likely protected speech. But if such engagement is unwanted, it may be perceived as harassing and discriminatory, and problems may ensue. Leaf-letting passersby to inform them about what you're doing may be less provocative than engaging them in the dramatization. Contact info@palestinelegalsupport.org if you have problems with your mock checkpoint events.



A mock checkpoint at Columbia University.

Source: *Mondoweiss* — <http://mondoweiss.net/2012/10/complaint-alleging-anti-semitism-at-uc-berkeley-claims-palestine-activism-creates-echo-of-nazi-regime.html>

unless state law says that they are. This is the case in some states, e.g. in California where a law explicitly protects free speech rights at private institutions, or in New Jersey, Pennsylvania, Washington, and Massachusetts, where courts have ruled that the state constitution protects free expression at private institutions. Contact us with questions about your state's laws. A private university may also promise to respect free speech rights (through its catalogues, regulations, codes of conduct, marketing materials, etc.), in which case students may be able to sue for breach of contract to compel the university to abide by its promises if those guarantees aren't kept. This is a step that might be considered if other efforts to enforce rights are unsuccessful.

Criminal Issues You May Face

COMMON PROTEST CHARGES

- **Be aware of local state laws and city ordinances** that you may be charged with breaking when you engage in protests and/or civil disobedience, for example: disorderly conduct, disturbing the peace, trespass, resisting arrest, obstructing justice, loitering, etc.
- **While you have every right to ask a law enforcement officer why they are arresting you** or why they are ordering you to leave a protest area, it is often best to keep cool and to avoid getting into arguments or physical interactions with law enforcement agents, who have a lot of discretion in enforcing the law on the street. You can challenge such orders or charges later, in court.

DISRUPTING SPEECH STATUTES

- **If you're planning a mic-check or other protest of an event, check if your state has a criminal statute prohibiting disruption of public meetings.** Most such laws build in First Amendment protection by requiring a “substantial” disruption that effectively prevents the speaker from finishing his address. Even without such a statute, you may be charged under other statutes, e.g., for disruptive or disorderly conduct during a speech.
- **Depending on the statute and the state's laws,** the disruption usually has to be beyond what is considered customary or normal for the type of meeting.
- **If you decide to engage in protest actions at an event, understand the possible legal and disciplinary consequences.** Universities are increasingly disciplining students for vocal protests at speaker events, which they claim violate school policies that require, e.g., getting prior permission for protests, or infringing on others' free speech and academic freedom. These disciplinary actions and school policies may or may not be subject to constitutional challenges.
- **Video-recording events is advisable** to document any problems you encounter in undertaking your free speech activities. But avoid recording an action that could lead to criminal liability. In cases where you decide to video-record another's event, **be aware that your state's laws may require you to get**



SPOTLIGHT: **Disrupting Speech—The Irvine 11**

The prosecution and conviction of the “Irvine 11,” students from UC Irvine who briefly protested Israeli Ambassador Michael Oren’s speech on campus, was based on a California law that prohibits disrupting a public meeting. The vigorous prosecution was an unusual response to a protest of a political event by several students who made verbal statements of a few seconds each at different points of the speech, without preventing the speaker from finishing his speech. The students have appealed their convictions for disruption and conspiracy to cause disruption, challenging the constitutionality of the statute itself and its discriminatory application to their conduct. Other protest options in similar circumstances that would likely be entirely protected by the First Amendment include silent walkouts, holding signs, leafleting outside of the event, or other actions, when done in ways that allow the speaker to be heard. Note that even such actions may still result in your removal from an event.

permission to record others, especially in situations where they don’t reasonably expect to be recorded (e.g., private meetings, phone calls). In meetings open to the public where people can reasonably expect to be recorded, it is best to make clear that you are recording, and to not hide the recording device. You can **check your state’s law on recording** at www.citmedialaw.org/legal-guide/state-law-recording.

MATERIAL SUPPORT

- **It is a crime to provide “material support” to a designated foreign terrorist organization (FTO) or its agent.** Material support is not only defined to include money and other assets, but also includes services, training, expert advice or assistance, or personnel. Providing your own services, even if those services appear to be very small in time or value, can subject you to the risk of prosecution if done in some degree of coordination with a FTO or its agents. In one egregious case, a person who allowed a guest to store luggage in his apartment containing socks and ponchos that the government claimed were military gear for a FTO was convicted of material support.
- **The material support laws are vague and their broad scope is uncertain,** encroaching on what was previously understood to be clearly protected First



SPOTLIGHT: Material Support — Donating Money

Donating money to a group that, for example, does charity work with orphans, but that coordinates its work with the social services arm of a FTO, may constitute material support. This happened in the Holy Land Foundation case, in which leaders of an Islamic charity organization were convicted for giving humanitarian aid to zakat (charity) committees that had connections with Hamas, despite the fact that the US government had itself delivered aid through these committees as well. In such a situation, if you have done your homework, you should be able to identify the organizations with which the charity works. If you can't figure it out, it may be better to get expert legal advice before donating to a charity that may itself be providing "material support" under the statute, or to find an alternative charity that you can verify is independent, transparent, and is internationally recognized.

Amendment activity. Because material support convictions can carry severe consequences, it is particularly important to consult with an attorney if you are uncertain whether your conduct may be illegal.

- **Liability for "material support" depends on whether one knew or should have known that the individual or organization is a FTO, or a FTO's agent.** Generally, **be aware of who you're working with**, especially when you work overseas. Check the designated terrorist lists (both State Department and the Treasury Department at <http://www.treasury.gov/ofac/downloads/t11sdn.pdf>) for the names of individuals and organizations with which you are considering collaborating. Organizations are added to the lists without notice, so check these public lists regularly if you're uncertain about the status of the organization that you want to support, and get legal advice, especially before you give money or engage in advocacy with an individual or organization whose status or affiliations you are unsure of.
- **The "material support" laws do not restrict independent advocacy.** Advocacy in favor of an organization that is a FTO, even by an advocate who knows its FTO status, *is* protected if it is **independent** — that is, it is not coordinated with or done on behalf of the FTO or its agents. For example, independent statements expressing solidarity with a FTO or individuals affiliated with it should be outside the scope of the material support statute.

WHAT ABOUT ADVOCACY RELATED TO A FTO?

If you want, for example, to start a campaign sending letters of solidarity to Palestinian political prisoners on hunger strike, and you communicate with someone who you know is involved with a FTO to organize it, that may be considered material support.

But a statement expressing solidarity with prisoners that is written and disseminated totally independently should not be the basis for liability, even if some of the prisoners you are expressing solidarity with have some relationship with a FTO.

- **The government thinks that providing support for someone working for or on behalf of a FTO can be the same as providing support to the FTO itself**, but agents of FTOs are not typically listed by name on the government lists.
- **The material support laws have had the effect of chilling speech and activity that expresses solidarity with Palestinians**, since several Palestinian groups are labeled FTOs. **If you have concerns, you should get legal advice**, but the law should not stop you from engaging in traditionally protected First Amendment activities independently of individuals or organizations.

CONSPIRACY

- **A “conspiracy” refers simply to any “agreement” to engage in unlawful conduct.** The unlawful conduct may be a crime in its own right, or an agreement to engage in lawful conduct in an unlawful manner. It requires that at least one “co-conspirator” (even if it’s an undercover law enforcement agent) do something towards implementing the conspiracy — which could be something as minor as sending an email or text message. There may be independent *criminal* consequences, so one could be charged with a conspiracy to do an illegal act without ever having done the illegal act itself. Conspiracy could also be added to a charge for committing the act itself.

Potential Lawsuits By or Against You

Civil lawsuits may be brought by individuals or entities. They may seek either money or a court order requiring the party sued (the defendant) to take (or stop) certain actions to remedy wrongdoing.

DEFAMATION

- **An individual can sue another for money damages and other remedies for making false statements**, spoken (slander) or written (libel), to others about them. The person suing must be able to prove that the statement was false and that spreading it caused some actual harm to him/her (e.g. loss of employment, harm to reputation, etc.). It's harder to claim defamation if the statement was about an issue important to the public, or if the person suing is a public figure. Public figures that claim they were defamed also have to show "malice" — i.e., that the person spread the statement knowing that it was false.
- **Truth is always a defense** to a defamation claim, no matter how personally devastating it is to the person. Showing that a statement was an "opinion" or "political hyperbole" is also usually a defense.



SPOTLIGHT: The Problem with Defamation Cases — A Tool for Legal Bullying

In 2007, A Jewish blogger, Richard Silverstein, was sued in a California state court for libel for calling a right-wing pro-Israel commentator a "Kahanist swine" on his blog. The trial court dismissed the case as a Strategic Lawsuit Against Public Participation (SLAPP — see "Benefits and Problems with Litigation," page 16), determining that the comment related to an issue of public interest and to the views of an outspoken critic of Palestinians. The court rejected the claim that the statement was made knowing that it was false, concluding instead that it was an opinion, not a factual statement. The blogger was awarded attorney fees. The case was appealed, however, and the Court of Appeals reversed the decision and reinstated most of the claims. It was only in 2011, back in a trial court, that the charges were again dismissed by a judge, who found that Silverstein did not commit libel. There could be another appeal.



SPOTLIGHT: Successful Assault Claim

An activist was tackled and sustained injuries when she shouted out “Stop Israeli war crimes” during Israeli PM Netanyahu’s speech to Congress in 2011. She sued the former AIPAC staffer who attacked her for assault and battery. The case settled for monetary compensation for medical expenses and other losses, along with a public apology from her attacker.

- **Lawsuits for defamation are problematic** because they target speech, are hard to prove, and money damages aren’t high. There’s also usually a lot of discovery (parties have to provide the other side with

personal records), which is very expensive and often intrusive into personal or organizational affairs. These lawsuits are more likely than others to go to trial so that a judge or jury can decide the facts.

ASSAULT/BATTERY

- **If you were threatened** and reasonably believed you were in immediate physical danger (assault), **or if you were actually physically touched** and the contact was uninvited (battery), there may be a civil claim for assault and/or battery. Even an action that doesn’t physically harm the other person, such as spitting at someone, or grabbing something they’re holding, can be a battery.

CIVIL RIGHTS AND CIVIL LIBERTIES VIOLATIONS

- **If government officials violate your civil or constitutional rights** (e.g. free speech, due process, equal rights, police brutality, etc.), you may be able to sue them. Contact an attorney if you believe your rights have been violated by a government official, including a police officer, public university administrator, etc.

BENEFITS AND PROBLEMS WITH LITIGATION

- **Lawsuits for violations of constitutional rights may help to advance the law on social justice issues and protect movements for social change.**
- **Lawsuits can result in good precedent that advances social justice, or can create bad precedent and present a legal setback.** In either case, movements often continue to press for justice in other ways to create an environment that will be favorable to the changes they seek. The often unfavorable legal climate for many social justice causes makes using the law more difficult. Lawsuits should therefore



SPOTLIGHT: Case Against Co-op's Boycott Resolution Dismissed as a SLAPP Suit

CCR and co-counsel won a motion to strike a lawsuit against Board Members of the Olympia Food Co-op after the Board passed a resolution to boycott Israeli products. The court found that the Board members had acted within their duties on an issue of public concern, and that the lawsuit was designed to hamper their free speech rights to engage in a boycott movement of national proportions. The individuals who brought the lawsuit, supported by StandWithUs, were directed to pay attorney fees and penalties for bringing the suit. They have appealed.



Olympia BDS activists. Source: *Electronic Intifada* — <http://electronicintifada.net/content/victories-n-american-boycott-movement-gains-momentum/8945>

be thought of as one of many tactics to achieve a movement's goals, when undertaken at the direction of and in close coordination with that movement. But they should not be relied on or considered an end in themselves.

- **Always consider the downsides of litigation. Lawsuits can be expensive and often take years with no guarantee of a just resolution.** Even a victory can be subject to a lengthy appeal process that could take years. Meanwhile, the movement may have moved on and your lawsuit may become irrelevant. Being a party to a lawsuit may cause anxiety and can distract you from your life and movement work. Also consider what may be exposed if the other party is allowed to see your documents and other private or group strategy communications as part of the discovery process in a lawsuit.
- **If you challenge a lawsuit brought against you as a SLAPP (Strategic Lawsuit Against Public Participation) that aims to silence your legitimate speech or activities through expensive litigation,** the other party could be forced to pay your attorney fees and other penalties. If you are thinking of filing a lawsuit, bear in mind that it, too, may be subject to an anti-SLAPP motion. To see if your state has an anti-SLAPP law, go to www.anti-slapp.org/your-states-free-speech-protection.
- **Litigation is usually best viewed as a last resort when your rights have been violated.** While it's difficult to achieve social change through a lawsuit alone, many whose rights have been violated have been vindicated in court. If you believe your rights were violated in order to repress your Palestine solidarity activism, contact us.

Campus Specific Issues

COMPLAINTS UNDER TITLE VI OF THE CRA

- **Palestinian rights activism and related academic discourse on campuses has been targeted by claims that it leads to discrimination against pro-Israel Jewish students**, based on a federal civil rights law.
- **Title VI of the 1964 Civil Rights Act (CRA) prohibits discrimination by federally funded programs on the basis of race, color and national origin.** Title VI is enforced against both public and private universities that receive federal assistance, which includes most universities.
- **Title VI is enforced by the Department of Education (DOE)**, and also via private lawsuits in federal courts. If the DOE finds that a university didn't do enough in response to valid complaints of discrimination against protected groups, **the university could lose its federal funding.**
- **Title VI is interpreted as barring unequal treatment by the university**, both intentional and unintentional, based on race, color, or national origin. **It also prohibits discriminatory harassment that creates a hostile environment** based on speech or conduct directed at a person's race, color, or national origin. The conduct complained of may be that of university officials, faculty, or other students, which the university has failed to appropriately address. To amount to discrimination, the conduct must be so offensive to a reasonable person (an objective standard), so severe, repeated, and pervasive that it gets in the way of the person's ability to benefit from educational programs. This is a high standard to prove because a lesser standard would risk infringing on First Amendment rights and invalidating this important Civil Rights law.
- **Although religion is not a protected category under Title VI, the DOE adopted a policy that allows it to investigate discrimination against religious groups** that also have "actual or perceived shared ancestry or ethnic characteristics," citing Jews, Muslims and Sikhs as examples.
- **Pro-Israel organizations promoted the policy's adoption, and have since been using it to challenge criticism of Israeli policies on campuses**, alleging that such criticism creates a hostile anti-Semitic environment for some Jewish students, and that the university didn't act effectively to stop it.
- **Several complaints have been filed with the DOE**, and one in federal court.



SPOTLIGHT: Title VI Complaint Against UC Berkeley

Actively pro-Israel students at UC Berkeley complained that activities conducted by Palestinian rights activists on campus, including theatrical checkpoints intended to illustrate the subjugation of Palestinians in occupied Palestinian territory, created a “hostile environment” for them. The original complaint against the University, filed in federal court, was dismissed. The judge said unequivocally that the activities complained of almost entirely constituted protected First Amendment political speech that deserves the highest level of protection. Immediately after the case was finally dismissed, the same students filed a complaint with the DOE alleging virtually identical facts as the lawsuit. The DOE complaint was also dismissed after a year-long investigation, along with complaints against UC Santa Cruz and UC Irvine. DOE confirmed that the activities complained of were speech activities and did not constitute harassment under Title VI. While the students advocating for Palestinian rights were not parties in the lawsuit or the DOE complaint, their interests were implicated because of false allegations made about their activities. In these cases generally, there is also the risk that the University will take actions that directly affect the students or student groups engaged in the activities complained of in order to appease the complainants. If a Title VI complaint is made or threatened against your school, contact us.

No complaints have succeeded so far. A federal court and the DOE have both said that the speech activities complained of were free speech that, while critical of Israel, was not discriminatory against Jewish students. Several complaints have remained under investigation for over 2 years, much longer than the DOE’s 6-month standard.

- **Title VI claims are directed against the university, not against the student activists themselves.** Although student activists accused of creating a “hostile environment” are often not a part of the investigation, the circumstances may favor these students taking the initiative to communicate their side of the story to the university and/or the DOE. Contact us before communicating with university or DOE officials about Title VI investigations.
- **Media advocacy and organizing with other students, faculty and staff on campus to counter the narrative that Palestinian rights activism is inherently anti-Semitic or hostile to Jewish students is important.** Setting the record straight on the facts of the case is also important. Even if a Title VI complaint has no merit, it can cause undeserved damage to a student group’s reputation if it is not effectively countered.
- **If you believe YOU are facing discrimination because of your race, color, national origin or religion on your campus, whether from other students or the university itself, contact us.**

ENGAGING WITH UNIVERSITY ADMINISTRATIONS

- **It is like putting money in a retirement account to build relationships with**

university administrators before you need their assistance, so that a trusting relationship is forged before situations arise. It may help to

minimize problems later if you establish your trustworthiness by getting necessary approvals from administrators for your events and making them familiar with your group's mission and goals.

- **Note that all administrations are different — some may be openly hostile, others may be friendly or even-handed.** Most administrators want to avoid exposing their institutions to public scrutiny and possible condemnation for intolerant reactions to student activism. In any case, it is important to document your communications with university officials to show your efforts to communicate in good faith. If you meet in person with a university official, send a written note summarizing your understanding of the conversation and ask for their confirmation of your understanding.
- **Building relationships with faculty, staff, other student groups and community organizations** is important in order to have a support network and connect your group's work with other social justice issues.

UNIVERSITY DISCIPLINE ISSUES

- **Be familiar with your school's policies,** regulations and codes of conduct before organizing events and engaging in activities, and follow the applicable procedures to get approval before an event when necessary.
- **In public university disciplinary procedures,** the university is at least required to provide you with some kind of notice of charges against you, and some kind of hearing, but you do NOT have the same rights as a criminal defendant (rights to free counsel or even to have counsel present, to call and ask questions of adverse witnesses, to a formal hearing, to a high burden of proof, etc.). Private universities can only be required to follow the procedures provided by their own manuals.
- **Make sure that the school's disciplinary procedures are being properly followed.** If the university does not follow its own rules and procedures, that may be a way to challenge them.
- **Ask for all procedural safeguards that seem reasonable to you,** even if they're not officially enforceable under student conduct codes or law. Safeguards to request include: a clear and reliable recording of the proceedings in question; your own unofficial recording of discussions, investigatory interviews, and hearings; being allowed to bring a trustworthy uninvolved third person (another student,

faculty, staff member or lawyer) to all discussions, investigations, and hearings; more time to gather papers, witnesses, and other evidence that you think would help your side of the case. They may refuse these requests, but it's worth asking.

- **Consider exposing any abusive, intolerant, unfair or discriminatory administrative conduct to the media** and public scrutiny, and do so before there's a decision. Trying to influence a fair outcome is usually easier than challenging the outcome after the fact, when the decision-maker is compelled to defend the decision.

Surveillance and Law Enforcement

See *Available Materials* section (page 24) for more resources.

- **Law enforcement (local police, federal agents) can use a number of methods to spy on you**, some of which require permission from courts. Assume that your activities and communications may be monitored without your knowledge, in ways that don't require a court order, or under a court order that you don't know about, or even by private surveillance or intrusion. **Be aware of the risks of different types of communication.** Experts repeatedly warn that there is no such thing as "secure" electronic communication. Law enforcement and private organizations often monitor activists' online activities and use the information against them in criminal cases or otherwise.
- **Infiltration of organizations by undercover agents or informants is common.** Be aware of people who suggest and encourage violent/unlawful action, whose background you don't know, who are divisive, or who appear suddenly and become actively engaged without prior known activism in the area. Agents can perform illegal activities and lie to you without penalty.
- **If confronted by law enforcement, you may be required to provide your name and address, depending on your state's laws.** You are not required to say anything else, even if pressured to do so. If you decide to speak to law enforcement, be aware that **anything you say can be used against you, your community or group.** If you decide not to talk to law enforcement, **state clearly that you don't wish to talk, and would like to speak with your attorney.** Even if you want to speak with law enforcement, **it is best to have a lawyer present, especially if you are under investigation or under arrest.**
- **Lying about anything, even your name, to any law enforcement could be a criminal offense.** Silence and a lawyer may be best in any situation involving



SPOTLIGHT: **Surveillance**

Local police and the FBI have been investigating Muslim communities and Palestinian rights activists around the country in various ways that may be illegal, some of which are being challenged in court. The use of informants has been confirmed in many cases, including the investigation of activists in the Midwest and in most material support cases. If you suspect you or your group or community is under surveillance, contact a lawyer. Also consider filing a freedom of information request (state or federal) to find out what information is being collected about you or your group by government officials.

law enforcement potentially investigating you.

- **If law enforcement asks to search you or your home, you can say explicitly “I do not consent to a search.”** You may be deemed to have consented to a search by your actions, e.g. by opening the door, letting them in, etc. If they come to your home and you do not want to talk to them or let them in, you may talk through the door or step outside, and tell them your lawyer will contact them.
- **If law enforcement has a search warrant, you can demand to see** it before letting them in. To make sure it is a valid warrant, check for a judge’s signature, specific language about where and what the search is for, and the correct name and/or address. You could be charged with obstruction of justice if you try to stop an authorized search from taking place. If you believe a search is not authorized, tell law enforcement but do not try to stop them. You can challenge the search later if anything they find is used against you. Be sure to record the officers’ names and badge numbers and what they did during the search.
- **If you want to find out what information the government is collecting about you, consider using tools like the federal Freedom of Information Act (FOIA) and state public records request laws** to discover information/ records that federal, state or municipal government agencies or officials have about you or your group. These requests can also be used in other contexts to expose communications and documents coming from government actors, government or public university contracts, investments, or other relationships with target companies, etc. Check your state’s public records request laws — some states restrict such requests to residents of that state. Sustained follow-up may be needed to obtain requested documents if the public agency is resistant to your request and to follow up on delays, etc. Contact us for resources to help you with such requests.
- **Despite all of these warnings, be smart, rather than paranoid** — do not let it hamper your activism!

Questions about the Legality of Boycott, Divestment, and Sanctions (“BDS”)

BOYCOTTS

- **Boycotts to protest human rights violations are protected activity under the First Amendment.**
- **There are federal anti-boycott regulations** that prohibit participating in a boycott against a “friendly country” if the boycott is called by a “foreign country.” These regulations prohibit U.S. commercial support for the Arab League countries’ boycott against Israel. They do NOT apply to boycotts that have not been called by a foreign country, such as a boycott called by a foreign organization or a coalition of foreign NGOs, including the Palestinian BDS National Committee (“BNC”). They also do NOT apply to boycotts called by a U.S. organization or coalition.
- **In summary, these regulations do not apply to human rights boycotts against Israel, or to boycotts of companies or other entities that profit from, support, or help to maintain Israel’s occupation of Palestine or its subjugation of Palestinians.**

DIVESTMENT

- **Divestment is not covered by the anti-boycott regulations.**
- **Divestment resolutions must respect what’s called fiduciary duty.**
The trustees or managers of a fund have a fiduciary duty to manage assets entrusted to them for the benefit of the assets’ owners and without injuring owners’ interests. But it is NOT a breach of this fiduciary duty to divest for human rights reasons. When making investment and divestment decisions, trust fund managers may consider reasons related to human rights in addition to considering profit, loss, and risk factors. **Federal regulations in fact allow divestment based**

WHAT ABOUT DIVESTMENT LANGUAGE ?

Language to use for a “Therefore” clause: Divestment language may say, e.g., “We request the trustees to divest from Caterpillar, at such time and in such manner as they may determine.” Or: “We ask the trustees to divest from companies directly supporting or profiting from the Israeli occupation of Palestinian land, as they may identify as appropriate for such action.”

Language to avoid: Divestment resolution language that orders trustees to divest (“trustees shall divest ...”) or to divest immediately or by some other externally imposed deadline would likely not be enforceable, because it interferes with the trustees’ discretion about when and how to divest.

on Socially Responsible Investing (SRI) criteria where alternative investments of equal value to the properties to be divested are available.

- **But the trustee does have sole discretion to manage funds,** so a resolution that usurps in any way this discretion is unenforceable. Fund trustees may therefore be asked to make decisions to sell entrusted funds based on SRI criteria as long as the divestment resolution does not intrude in any way on the trustees’ discretion to implement the resolution how and when they decide, in their sole discretion. The divestment resolution must also allow trustees to implement it without injuring the interests of fund owners in any way that owners have not authorized.
- **So, to avoid problems, divestment resolution language** demanding SRI, including divestment from Israel or from companies profiting from the Occupation, must comply with two principles that recognize the discretionary powers of fund trustees:
 - 1 There must be alternative investments of equal value available to replace divested properties, as determined by fund trustees; and
 - 2 divestment resolutions cannot dictate to fund trustees when or how to divest or identify the specific replacement(s) for divested assets.

Available Resources

ORGANIZATIONAL SUPPORT

- **Palestine Solidarity Legal Support** is an initiative supported by the Center for Constitutional Rights that works in collaboration with the National Lawyer's Guild and other organizations. PSLS works to protect and advance the constitutional rights of Palestinian rights activists across the U.S. Go to PalestineLegalSupport.org to report incidents, ask for advice, representation and referrals, and for general advocacy support.
- **The Center for Constitutional Rights (CCR)** works to advance and protect constitutional and human rights through litigation and advocacy. It has worked extensively to promote Palestinian human rights and towards accountability for violations of Palestinian rights. Go to ccrjustice.org for more information.
- **The National Lawyers Guild (NLG)** generally defends social justice movements, and is a primary resource for Palestine solidarity legal work. The Free Palestine Subcommittee of the International Committee provides free legal counsel when possible, prepares advocacy letters and legal memos, and advises BDS activists and campaigns. Local NLG chapters can also provide Legal Observers for actions and events where law enforcement encounters may occur. Go to nlginternational.org/com/main.php?cid=11 for more information.
- **The Student Speech Working Group** includes several organizations dedicated to supporting Muslim and Palestinian rights student activism. CCR, the NLG, Asian Law Caucus, Council on American-Islamic Relations (CAIR)-San Francisco Bay Area, American Muslims for Palestine, Jewish Voice for Peace, and other individuals and organizations, are involved.
- **Local affiliates of CAIR, the American-Arab Anti-Discrimination Committee (ADC), and the Muslim Legal Defense Fund** also may be able to provide legal advice or representation to Muslims and Arabs facing legal issues.
- **ACLU** affiliates around the country have provided free legal advice and representation to Palestine activists on First Amendment cases and may be a source for legal advice or representation on matters presenting other civil rights and liberties issues.

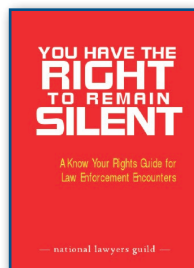
EXISTING KNOW YOUR RIGHTS MATERIALS

- **A collection of resources** on topics relevant to Palestinian solidarity activism is available on the Resources page at PalestineLegalSupport.org. Check the website for new materials and to learn more about these issues. Also look for Palestine Solidarity Legal Support on Twitter, @pal_legal, for updates.
- **Free speech and protest rights:** Look at ACLU websites in your state for materials addressing different issues. E.g., for California free speech and protest rights: https://www.aclunc.org/issues/freedom_of_press_and_speech/rights_of_demonstrators/index.shtml.

- **Surveillance/Law Enforcement**



- ❖ CCR — If an Agent Knocks: <http://ccrjustice.org/ifanagentknocks>;
- ❖ NLG — You Have the Right to Remain Silent: <http://www.nlg.org/publications-you-have-the-right-to-remain-silent/>;
- ❖ ACLU — http://www.aclu.org/files/kyr/kyr_english.pdf



- **Know Your Rights presentations offered:**

- ❖ To request presentations tailored to address Palestine solidarity activism, email info@palestinelegalsupport.org.
- ❖ The NLG-NY's Muslim Defense Project, different CAIR chapters, and the CLEAR Clinic at CUNY Law School give presentations on surveillance, law enforcement issues, travel, etc.
- **Legal Observers:** Your local NLG chapter may be able to provide Legal Observers for your protests, marches or demonstrations to monitor law enforcement activity /violations. Go to NLG.org for information about a local chapter. The local affiliate must be contacted sufficiently in advance to line up volunteer lawyers or other trained legal observers.

This information is not intended as a substitute for legal advice. Please contact us or another attorney for advice about your specific issue.



**PALESTINE
SOLIDARITY
LEGAL SUPPORT**

www.PalestineLegalSupport.org

 **center for
constitutional
rights** www.CCRjustice.org