

*Via Email*

November 21, 2016

President Janet Napolitano, University of California  
Members of the University of California Regents

cc: Provost for Diversity and Engagement Yvette Gullatt, Counsel Julia Friedlander, UC Davis Acting Chancellor Ralph Hexter, UC Berkeley Chancellor Nicholas Dirks, UC Santa Cruz Chancellor George Blumenthal, UC Santa Barbara Chancellor Henry Yang, UCLA Chancellor Gene Block, UC Riverside Chancellor Kim Wilcox, UC Irvine Chancellor Howard Gilman, UC Merced Chancellor Dorothy Leland, UC San Diego Chancellor Pradeep Khosla, UC San Francisco Chancellor Sam Hawgood.

Dear President Napolitano and members of the Board of the UC Regents:

As students, community, and civil rights organizations, we write to raise new concerns about the Regents Statement of Principles Against Intolerance (“Intolerance Statement”) adopted in March 2016. The Intolerance Statement has already resulted in suppression of speech and academic freedom across the University of California (UC), and threatens more.

As our communities absorb the shock of Donald Trump’s election and the ascendancy of xenophobic, anti-Arab and anti-Muslim hate to the highest echelon of power, we write to make clear that we represent some of the UC's most vulnerable populations. These are the communities

in the crosshairs of Trump's plans to persecute Muslims and criminalize political speech.<sup>1</sup> The Intolerance Statement is an inadequate tool to confront racism, Islamophobia, and antisemitism in the current political climate. Moreover, the Intolerance Statement is actively harmful for students who are Arab, Muslim, and/or activists for Palestinian rights.

We previously wrote to you to oppose the Intolerance Statement (and its earlier iterations) because language that condemns anti-Zionist expression raises serious free speech concerns.<sup>2</sup> As our organization and others<sup>3</sup> warned, if campus authorities try to apply the Intolerance Statement to restrict or punish criticism of Israeli policy, they will invite a lawsuit under the First Amendment.

Unfortunately, our calls were not heeded, and harms to the learning environment, not to mention violations of university policy and the U.S. and California Constitutions, have already materialized. The Intolerance Statement and the resulting suppression of speech critical of Israeli policy diminish the educational environment for all, but particularly Arab, Muslim, and other supporters of Palestinian rights.

We also write to alert you, again, to a sustained anti-Muslim and anti-Palestinian campaign targeting students and faculty across the UC who have engaged in speech supportive of Palestinian rights. The David Horowitz Freedom Center has repeatedly posted campuses across the UC, defaming individual faculty members, students and student groups by name as "terrorists" and "Jew-haters" for their support for Palestinian rights. The posters deploy anti-Muslim and anti-Arab stereotypes. Notably, the Regents and the Office of the President have been so far silent in response. As the Regents fail to even condemn true harassment against its students and faculty, their professed concern about upholding values of tolerance and inclusion for all vulnerable groups on campus –including Arab, Muslim, and anti-Zionist Jewish students – rings hollow.

Our concerns are detailed below, followed by several measures we ask that you take immediately to demonstrate your commitment to protecting the educational environment from speech suppression.

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<sup>1</sup> In addition to the Muslim registry, which has received wide coverage, Trump also indicated his intent to have the Department of Justice investigate campus critics of Israel. See, Barney Breen-Portnoy, "Trump Campaign Unveils New Policy: Will Ask Justice Department to Probe Anti-Israel Intimidation on US College Campuses," *Algemeiner*, November 1, 2016, <https://www.algemeiner.com/2016/11/01/trump-campaign-unveils-new-policy-will-ask-justice-department-to-probe-anti-israel-intimidation-on-us-college-campuses/>.

<sup>2</sup> Palestine Legal, Jewish Voice for Peace, Center for Constitutional Rights, National Lawyers Guild, letter to UC President Janet Napolitano and the UC Regents, "First Amendment concerns with efforts to adopt a re-definition of anti-Semitism," June 18, 2015, <http://tinyurl.com/j7mrt8b>.

<sup>3</sup> Alan Schlosser, Senior Counsel at the ACLU of Northern California, "ACLU Statement on UC Proposed Intolerance Policy," March 22, 2016, <https://www.aclunc.org/news/aclu-statement-uc-proposed-intolerance-policy>; Will Creeley, Foundation for Individual Rights in Education, "University of California Considers Yet Another Proposal to Silence Protected Speech," September 14, 2015, <https://www.thefire.org/university-of-california-considers-yet-another-proposal-to-silence-protected-speech/>; Asian Americans Advancing Justice – Asian Law Caucus, letter to UC President Janet Napolitano, "Request to postpone consideration of State Department definition of anti-Semitism," June 18, 2015, on file with Palestine Legal.

## **I. The Regents Statement of Principles Against Intolerance is plagued with problems.**

A diverse set of critics, including several of the signatories below, pointed out serious problems with the Intolerance Statement prior to, and at the time of, its adoption. To summarize, these critiques include:

- The Intolerance Statement conflates criticism of Israeli policy with antisemitism.<sup>4</sup> The draft first presented stated, “antisemitism, anti-Zionism and other forms of discrimination have no place at the university.” The Regents amended this phrase to read, “anti-Semitic forms of anti-Zionism.” In doing so, they apparently rejected a blanket conflation of anti-Semitism with anti-Zionism. However the university made few, if any, statements clarifying the difference. “Anti-semitic forms of anti-Zionism” is never defined, and is redundant with “anti-Semitism.” The vague, redundant language leaves the false conflation in place, as evident by recent events discussed below.
- The Regents also ignored ample evidence that Palestinian human rights activism on all UC campuses is principled social justice work, grounded in opposition to all forms of racism.<sup>5</sup> While isolated antisemitic incidents have occurred, there is no evidence connecting the vast majority of incidents to Palestine activism, and Palestine activists have been among the first

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<sup>4</sup> An outcry from university faculty, undergraduate students, graduate instructors, Jewish and other civil rights organizations, media outlets, and First Amendment scholars objected to defining advocacy for Palestinian rights as anti-Semitic. See, for example, Daniel Hare, Chair of The UC Academic Senate Letter to the Regents Working Group on the Principles Against Intolerance, “Re: Faculty concerns about the Final Report of the Regents Working Group on Principles Against Intolerance,” attaching letter from the University Committee on Academic Freedom, and a memo signed by the Chair of the Academic Senate on each UC campus, <http://senate.universityofcalifornia.edu/files/reports/documents/faculty-concerns-regents-work-group-principles-against-intolerance.pdf>. See also, Jewish Voice for Peace, Professor Judith Butler and 250 UC faculty members, letter to UC, “University of California faculty letter re: Statement of Principles against Intolerance,” <https://jewishvoiceforpeace.org/uc-faculty-letter-to-regents/>; SJP West, letter to UC President Janet Napolitano, “Students ask Janet Napolitano not to endorse conflation of anti-Semitism with critique of Israel,” June 29, 2015, <http://sjpwest.org/2015/06/29/students-ask-janet-napolitano-not-to-endorse-conflation-of-anti-semitism-with-critique-of-israel/>; United Auto Workers Local 2865, letter to UC President Janet Napolitano, [http://www.uaw2865.org/wp-content/uploads/Napolitano-Letter\\_2015-07-06.pdf](http://www.uaw2865.org/wp-content/uploads/Napolitano-Letter_2015-07-06.pdf); LA Times, “UC Intolerance Policy Goes Dangerous Astray on Anti-Semitism,” March 13, 2016, <http://www.latimes.com/opinion/editorials/la-ed-uc-intolerance-20160316-story.html>; Eugene Volokh, “University of California Board of Regents is wrong about ‘anti-Zionism’ on campus,” *Washington Post*, March 16, 2016, [https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/03/16/university-of-california-board-of-regents-is-wrong-about-anti-zionism-on-campus/?utm\\_term=.e89191669f35](https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/03/16/university-of-california-board-of-regents-is-wrong-about-anti-zionism-on-campus/?utm_term=.e89191669f35).

<sup>5</sup> Through letters to UC administrators, op-eds in student newspapers, organizational mission statements, and in their actions, SJP members have repeatedly demonstrated their principles in favor of equality for all people, including their steadfast opposition to anti-Semitism.

to condemn them.<sup>6</sup> The Intolerance Statement accepts, without any investigation, the premise promoted by Israel advocacy organizations that promotion of Palestinian rights has caused a rising problem of antisemitism on UC campuses. The Intolerance Statement ignores data from the statewide quantitative campus climate survey showing that Jewish community members on every campus consistently reported high levels of comfort.<sup>7</sup> The Regents Working Group on Intolerance opted to rely solely on anecdotes presented by Zionist interest groups, to the exclusion of all other available evidence.

- The Regents claimed to address “all forms of intolerance,” but they demonstrated a singular interest in the feelings of some Jewish students about criticism of Israel, to the exclusion of other pressing issues like institutionalized sexual harassment and anti-black racism.<sup>8</sup>

## **II. The Intolerance Statement is so vague that students and scholars cannot discern what type of speech “has no place at the university.”**

The Intolerance Statement is so vague that it provides no measurable standard as to what type of speech and scholarship constitutes “intolerance” or “antisemitic forms of anti-Zionism.” Students and scholars cannot discern what type of speech “has no place at the university.” What are “anti-Semitic forms of anti-Zionism”? According to Israel advocacy groups, the statement’s primary proponents, this would include:

- A speaking event where former Israeli soldiers talk about their experiences in the Israeli military brutalizing Palestinians.<sup>9</sup>
- A student protest outside a film about Israeli soldiers, where protesters identifying as Black, Jewish, Muslim, Arab, Asian, Native-American and Latinx chant slogans objecting to state violence at home and abroad.<sup>10</sup>

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<sup>6</sup> For example, see statement from UC Berkeley Students of Ethnic Studies 198: Palestine: A Settler Colonial Inquiry, denouncing anti-Semitic flyers related to the course, <https://medium.com/@ethnicstudies198/the-students-of-ethnic-studies-198-condemn-the-anti-semitic-racist-flyers-put-up-on-uc-berkleys-c2f000edd68a#.g7v2t2av9>; SJP at UC Berkeley, “Cal SJP Condemns UC Davis Hate Crime,” January 31, 2015, <http://calsjp.org/cal-sjp-condemns-davis-hate-crime/>.

<sup>7</sup> Rankin & Associates, “University of California System, “Campus Climate Project Final Report,” March, 2014, [http://campusclimate.ucop.edu/\\_common/files/pdf-climate/ucsystem-full-report.pdf](http://campusclimate.ucop.edu/_common/files/pdf-climate/ucsystem-full-report.pdf).

<sup>8</sup> A broad array of critics raised concern about the Regents failure to address every other vulnerable campus group. See footnote 4.

<sup>9</sup> Nathan Guttman, “Ban Anti-Israel Campus Protests as ‘Anti-Semitic’ Hate?” *The Forward*, June 10, 2015, <http://forward.com/news/national/309450/what-is-anti-semitism/> (quoting the AMCHA Initiative’s Tammi Rossman-Benjamin, who named the following as anti-Semitic: boycott divestment and sanctions initiatives, mock walls to symbolize Israel’s separation barrier, and demonstrations in which activists distribute mock eviction notices to raise awareness about Palestinian home demolition.)

<sup>10</sup> This refers to a protest at UC Irvine in May 2016 after which Israel advocacy organizations alleged protesters harassed and terrorized Jewish students. The university’s factual investigation exonerated protesters from these allegations and determined there was nothing to punish except for the loud volume of the protesters’ chants. (See, UCI Office of Student Conduct “Sanction Letter,” August 18, 2016, <http://tinyurl.com/hbt2d8b>, including a 58-page review of relevant facts, witness testimony and related documents.) Nevertheless, Israel advocacy organizations repeatedly complained the protest was antisemitic and called on UC Irvine to enforce the Intolerance Statement. (For example, Brandeis Center, “LDB Responds to UC Irvine’s SJP Decision and Calls for Stronger Action,” August 25, 2016,

- A student-led course, taught by a Palestinian-American student, examining Palestine through the lens of settler-colonialism.<sup>11</sup>

But each of these forms of speech are protected by the First Amendment, university free speech, and academic freedom policies, and thus their “place at the university” is also protected by law.

Moreover, each of these examples of student and faculty speech – and many more including academic courses, lectures, films, and protests – focus on political critique of Israeli state policy and have nothing to do with anti-Jewish hatred. They clearly do have a place at the university because many students and scholars seek to engage in critical discussion of Israeli policy towards Palestinians.

To restrict the story-telling of dissenting Israeli soldiers on campus, to punish the expression of students angry about militarized police in communities of color, or to censor course content that examines the colonial process in Israel-Palestine all constitute actions that would not only violate the First Amendment, but would make a mockery of the UC, home to the free speech movement, where vigorous engagement on our world’s most pressing problems is essential to the learning environment.

What type of speech then, has “no place” at the university? On what basis will the Regents exclude such speech? Who will decide? Will the UC rely on the same Israel advocacy groups that lobbied for the statement, and continue to demand that the UC censor and punish virtually any criticism of the Israeli state that falls within their vague, overbroad and inaccurate definition of antisemitism? How should administrators apply the Intolerance Statement?

Many critics have pointed out that this lack of clarity is unacceptable, especially on a public university campus where the First Amendment applies, and where administrators have a responsibility to nurture unfettered inquiry.<sup>12</sup> As the ACLU emphasized in its concerns about the Regents statement, “In the area of free speech, clarity and specificity are essential to preserve the free flow of ideas.”<sup>13</sup>

### **III. UC Berkeley Recently Violated Academic Freedom, Citing the Regents Statement of Principles Against Intolerance as a Justification.**

The vague Intolerance Statement has already resulted in at least one major incident where the university violated student and faculty rights. In September, 2016, UC Berkeley made

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<http://brandeiscenter.com/blog/ldb-responds-to-uc-irvines-sjp-decision-and-calls-for-stronger-action/>, “Irvine needs to demonstrate that they have heard the Regents’ [Intolerance] statement and that they are prepared to reform their process.”)

<sup>11</sup> The course – Palestine: a Settler Colonial Inquiry” – is discussed at length below. For more information on accusations of antisemitism, see, Drew Himmelstein, “U.C. Berkeley suspends student-led Palestine course after Jewish outcry,” *Jweekly*, September 13, 2016,

<http://www.jweekly.com/article/full/78411/u.c.-berkeley-suspends-student-led-palestine-course-after-jewish-outcry/>.

<sup>12</sup> See footnote 4.

<sup>13</sup> American Civil Liberties Union of Northern California, “ACLU Statement on UC Proposed Intolerance Policy,” March 22, 2016, <https://www.aclunc.org/news/aclu-statement-uc-proposed-intolerance-policy>.



international headlines after it suspended and then reinstated a student-led “DeCal” course, Ethnic Studies 198, titled “Palestine: a settler colonial inquiry.” The suspension followed heavy pressure from Israel advocacy organizations and the Israeli government. All indications are that the university suspended the course because of controversy created by complainants who disfavored the perceived political viewpoints the course was exploring. Although the university argued that the suspension was justified by procedural errors in approving the course, this explanation proved to be unfounded.<sup>14</sup>

After an outcry from students, faculty, and academic freedom advocates, UC Berkeley reinstated the course one week after suspending it. In a letter announcing the reinstatement, Executive Dean of the College of Letters and Science, Carla Hesse cited a potential “violation” of the Regents Statement of Principles Against Intolerance as a justification for the course suspension, echoing the complaints of Israeli advocacy groups.<sup>15</sup>

The suspension violated the free speech and academic freedom rights of students and faculty, and according to the Academic Senate, the suspension constituted a severe infringement on authority delegated to the faculty. The suspension caused significant disruptions to the student facilitator and the enrolled students, not to mention a widespread chilling effect on members of the university community interested in studying – or teaching – Palestinian history.<sup>16</sup>

As Palestine Legal explained in letters to UC Berkeley on September 16 and October 18, the Regents Intolerance Statement could not justify the suspension because it is not an enforceable policy and because it cannot supersede the university’s constitutional responsibility to protect free speech and academic freedom, which protects the course from interference.<sup>17</sup>

The resulting damage to the academic environment is severe. As Palestine Legal wrote to UC Berkeley,

Such blatant viewpoint discrimination damages the educational environment by casting a pall of orthodoxy over the campus. Students in the course, prospective student facilitators, faculty and others in the campus community are left to

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<sup>14</sup> Executive Dean of the College of Letters and Science Carla Hesse, Letter to Paul Hadweh, November 10, 2016, on file with Palestine Legal. “I am writing to offer our apology for the public misstatement made regarding your DeCal course submission in the campus announcement of the decision to suspend the ES 98/198 course ... We regret stating that you had not followed the appropriate procedures, when in fact you had.”

<sup>15</sup> Executive Dean of the College of Letters and Science Carla Hesse, “Letter Regarding ES 198 Fall 2016,” September 19 2016.

<sup>16</sup> A full account of the Academic Freedom violations that occurred and the harms done is described in letters from Palestine Legal to UC Berkeley, September 16 and October 18 2016, attached. (Letter from Palestine Legal to UC Berkeley Chancellor Nicolas Dirks, October 18, 2016, <http://tinyurl.com/gsvg9xn>; Letter from Palestine Legal to UC Berkeley Chancellor Nicolas Dirks, September 16, 2016, <http://tinyurl.com/oqhhlms>.)

<sup>17</sup> During discussion at the UC Regents meeting just prior to adoption of the Intolerance Statement, UC General Counsel Robinson stated to the Committee on Educational Policy that the statement is “aspirational rather than prohibitory” and it “does not provide basis for sanction or enforcement activity against anyone in the university community.” (UC General Counsel Robinson Statement on Statement Against Intolerance, March 24, 2016, <https://www.youtube.com/watch?v=ukc9qSuJZmU>.)

wonder whether or not they are permitted to study Palestine from an anti-colonial perspective – or at all. Is critical inquiry into the process of expanding Israeli settlements in the West Bank permitted, or will that be scrutinized by administrators as potential indoctrination or antisemitism, in violation of university policy? Are students permitted to study alternatives to the “two state solution” in Palestine-Israel, or is that considered overly narrow range of viewpoints, and thus impermissible? It is intolerable for these to even be serious questions left to administrators who have no knowledge of the fields of inquiry.<sup>18</sup>

The fact that a high level administrator so seriously misunderstood and misapplied the Regents Intolerance Statement, resulting in severe infringements of academic freedom and an irreparable chilling effect is a predictable outcome of such a vague document. Such an outcome underscores the ACLU’s warning: the Intolerance Statement – lacking clarity and specificity – indeed, cut off the free flow of ideas at UC Berkeley.

#### **IV. UCLA Violated the First Amendment in Fall 2015 While the Statement of Principles Was Under Consideration.**

UC Berkeley is not the only campus where the Intolerance Statement is connected to the unconstitutional restriction of ideas supportive of Palestinian rights. During the 2015-16 academic year at UCLA, amidst ongoing debates about the Regents Intolerance Statement, but prior to its adoption, the then-President of UCLA Graduate Students Association issued an unconstitutional funding restriction to isolate students who support divesting from companies that profit from Israel’s human rights violations. The restriction required an umbrella student group called the Diversity Caucus to have “zero connection” with any supporters of divestment from Israel.<sup>19</sup>

After rights groups complained,<sup>20</sup> the university investigated and determined that indeed, the funding stipulation violated university policy requiring viewpoint neutrality in the distribution of student fees.<sup>21</sup> But the damage was done – supporters of divestment were blacklisted by a student official, even if temporarily – and left to wonder whether or not their human rights activism has a place at the UC, and if not, what punishments they would suffer if they expressed criticism of Israeli policies.<sup>22</sup>

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<sup>18</sup> Letter from Palestine Legal to UC Berkeley Chancellor Nicolas Dirks, October 18, 2016, <http://tinyurl.com/gsvg9xn>.

<sup>19</sup> UCLA Discrimination Prevention Office (DPO), “Investigation Report Regarding Complaints of Violation of Policies Requiring Viewpoint-Neutral Allocation of Mandatory Student Fees by Students for Justice in Palestine and Diversity Caucus against [Redacted] as Graduate Students Association President,” June 29, 2016, <https://www.scribd.com/document/317927252/UCLA-Discrimination-Prevention-Office-findings-re-GSA-Viewpoint-Discrimination>, (“DPO Report”).

<sup>20</sup> Palestine Legal, Center for Constitutional Rights, and ACLU of Southern California, letter to UCLA Chancellor Gene Block, November 18, 2015, <http://tinyurl.com/jut88xt>.

<sup>21</sup> DPO Report, June 29, 2016.

<sup>22</sup> Palestine Legal, Center for Constitutional Rights, and ACLU of Southern California, letter to UCLA Interim Vice Chancellor for Legal Affairs Amy Blum, February 8, 2016, on file with Palestine Legal.

It is no coincidence that a student government official committed a violation of university policy, believing that criticism of Israeli policy is “bad speech” that should be restricted and punished. This is the same message that members of the Regents and President Napolitano repeatedly communicated during the debate on the Intolerance Statement in comments mischaracterizing advocacy for Palestinian rights as antisemitic speech that should be censured.<sup>23</sup>

#### V. A recent report from UC Irvine repeats and reinforces the harms of the Intolerance Statement.

On October 21 2016, UC Irvine published a report “Higher Ground: The Alignment of UCI’s Policies, Principles, and Programs with the UC Regents’ Principles Against Intolerance.”<sup>24</sup> The report further conflates anti-Zionism and antisemitism, discards the UC’s commitment to free speech, and excludes the interests of Palestinian and other vulnerable communities.

The report repeatedly collapses expression that criticizes Israel with antisemitism, as if the two types of speech are the same. For example, the report expresses concern that “student organizations are reluctant or unwilling to partner on social justice projects with students or student organizations that support Israel.”<sup>25</sup> But the report then jumps from this observation to the recommendation that UCI “Work with social justice student groups to invite *Jewish students* to be part of activities that reflect shared values.” (Emphasis added.) This recommendation misrepresents the problem it purports to solve. Students for Justice in Palestine at UCI, and other social justice clubs on campus, already include many *Jewish* members; they choose not to collaborate with organizations that espouse *Zionist* political ideologies because they view them as inconsistent with their own values.

In a second example, the report calls for “develop[ing] and adopt[ing] an Inclusive Excellence Index” to assess the integration of Jewish students on campuses, which would “[address] anti-Semitism and anti-Israel sentiment” – collapsing the two terms. The prevalence of criticism of Israel on campus by itself says nothing about the acceptance of Jewish students on campus.

The ongoing conflation of criticism of Israel and antisemitism is counterproductive and only reproduces bias towards all groups. The more that the university indiscriminately equates “Israel” or “Zionism” with “Jewish students,” the more students will misinterpret criticism of Israel as anti-Jewish bias. If senior UCI personnel cannot make these important distinctions in a

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<sup>23</sup> Council of University of California Faculty Associations and American Association of University Professors, Statement on Regent Blum’s Remarks, September 25, 2015, <https://academeblog.org/2015/09/25/cucfa-and-aaup-statement-on-uc-regent-blums-remarks/>; Glenn Greenwald, “The Greatest Threat to Free Speech is Coming from Dianne Feinstein and her Military Contractor Husband,” *The Intercept*, September 25, 2015, <https://theintercept.com/2015/09/25/dianne-feinstein-husband-threaten-univ-calif-demanding-ban-excessive-israel-criticism/>.

<sup>24</sup> Douglas Haynes, UCI Vice Provost for Academic Equity, Diversity and Inclusion, “Higher Ground: The Alignment of UCI’s Policies, Principles, and Programs with the UC Regents’ Principles Against Intolerance,” [http://inclusion.uci.edu/wp-content/uploads/sites/13/2016/10/Higher\\_Ground.pdf](http://inclusion.uci.edu/wp-content/uploads/sites/13/2016/10/Higher_Ground.pdf).

<sup>25</sup> It is true that sometimes groups with anti-Zionist positions choose not to collaborate with Zionist organizations because they cannot agree on core values.



heavily edited report, how can one expect the differences to be maintained by others in the university community?

Similar to the Regents Intolerance Statement, UCI's Higher Ground report makes a rhetorical nod to the university's commitment to free speech, and then swiftly undermines free speech values. The report notes, "constitutionally protected events in which the policies of the state of Israel are vigorously criticized can be deeply offensive" to "Jewish students who closely identify with Israel as a Jewish state." Rather than respect or reiterate the reason such events are constitutionally protected – because the Supreme Court has emphasized that our nation's universities are the quintessential marketplace of ideas – the report concludes that "UCI should focus more attention on ensuring that Jewish students feel ... safe during events where Israel is criticized."

Many following the national debate on the diminishing free speech environment (for example, see, *The Coddling of the American Mind*<sup>26</sup>) would scorn such a statement that calls on administrators to prioritize protecting the emotional safety of one group of students who are uncomfortable hearing criticism of a nation state on a public university campus.<sup>27</sup> This directly contradicts the university's repeated high-minded statements embracing a robust commitment to a rigorous exchange of ideas.<sup>28</sup>

Most egregiously, Higher Ground entirely excludes the concerns of other vulnerable communities. It claims the Regents Intolerance Statement is "grounded in the centrality of diversity to our university community," but it spends nine pages addressing only the concerns of a particular subset of Jewish students at UCI – namely, those that strongly identify with a Zionist political ideology. This excludes non-Zionist Jewish students, and every other vulnerable group. The report poses a "central question" for UCI: "is our campus commitment to inclusive excellence capacious enough to do more to improve the climate for all students, including Jewish students?" This premise separates out Jewish students from others, and does not even bother to name some of the other vulnerable groups such as LGBTQ, Black, Latinx, Asian, or Native students.

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<sup>26</sup> Greg Lukianoff and Jonathan Haidt, "The Coddling of the American Mind," *The Atlantic*, September, 2015, <http://www.theatlantic.com/magazine/archive/2015/09/the-coddling-of-the-american-mind/399356/>.

<sup>27</sup> The reason students are engaged in criticism of Israel is because the state has committed well-documented human rights violations and UC students have experienced direct and indirect harm from such violations. They too have hurt feelings, and do not feel safe emotionally, for example, when former military soldiers that defend Israel's military actions are welcomed and valorized on campus. But their response is to engage in counter-speech, as Chancellor Gilman and President Napolitano have counseled them to do. There is no university report assessing the comfort level of Palestinian students on campus and making policy recommendations to enhance their emotional safety.

<sup>28</sup> For example, see, Janet Napolitano, "It's time to free speech on campus again," *Boston Globe*, October 2, 2016, <https://www.bostonglobe.com/opinion/2016/10/01/time-free-speech-campus-again/v5JDCzjuv710Mc92AhaAqL/story.html>; see also, Howard Gilman and Erwin Chemerinsky, "Don't mock or ignore students' lack of support for free speech. Teach them," March 31, 2016, <http://www.latimes.com/opinion/op-ed/la-oe-chemerinsky-gillman-free-speech-on-campus-20160331-story.html>; UC Regents Policy: Principles Against Intolerance, March 24, 2016, <http://regents.universityofcalifornia.edu/aar/mare.pdf> ("Freedom of expression and freedom of inquiry are paramount in a public research university and form the bedrock on which our mission of discovery is founded.").

For a campus concerned about intolerance and diversity, it is alarming to see the total absence of concern about prejudice and harassment experienced by Arab and Muslim students, who have routinely been targeted with harassment and violence and singled out by authorities for investigation and punishment.<sup>29</sup>

Finally Higher Ground sets out recommendations for putting the Intolerance Statement into action, which again, seem to invite university administrators to violate the First Amendment. For example, the plan to "incorporate [the Regents Intolerance Statement] into campus events application process for space requests for on-campus events," suggests the university may predicate approval for events on the requirement that students endorse the Intolerance Statement. If the university were to implement such a requirement, it would amount to unconstitutional viewpoint discrimination and/or compelled speech. The views expressed in the Intolerance Statement are the Regents' views, and the university cannot coerce students to adopt them.

#### **VI. The President's Office and the Regents have not addressed numerous instances of anti-Arab and anti-Muslim harassment.**

Throughout the yearlong process of adopting the Intolerance Statement, and since its adoption in March 2016, there have been ongoing incidents of harassment targeting UC's Arab and Muslim students and students active for Palestinian rights. The President's office and the Regents have been silent, despite your professed concern about intolerance targeting all groups.

The following is a non-exhaustive list of anti-Arab, anti-Muslim harassment and criminal acts that have occurred on UC campuses since last March:

At UC Riverside during spring break week in March 2016, vandals broke into the Ethnic Studies offices of several women of color PhD students, and professors. A number of graduate student mailboxes were tampered with and rummaged through. Materials related to Palestine, including an image of the Palestinian flag, were torn down from the wall. "Women of color have been specifically targeted by these parties, and the available information makes it abundantly clear that these acts of violence are significantly motivated by anti-Muslim and Islamophobic sentiment and/or ideology," wrote Ethnic Studies department chair Dylan Rodriguez.<sup>30</sup> The victims reported experiencing trauma and fear that disrupted their ability to study and teach. The victims also reported to the administration their concern about the lack of proactive measures to

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<sup>29</sup> See, for example, Palestine Legal and the Center for Constitutional Rights, *The Palestine Exception to Free Speech: A Movement Under Attack, Appendix, UC Irvine 11*, "Eleven Students Criminally Prosecuted for Event Walkout," <http://palestinelegal.org/the-palestine-exception-appendix#irvine3>; see also, Murtaza Hussain, "Students In California Might Face Criminal Investigation For Protesting Film On Israeli Army," *The Intercept*, June 23, 2016, <https://theintercept.com/2016/06/23/students-in-california-might-face-criminal-investigation-for-protesting-film-on-israeli-army/>.

<sup>30</sup> Dylan Rodriguez, Chair of Ethnic Studies, statement on vandalism, UC Riverside Media and Cultural Studies Department Facebook page, March 30, 2016, <https://www.facebook.com/UcRiversideMediaAndCulturalStudiesDepartment/posts/351689734955401>.

ensure safety for targeted communities of color. The campus community called on the administration to protect campus safety for south and west Asian and north African students.<sup>31</sup>

In April 2016 at UC Irvine, a vandal chalked the ground with anti-Muslim graffiti surrounding a Students for Justice in Palestine (SJP) display that protested Israeli government policies. The vandal drew a picture of an airplane aimed at the flagpole (suggesting a 9-11 type attack) and wrote “MSU [Muslim Student Union], SJP, BSU [Black Student Union] should be run over by a car.” Other statements included: “Islam = apartheid,” “ Hamas = Isis = Islam,” “Hitler loved Islam,” “Mohamed committed Genocide,” and “Trump 2016.” The chalking occurred in the middle of the night while SJP students were inside the library. Forced to turn their attention away from their midterms due the following day, SJP stayed out until 5 am erasing the chalk messages.

In April 2016, the David Horowitz Freedom Center plastered UCLA, UC Santa Barbara, UC Santa Cruz, and UC Berkeley with posters targeting individual students and faculty, who “allied themselves with Palestinian terrorists” and “perpetrate...Jew hatred on this campus.”<sup>32</sup> David Horowitz, who claimed responsibility for the posters, is named by the Southern Poverty Law Center as a driver of anti-Muslim, anti-Black, and anti-Immigrant hate.<sup>33</sup> To track the names of targeted students and faculty on campus, the David Horowitz Freedom Center used Canary Mission, an anonymous blacklisting website that posts the names, universities, employers, and social media accounts of students and faculty who support Palestinian rights.<sup>34</sup>

Again, in October 2016, David Horowitz plastered campuses at UCLA, UC Irvine, and UC Berkeley, targeting individual students and faculty by name as promoters of terrorism and “Jew Hatred” because of their support for Palestinian rights. This poster campaign featured large-form caricatures of faculty members’ faces along with the accusations.<sup>35</sup> At the end of October 2016 at UC Irvine, separate posters appeared on campus with the words “Islam Kills” in large red font, styled as if painted in blood.<sup>36</sup>

The Horowitz posters are anti-Muslim and anti-Arab, even where they target others (such as white, Jewish, Asian, and African American campus members) because they reinforce the

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<sup>31</sup> Alejandra Molina, “UC Riverside: Political vitriol blamed for anti-Muslim vandalism,” *The Press Enterprise*, April 11, 2016, <http://www.pe.com/articles/hand-799569-islamophobia-riverside.html>. The UCR Graduate Student Association and the Associated Students of UCR also passed resolutions calling on the administration to condemn Islamophobia and anti-Arab racism.

<sup>32</sup> See, Sam Levin, “GOP mega-donor funds group calling pro-Palestine US students 'Jew haters',” *The Guardian*, August 24, 2016, <https://www.theguardian.com/us-news/2016/aug/22/sheldon-adelson-palestine-jew-haters-colleges-campuses>.

<sup>33</sup> Southern Poverty Law Center, Extremist Info, David Horowitz, <https://www.splcenter.org/fighting-hate/extremist-files/individual/david-horowitz>.

<sup>34</sup> Amanda Holpuch, “Website targets pro-Palestinian students in effort to harm job prospects,” *The Guardian*, May 27, 2015, <https://www.theguardian.com/us-news/2015/may/27/website-targets-pro-palestinian-students-harm-job-prospects>.

<sup>35</sup> Charlotte Silver, “Racist group launches national offensive on US campuses,” *Electronic Intifada*, October 25, 2016, <https://electronicintifada.net/blogs/charlotte-silver/racist-group-launches-national-offensive-us-campuses>.

<sup>36</sup> It is unclear based on public information whether the posters were affiliated or related to the David Horowitz Freedom Center poster campaign. Pictures are on file with Palestine Legal.

stereotype that Muslims, Arabs, Palestinians, and their supporters are inherently violent or antisemitic.

In response to the posters, students have reported severe disruptions to their educational experience. For example, a first generation college student and African-American senior who was targeted at UCLA reported losing sleep, missing class, and missing reading that affected his ability to perform on a mid-term examination. A Palestinian-American graduate student at UCLA reported anxiety and distraction, and concern about walking around on campus that diminished his teaching and research. A Jewish graduate student at UC Berkeley reported having to walk by the poster plastered outside his lab and workplace repeatedly for two days before the university removed the poster, and wondering which of his colleagues believed him to be a terrorist because of the posters.

Campus level administrators condemned some of the Horowitz posters. But the President's Office and the Regents expressed no sympathy for the targets, no condemnation or rebuke of the false accusations, and little concern about the violent, xenophobic, and anti-Muslim sentiment sweeping the nation.

Students report real fears for their physical safety, given the dangerous national climate for Muslim students, and those perceived to be associated with Muslims, such as supporters of Palestine. A recent report found that during the course of 2015, there were approximately 174 reported incidents of anti-Muslim violence and vandalism, and that Muslim murder victims were most likely to be aged 18 to 24.<sup>37</sup>

Finally, as we write this letter, in the week following Trump's election, numerous instances of anti-Muslim harassment and assaults were reported across California campuses, including at the UC.<sup>38</sup> Students testified about their concerns of anti-Muslim targeting at the UC Regents Meeting on November 16, 2016.<sup>39</sup> Meanwhile, the Southern Poverty Law Center reported more than 400 incidents of hate occurring nationwide in the one week since Trump's election, noting a high-rate of incidents in California, at universities, and targeting Muslims.<sup>40</sup>

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<sup>37</sup> Georgetown University Bridge Initiative, "When Islamophobia Turns Violent: The 2016 U.S. Presidential Elections," May 2, 2016, <http://bridge.georgetown.edu/when-islamophobia-turns-violent-the-2016-u-s-presidential-elections/>.

<sup>38</sup> Melanie Woodrow, "2 Hate Crimes Against Muslim Students Reported On Bay Area College Campuses Since Election," *ABC 7*, November 14, 2016, <http://abc7news.com/news/2-hate-crimes-reported-on-bay-area-college-campuses-since-election/1607325/http%3A%2F%2Fabc7news.com%2F1607325%2F>.

<sup>39</sup> Teresa Watanabe, "At UC regents meeting, unease and uncertainty over Donald Trump's presidency," *Los Angeles Times*, November 16, 2016, <http://www.latimes.com/local/education/la-me-ln-uc-regents-20161116-story.html>.

<sup>40</sup> Southern Poverty Law Center Hatewatch, "Update: More Than 400 Incidents of Hateful Harassment and Intimidation Since the Election," November 15, 2016, <https://www.splcenter.org/hatewatch/2016/11/15/update-more-400-incidents-hateful-harassment-and-intimidation-election>. As of November 16, data was not publicly available showing the number of incidents targeting Muslim students on California campuses.

## VII. Conclusion.

It is a shock to hear the Regents' extended silence regarding anti-Muslim harassment, especially in the same year that the Regents adopted the Intolerance Statement with so much national attention. Horowitz and other promoters of hate are widely viewed as extremists, but their strategy – to suppress support for Palestinian rights by branding it antisemitic and dangerous – has the same effect as the Regents' vague and chilling Intolerance Statement.

President Napolitano relied on the Intolerance Statement in a post-election message to the UC Community on November 9, 2016, as reassurance to UC's vulnerable communities that, "Diversity is central to our mission" and that the UC remains "absolutely committed to supporting all members of our community." But the Intolerance Statement, as critics have repeatedly articulated, reassures only one narrow interest group: students with a Zionist political ideology. Many others, including the communities we represent, find it directly threatening to their rights and interests.

Given the violations of speech rights, and the ongoing anti-Muslim and anti-Palestinian harassment at UC, we call on you to take the following actions:

1. **Repeal the UC Statement of Principles Against Intolerance and replace it with protective measures that address all vulnerable communities at the UC.** Alternatively, at the very least, issue written guidance to administrators, faculty and students to clarify two critical items:
  - A. The Regents Statement of Principles Against Intolerance is not enforceable policy, but instead an aspirational statement of the Regents' views. Regardless, it cannot be used to justify university actions that infringe on First Amendment rights and academic freedom.
  - B. The important difference between criticism of Israeli policies and antisemitism.
2. **Remedy the violation of academic freedom that occurred at UC Berkeley,** as requested in Palestine Legal's letter of October 18, 2016, attached.
3. **Reject the UCI Report "Higher Ground"** and ask the campuses to assess the climate for all vulnerable groups, including but not exclusive to Jewish students, because our campuses include a multitude of marginalized faiths, national origins, races, ethnicities, gender and sexual identities, and other groups.
4. **Unequivocally condemn the Horowitz posters, and defend Students for Justice in Palestine, the Muslim Students Association, and the targeted individual students and faculty.** The UC must use its publicity platform to dispel racist stereotypes. It should state that Arabs, Muslims and supporters of Palestinian rights of all backgrounds are valued members of the campus community, and that the insinuations against them are unfounded. Anti-racism and advocacy for justice, equality and freedom for Palestinians, is not only protected by law, but is a valued part of UC's educational mission.
5. **Join administrators and faculty members in condemning Canary Mission, and stating that UC officials will not refer to it as a source in evaluating prospective or current**

**student or faculty records.** Recently, over 1,000 faculty across the country signed onto a statement condemning Canary Mission’s fear mongering, and insisting that the website ‘should not be trusted as a resource to evaluate students’ qualifications for admission.’<sup>41</sup>

6. **Meet with representatives of our organizations** to discuss the university’s response to intolerance against our communities, and measures the university can take to protect against efforts by the Trump administration, and others, to punish political speech.

We will follow up with your offices to discuss the concerns and requests raised in this letter.

Sincerely,



Liz Jackson  
Staff Attorney, Palestine Legal  
Cooperating Counsel, Center for Constitutional Rights,

On behalf of:

American Muslims for Palestine  
Center for Constitutional Rights  
Council on American Islamic Relations, Los Angeles  
Jewish Voice for Peace  
National Lawyers Guild San Francisco Bay Area  
Muslim Students Association West  
Palestine Legal  
Students for Justice in Palestine West

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<sup>41</sup> “Against Canary Mission,” <http://againstanarymission.org/>.



# Attachment A

Letter from Palestine Legal to UC  
Berkeley Chancellor Nicolas Dirks,  
September 16, 2016



*Via Email*

September 16, 2016

Chancellor Dirks, University of California Berkeley  
Executive Dean of the College of Letters and Science Carla Hesse  
Chief Counsel Christopher Patti

**Re: Suspension of Ethnic Studies 198, Palestine: A Settler Colonial Analysis**

Dear Chancellor Dirks,

I write on behalf of Paul Hadweh to express Palestine Legal's serious concerns with respect to University of California Berkeley's ("Cal") decision to suspend the student-led class, "Ethnic Studies 198: Palestine: A Settler Colonial Analysis." All indications suggest you suspended the course in response to political pressure from off-campus Israel advocacy groups.

The course suspension is a violation of students' First Amendment and academic freedom rights, undermines Hadweh's right to an equal educational opportunity, and subverts the University's stated processes for approval of DeCal courses. Accordingly, we demand that you immediately reinstate Ethnic Studies 198, apologize to Hadweh and the 26 enrolled students, and reaffirm your commitment to academic freedom, especially in the face of political pressure.

Our understanding of the relevant facts is as follows:

Mr. Hadweh is a Palestinian-American senior majoring in Peace and Conflict Studies. His interest is to engage in critical theory and historical analysis, and discuss with his peers what a just solution to the Israel/Palestine issue could look like. Towards that end, he took a recommended course in spring 2016 that supports students in becoming Decal facilitators. He designed the course "Palestine: A Settler Colonial Analysis" in close consultation with his faculty advisor. As required, he submitted the Course Proposal Form, and completed every step indicated on the instructions "checklist," including approval from his faculty advisor, the department chair, and the Academic Senate.<sup>1</sup> The course received a course control number on August 22 2016, and a room assignment on August 26.

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<sup>1</sup> See, [http://vcue.berkeley.edu/sites/default/files/course\\_proposal\\_packet.pdf](http://vcue.berkeley.edu/sites/default/files/course_proposal_packet.pdf).

<sup>2</sup> Ethnic Studies 198 Community Agreements are on file with Palestine Legal.

<sup>3</sup> <http://www.algemeiner.com/2016/09/01/campus-watchdog-upcoming-palestine-course-will-increase-antisemitic-atmosphere-at-uc-berkeley/>

<sup>4</sup> <http://m.nana10.co.il/article/1209136?sid=120&pid=55&service=10tv>

On September 6, the first day of class, 31 students attended. The students had an introductory discussion about the content of the course and created a list of community agreements focused on respectful engagement with diverse viewpoints.<sup>2</sup>

The class was limited to 24 students, but Mr. Hadweh took the appropriate steps to expand the limit due to the high level of interest. On the day of its suspension, 26 students were enrolled in the course.

Administrators reportedly were first made aware of the course on August 26, and Cal Assistant Vice Chancellor Dan Mogulof was quoted responding to criticisms of the class in a September 1 article, highlighting Cal's vast efforts to ensure that Jewish students are safe and welcome on campus, and stating that "we are in full support of the Regents recently issued Principles Against Intolerance."<sup>3</sup> Full information about exactly who was complaining about the course, and for how long, is not publicly available, however Israeli media reported on September 11 2016 that Israeli government Minister Gilad Erdan and the Israeli Union of Heads of the Universities had for several days been trying to covertly prevent the course from taking place.<sup>4</sup>

On September 13, the AMCHA Initiative, along with 42 other Israel advocacy organizations, publicly complained to Chancellor Dirks about Hadweh's class, claiming that it violates the Regent's Policy on Course Content by allowing a classroom to be used for "political indoctrination" and "as an instrument for the advance of partisan interest."<sup>5</sup>

Two hours after receiving AMCHA's letter, Dean Carla Hesse informed the faculty advisor and the department chair that she was suspending the course. A statement from Berkeley the same day, which was sent to those who complained to the university, claimed that the student facilitator "did not comply with policies and procedures that govern the review and approval of proposed courses for the DeCal program," and that the course "did not receive a sufficient degree of scrutiny to ensure that the syllabus met Berkeley's academic standards." The statement also expressed "[concern] about a course...that espoused a single political viewpoint and appeared to offer a forum for political organizing..."<sup>6</sup>

Although the statement did not name Hadweh, and instead referred to the "student facilitator," the university was, or should have been, aware that his name was widely available and under international scrutiny. Administrators made no contact with Hadweh to discuss their concerns about the course before publicly alleging that he failed to follow proper procedures and that his course was inappropriate for the university setting. Nor did the university reach out to Hadweh to discuss how he may protect himself and stay focused on his studies while facing

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<sup>2</sup> Ethnic Studies 198 Community Agreements are on file with Palestine Legal.

<sup>3</sup> <http://www.algemeiner.com/2016/09/01/campus-watchdog-upcoming-palestine-course-will-increase-antisemitic-atmosphere-at-uc-berkeley/>

<sup>4</sup> <http://m.nana10.co.il/article/1209136?sid=120&pid=55&service=10tv>

<sup>5</sup> <http://www.amchainitiative.org/letter-to-uc-berkeley-chancellor-dirks>

<sup>6</sup> Id.

scrutiny in the international media and harassment. Hadweh only learned of the criticisms of his course in the Israeli media on September 13, and only several hours before the university suspended it. That same morning he began to receive a barrage of harassment emails and contacts from reporters.

### **UCB's Suspension Violates First Amendment and Academic Freedom Principles**

Your justification for the suspension of Ethnic Studies 198 – which you said “espouse[d] a single political viewpoint and/or appears to offer a forum for political organizing” – is legally untenable and reveals a major misunderstanding of UC Berkeley’s academic standards, and the law. The ample documentation of a public pressure campaign, combined with your failure to provide a justification that holds water – procedural or otherwise – makes it clear that you suspended Ethnic Studies 198 because Israel advocacy groups disagreed with the course content.

The university’s official statements to the press over the past several days have increasingly relied on the theory that bureaucratic procedures were not properly followed, therefore requiring suspension of the course after it had begun. The university’s shifting procedural explanation has been meticulously addressed by John Wilson of the AAUP’s *Academe Blog*.<sup>7</sup> The alleged procedural failure is that the ethnic studies department did not deliver the course to Dean Hesse’s desk, giving her proper time to review the course. This argument fails first because the Decal website could not be more clear in stating that there is no need for Dean Hesse’s review. Second, Dean Hesse clearly had time between August 26 and September 13 to suspend the course, if she could articulate a constitutional reason to do so.

The First Amendment protects the right to free expression from government interference. This right ensures that students and professors are not targeted for expressing disfavored viewpoints. Any attempt by university officials to circumscribe academic content because you disagree with the perspective is impermissible “viewpoint discrimination,” in violation of the First Amendment.<sup>8</sup>

Moreover, several DeCal courses this semester arguably teach “single political viewpoints” and “offer a forum for political organizing.” For example, *Marxism and its Discontents* requires readings by Karl Marx, Lenin and Gramsci -- all Marxists -- with no corresponding readings by Milton Friedman and Adam Smith.<sup>9</sup> A course on *Human Trafficking Prevention Education* does not appear to offer a pro-trafficking viewpoint.<sup>10</sup>

Similarly, several DeCal courses could be said to offer a “forum for political organizing.” For example, the course description of *Helping the Navajo Rebuild with Project Pueblo* states that: “The objective of this course is to provide a venue where you can not only learn about the issues surrounding the Navajo Nation and the Former Bennett Freeze, but where you can

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<sup>7</sup> John K. Wilson, “Berkeley Bans a Palestine Class,” *Academe*, September 14 2016, <https://academeblog.org/2016/09/15/berkeley-bans-a-palestine-class/>

<sup>8</sup> *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992).

<sup>9</sup> <http://www.decal.org/courses/4268>

<sup>10</sup> <http://www.decal.org/courses/4169>

*actually do something about it!*” (emphasis in the original).<sup>11</sup> The course requires that “[STUDENTS] MUST ATTEND THE ONE-WEEK SERVICE TRIP ON JANUARY 6TH-13TH WITH NO EXCEPTIONS” (emphasis in the original).<sup>12</sup> Likewise, a course titled Copwatch: Community-Based Police Accountability, “provides students with opportunities to participate in community organizing throughout the semester.”<sup>13</sup> The Invisible Forces of Mass Incarceration<sup>14</sup> explores “how we as students can continue to push for change,” and Film Making for Activists “serve[s] as an introduction into the world of creative activism.”<sup>15</sup>

Beyond the First Amendment issues implicated here, Cal has betrayed principles of academic freedom, which protect faculty and students from “institutional censorship or discipline.”<sup>16</sup>

The Supreme Court has long-recognized that the university is “peculiarly the ‘marketplace of ideas,’” which must encourage critical thought and questioning of social and political orthodoxy, and is charged with producing future leaders acculturated in the norms of a pluralistic, democratic country.<sup>17</sup> In taking such precipitous action, Cal has sent the anti-democratic message to its faculty and students that censorship – rather than engagement, reflection or critique – is an appropriate response when political orthodoxy is challenged. The Supreme Court warned against such self-defeating academic censorship, which previously arose during the McCarthy-era:

The essentiality of freedom in the community of American universities is almost self-evident... To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation . . . . Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.<sup>18</sup>

Furthermore, UC’s Policy on Academic Freedom states that “principles of academic freedom protect freedom of inquiry and research, freedom of teaching, and freedom of expression and publication.” The policy places the authority to apply professional standards related to teaching with “the faculty as a body,” represented by the Academic Senate. Importantly, the UC Policy recognizes that academic freedom rights apply to faculty in addition “to the full protections of the Constitution of the United States and of the Constitution of the State of California.” By summarily overriding the faculty expertise in this case, you have violated these principles.

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<sup>11</sup> <http://www.decal.org/courses/4188>

<sup>12</sup> *Id.*

<sup>13</sup> <http://www.decal.org/courses/4158>

<sup>14</sup> <http://www.decal.org/courses/4177>

<sup>15</sup> <http://www.decal.org/courses/4133>

<sup>16</sup> See American Association of University Professors, 1940 Statement of Principles on Academic Freedom and Tenure.

<sup>17</sup> *Keyishian v. Board of Regents of Univ. of N.Y.*, 385 U.S. 589, 603 (1967); *Grutter v. Bollinger*, 539 U.S. 306, 324325 (2003).

<sup>18</sup> *Keyishian*, 385 U.S. at 684.

The claim that Ethnic Studies 198 is “political indoctrination” is absurd, and smacks of McCarthyism. Notably, an almost identical outcry by the same Israel advocacy groups during the spring of 2015 about another student-led course on Israel/Palestine resulted in an investigation and report from UC Riverside’s Chief Compliance Officer and Associate Vice Chancellor, which concluded:

this student-facilitated course involves a politically controversial topic about which conscientious stakeholders in the broader community . . . disagree and express concerns . . . At the end of the day the existence of objections and concerns about [the course] . . . constitutes an insufficient basis to second-guess academic judgment.<sup>19</sup>

Though universities should – and do – expose students to a robust variety of viewpoints, that variety should reflect scholarly judgments that are based on pedagogical and curricular value, not political considerations, as is evident here. Otherwise, administrators, who are more vulnerable to external political pressures, would be in the position of evaluating programs under narrow partisan or political criteria.

While a course exploring the history of Israel’s occupation of Palestinians in the context of other settler-colonial regimes may spark complaints by some who oppose the course content, such complaints can never justify a course’s suspension. Courses may not be censored based on how much controversy they may provoke. Other DeCal courses – and classes at Cal – clearly, frequently teach certain “singular” perspectives. No biology classes, to our knowledge, teach creation. To our knowledge, this is the first time Cal has suspended a class in such a manner.

Finally, at a time when Islamophobic and anti-Arab sentiment is on rise in the United States, Cal’s treatment of Paul is particularly alarming. The fact that you applied an unconstitutional viewpoint based restriction to a Palestinian-American student who wanted to study Palestinian history, while applying no similar scrutiny to other courses with similarly one-sided perspectives, raises serious concern about racial and national origin discrimination.

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<sup>19</sup>See, Bill Kidder – Chief Compliance Officer and Associate Vice Chancellor, “UCR Review of the Spring 2015 “Palestinian Voices” Student-Led Course,” available at, <http://static1.squarespace.com/static/548748b1e4b083fc03ebf70e/t/57d9e36bbebafb63eb5ebcb7/1473897336385/Palestinian+Voices+Course+UCR+review+memo+June+3+2015+FINAL+with+appendices.pdf>



There is no justification for the suspension of Ethnic Studies 198: As a university committed to free speech and academic freedom, we expect that UC Berkeley will live up to obligations under Title VI, the California and U.S. Constitution.

To ameliorate the harm done, we request that you take the following immediate steps:

1. Reinstate Ethnic Studies 198
2. Apologize, in writing, to Paul Hadweh and the enrolled students.

We are committed to using all of the resources at our disposal to ensure the rights of UC Berkeley students. We request a prompt response to this by September 21, 2016.

Sincerely,

Liz Jackson

Staff Attorney

Palestine Legal

Cooperating Counsel

Center for Constitutional Rights

# Attachment B

Letter from Palestine Legal to UC  
Berkeley Chancellor Nicolas Dirks,  
October 18, 2016



*Via Email*

October 18, 2016

Chancellor Dirks, University of California Berkeley  
Executive Dean of the College of Letters and Science Carla Hesse  
Chief Counsel Christopher Patti

Dear Chancellor Dirks, Executive Dean Hesse, and Chief Counsel Patti:

I write to follow up on my letter of September 16 2016 on behalf of Paul Hadweh, the student facilitator of Ethnic Studies 198, Palestine: A Settler Colonial Inquiry (“ES 198” or, “the course.”). The university’s summary suspension of Mr. Hadweh’s course mid-semester was an extreme and unprecedented measure, for which the university has failed to provide any valid justification.

All indications are that the university suspended the course because of controversy created by complainants who disfavored the perceived political viewpoints in the course. The suspension violated the free speech and academic freedom rights of students and faculty, resulting in harm to the educational environment, severe disruptions to Mr. Hadweh’s studies, and confusion as to the meaning and application of UC policies. Mere reinstatement of the course is insufficient without further steps to remedy the harms done, and we request that the university take several immediate actions, including apologizing to Mr. Hadweh and issuing written clarifications to applicable university policies.

#### **A. Factual Background**

My September 16, 2016 letter, attached, provides a detailed summary of facts up until that date. In brief, Mr. Hadweh spent eight months preparing to facilitate a student-led course on Palestine. Executive Dean of the College of Letters and Science Carla Hesse suspended ES 198 on September 13, 2016, three weeks after the semester started and one week after the course began, without consulting Mr. Hadweh, the faculty advisor, or the department chair. The university publicly announced its decision less than 30 minutes after informing the faculty advisor and department chair that the course was suspended.<sup>1</sup>

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<sup>1</sup> Dean Hesse emailed Shari Huhndorf, Chair of the Ethnic Studies Department to inform her of the course suspension on September 13 at 9:59 a.m. (Email on file with Palestine Legal). The Chancellor’s Office informed the AMCHA initiative within 30 minutes (Email from Chancellor Departmental to Tammi Rossman-Benjamin, “Re: Serious Concerns about vetting procedure for DeCal Courses at UCB,” September 13, 2016 at 10:26 a.m., <http://www.amchainitiative.org/wp-content/uploads/2016/09/Letter-from-Chancellor-Dirks-9.13.2016.pdf>.) The AMCHA initiative promptly publicized the suspension.

The decision followed heavy pressure from Israel advocacy organizations and the Israeli government, which complained the course violated the Regents Policy on Course Content.<sup>2</sup>

The university's public statement claimed erroneously that, "the facilitator for the course in question did not comply with policies and procedures."<sup>3</sup> No policies or procedures were cited to support this claim.

The course did not meet as scheduled on September 13. Mr. Hadweh spent the following week fighting to reinstate the course and defending his name amidst an international media storm. The story was covered in Israeli, Arab, European, national, and local media outlets.<sup>4</sup> Mr. Hadweh was depicted falsely throughout the coverage as a student who violated university policies and attempted to indoctrinate his peers with antisemitic thinking.<sup>5</sup> The university made no statements in his defense.

On September 19, Dean Hesse announced that she was reinstating ES 198.<sup>6</sup> The enrolled students met on Tuesday September 20, but Mr. Hadweh was unable to engage his students in the planned discussion of the course material because of questions about the university's suspension of the course and its reinstatement. They fell two weeks behind on the course syllabus as a result of the suspension.

On Tuesday September 20, the Academic Senate Divisional Council released a statement condemning the university's suspension of ES 198 as a major infringement on delegated authority, and demanding that the university retract and apologize for false statements accusing

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<sup>2</sup> See, Letter to Chancellor Dirks from the AMCHA Initiative and 43 other organizations, September 13, 2016, "Letter to UC Berkeley Chancellor Dirks Regarding Serious Concerns About Vetting Procedure for DeCal Courses at UC Berkeley," <http://www.amchainitiative.org/letter-to-uc-berkeley-chancellor-dirks> ("this course violates the Regents Policy on Course Content.") See also, statement from Hillel International President and CEO Eric Fingerhut and Berkeley Hillel Executive Director Rabbi Adam Naftalin-Kelman as quoted in *Jweekly*, September 13, 2016, "U.C. Berkeley suspends student-led Palestine course after Jewish outcry," <http://www.jweekly.com/article/full/78411/u.c.-berkeley-suspends-student-led-palestine-course-after-jewish-outcry/>, ("This course seems to be a matter of political indoctrination in the classroom and is a violation of the newly adopted principles by the U.C. regents on intolerance.") See also, Israel Channel Ten News, September 11, 2016, <http://m.nana10.co.il/article/1209136?sid=120&pid=55&service=10tv>, translation on file with Palestine Legal, ("Both Minister Erdan and the Association of University Heads have been trying covertly to prevent the course from taking place. The Association of Heads University Heads has told us this is illegal, and is contrary to Berkeley's own regulations.") Translation from Hebrew on file with Palestine Legal.

<sup>3</sup> Email from Chancellor Departmental to Tammi Rossman-Benjamin, "Re: Serious Concerns about vetting procedure for DeCal Courses at UCB."

<sup>4</sup> Mr. Hadweh is uncertain as to whether he will live and work in California, Palestine, or elsewhere internationally and thus the negative coverage potentially limits his opportunities anywhere he might go.

<sup>5</sup> For example, the Israeli news media claimed the course offered "practical tips for how to drive Jews out of Israel." (See Israel Channel Ten News, September 11, 2016, <http://m.nana10.co.il/article/1209136?sid=120&pid=55&service=10tv>, translation on file with Palestine Legal.)

<sup>6</sup> Hesse Letter Regarding ES 198 Fall 2016, September 19 2016, attached.

Mr. Hadweh of failing to follow university procedures.<sup>7</sup> To date, the university has issued no public response to the Academic Senate.

For the week that followed the reinstatement, Mr. Hadweh was forced to devote himself full time to defending his reputation and responding to high interest from international and local media outlets. He fell irreparably behind in an intensive Hebrew language course. Mr. Hadweh lost sleep, had trouble concentrating, and was consumed with anxious thoughts about the consequences of the reputational harm on his future and his family.

Mr. Hadweh sought support from the Dean of Students office for a tutor on September 16, and he followed up on September 21, and again on October 3. Specifically, he requested the university provide him with a compensated and qualified Hebrew language tutor. On October 4, a case manager from the Dean of Students office replied to Mr. Hadweh informing him that the university is unable to provide compensated tutoring support, and Mr. Hadweh would have to rely on volunteers from the class.<sup>8</sup>

The university has not apologized to Mr. Hadweh, has not retracted its public statements blaming Mr. Hadweh, or provided him additional academic support as he requested.

#### **B. The mid-semester course suspension was an extreme and unprecedented action.**

Academic Senate officials advised Mr. Hadweh that the university has never before taken action to suspend a course in the middle of a semester. Meanwhile, many other courses on hot-topics, with deeply contested viewpoints, are taught every semester at UC Berkeley and are rarely, if ever, reviewed by Dean Hesse. Many of these courses arguably espouse a “singular political viewpoint” or provide “forums for political organizing” (as the university originally framed its concern about ES 198).<sup>9</sup>

The mid-semester suspension was extreme because it communicated to the campus that the questions explored in Mr. Hadweh’s course are so dangerous that they must be censored on an emergency and unprecedented basis.<sup>10</sup> The timing meant that the students enrolled in ES 198 had already committed their academic schedules and course credit arrangements to the course but were then left in limbo, with no communication from the university as to the fate of their course.

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<sup>7</sup> Divisional Council (DIVCO) statement on the suspension of a student-facilitated course, Tuesday September 20, 2016, attached.

<sup>8</sup> Correspondence on file with Palestine Legal.

<sup>9</sup> Email from Chancellor Departmental to Tammi Rossman-Benjamin, “Re: Serious Concerns about vetting procedure for DeCal Courses at UCB,” September 13, 2016.

<sup>10</sup> John K Wilson wrote in *Academe Blog*, blog of *Academe*, the magazine of the American Association of University Professors (AAUP), “Universities should never suspend courses in the middle of a semester except under the most dire circumstances, where a course has been proven to violate university policies and cannot be fixed, or some kind of extraordinary fraud has occurred.” (*Academe*, September 15, 2016, <https://academeblog.org/2016/09/15/berkeley-bans-a-palestine-class/>.)

### C. The university's procedural justifications for suspending ES 198 are baseless and pretextual.

In reports to the public, the procedural justifications shifted several times. First, in suspending the course on September 13, the Chancellor's office claimed the course facilitator – Mr. Hadweh – had not followed the correct procedures to get the course approved. This was erroneous. In fact, Mr. Hadweh stated that he followed every posted procedure,<sup>11</sup> and the Divisional Council (DIVCO) of the Berkeley Division of the Academic Senate confirmed his account.<sup>12</sup>

Second, university spokesperson Dan Mogoluf told the media on September 14 that the course was never submitted to Dean Carla Hesse of the College of Letters and Sciences and that this justified the suspension.<sup>13</sup> On September 19, upon reinstating the course, Dean Hesse reiterated the claim that she suspended the course because she had not “been made aware formally of this DeCal class offering, nor seen the syllabus.”<sup>14</sup> However, the DeCal website, which outlines procedures on course approval for student-instructors, clearly states in bold font that, “**DeCals in the College of Letters & Science no longer need to submit a copy of their proposals to the Dean starting Fall 2014.**”<sup>15</sup> In other words, Dean Hesse's not being aware “formally” of a DeCal class is not a basis for its suspension. Mr. Mogoluf told the *Academe* blog that Dean Hesse was unaware of a policy change.<sup>16</sup> This may be true, but ignorance of procedures (implemented two years previously) is not a justification for suspending the course. Rather, it is a reason to offer Mr. Hadweh an apology.

Third, Mr. Mogoluf asserted that despite the clear instruction on the DeCal website, campus policy still requires a copy of the approved course syllabus be delivered to Dean Hesse.<sup>17</sup> However, even if Dean Hesse believed this to be true, the appropriate remedy would be to ask Mr. Hadweh, or the faculty advisor, for a copy of the syllabus – not the extreme measure of an indefinite mid-semester suspension. Moreover, Dean Hesse does not have the authority to suspend a course on an emergency basis given that authority over course approvals remains delegated to the faculty, as discussed below.<sup>18</sup>

Fourth, the university also claimed, in a statement provided to *Academe* blog, that the acting chair of the Ethnic Studies department did not have authority to approve the course. The university failed to explain why an acting chair would lack such authority. Moreover, there were

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<sup>11</sup> Mr. Hadweh explained this to Dean Hesse during their first communication in a meeting on September 13, 2016, and explained in a public statement that he followed every posted procedure. (See, <http://palestinelegal.org/news/2016/9/14/uc-berkeley-censors-course-on-palestine-and-settler-colonialism>.)

<sup>12</sup> Divisional Council (DIVCO) statement on the suspension of a student-facilitated course, Tuesday September 20, 2016.

<sup>13</sup> John K. Wilson, “Berkeley Bans a Palestine Class,” *Academe*.

<sup>14</sup> Hesse Letter Regarding ES 198 Fall 2016, September 19 2016.

<sup>15</sup> See, <http://www.decal.org/start-a-course/>.

<sup>16</sup> John K. Wilson, “Berkeley Bans a Palestine Class,” *Academe*.

<sup>17</sup> Id.

<sup>18</sup> Divisional Council (DIVCO) statement.



eight other courses sponsored by the Ethnic Studies department this semester, and there was no problem raised with the acting chair's authority to approve those courses.

The Divisional Council (DIVCO) of the Berkeley Division of the Academic Senate, which investigated the matter, disputed the university's procedural justifications for suspending the course, noting:

The course proposal was reviewed and considered according to posted procedures, which include three levels of oversight. The student-facilitator adhered to University policy at all stages of the process. Concerns were never raised at any stage, and the course went into effect at the start of the fall 2016 semester uneventfully.<sup>19</sup>

University administrators first became aware of the course at least as early as August 26, when Mr. Mogolof made statements to the media.<sup>20</sup> If Dean Hesse believed that the appropriate procedures had not been followed, or merely needed "clarifications" (as described in the September 19 reinstatement letter), she should have contacted the facilitator, the faculty advisor or the department chair to address her concerns at any time before the semester began. There is no valid justification for waiting nineteen days to take action.

The university failed to describe a single procedural error that could justify suspending the course. The absence of a valid procedural justification strongly suggests that such an explanation is pretextual.

**D. Dean Hesse did not have the authority to override the faculty's judgment on scholarly or content-related concerns.**

In her reinstatement letter on September 19, Dean Hesse added several content-related reasons for the course suspension. Hesse explained that she suspended the course in order to question: (1) whether the course was properly hosted in the Ethnic Studies department, (2) whether the course had a "particular political agenda ... and whether it potentially violated the 2007 Regents Policy on Course Content and/or the 2015 Regents Statement of Principles Against Intolerance" and (3) whether the course "violated Regents Policy by crossing over the line from teaching to political advocacy and organizing."<sup>21</sup>

By assuming authority to suspend the course mid-semester due to such content-related concerns, Hesse usurped faculty power to authorize and supervise course curricula. Under the UC structure of shared governance, the faculty body – not administrators – has authority to make decisions about course curricula because faculty members are the experts in the professional standards of their fields. As the September 20 Academic Senate DIVCO statement explained in detail, DIVCO "reject[s] the notion of decanal authority to approve or suspend courses" because "that authority is vested in the faculty"<sup>22</sup> The faculty had already approved ES

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<sup>19</sup> Id.

<sup>20</sup> Id.

<sup>21</sup> Hesse Letter Regarding ES 198 Fall 2016, September 19 2016.

<sup>22</sup> Divisional Council (DIVCO) statement.

198 course based on an evaluation of professional standards, and when Dean Hesse suspended the course mid-semester, based on course content concerns, she abrogated faculty governance.

In the September 19 reinstatement letter, Dean Hesse acknowledges that “Dean’s [sic] review, but do not approve the academic content of DeCal courses.” However this fails to acknowledge that if a Dean does not “approve” academic content, she also does not withhold approval. In other words, a Dean may not suspend a course due to concerns about the academic content.

#### **E. The Regents Policy on Course Content could not justify the suspension.**

Dean Hesse’s professed concern that the course potentially violated the Regents Policy 2301: Policy on Course Content<sup>23</sup> echoed the complaints of Israel advocacy organizations, which alleged that the course “intended to indoctrinate students to hate the Jewish state and take action to eliminate it,” in violation of the Course Content policy’s prohibition on political indoctrination.<sup>24</sup> But Dean Hesse’s concern misinterprets the policy, which must be read harmoniously with the university’s Academic Freedom policies.

During the spring of 2015, UC Riverside (UCR) considered the meaning of the Course Content Policy as applied to a similar student-led course on Palestine with a Palestinian student facilitator. The course was similar in tone and content, and it faced the same accusations of political indoctrination from many of the same groups that complained about Mr. Hadweh’s course. Rather than prohibit or suspend the course, UCR administrators refrained from interfering.<sup>25</sup>

Given complaints about the course, UCR Chief Compliance Officer Bill Kidder analyzed the Course Content Policy alongside UC Academic Freedom and Faculty Governance policies, and concluded:

[T]here was not a failure to adhere to the “political indoctrination” prohibition in Regents Policy 2301 when that policy is interpreted harmoniously with (as it should and must be) and alongside the University’s robust commitment to academic freedom (APM – 010) animated by the academic judgment of the faculty (Regents Standing Order 105.2).<sup>26</sup>

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<sup>23</sup> Regents Policy 2301: Policy on Course Content, <http://regents.universityofcalifornia.edu/governance/policies/2301.html>. The policy was adopted in 1970. It states, “The Regents...are responsible to see that the University remain aloof from politics and never function as an instrument for the advance of partisan interest. Misuse of the classroom by, for example, allowing it to be used for political indoctrination...constitutes misuse of the University as an institution.”

<sup>24</sup> Letter to Chancellor Dirks from the AMCHA Initiative and 43 other organizations, September 13, 2016.

<sup>25</sup> For a summary of the UC Riverside “Palestinian Voices” student-led course, please see “Palestine Exception to Free Speech, UC Riverside Case Summary,” <http://palestinelegal.org/the-palestine-exception-appendix#riversidel>.

<sup>26</sup> Bill Kidder, Chief Compliance Officer and Associate Vice Chancellor, “UCR Review of the Spring 2015 “Palestinian Voices” Student-Led Course,” <http://tinyurl.com/jzctx58>.

The same analysis applies here. ES 198 is “political” in nature because of the deeply contested issues surrounding Palestine-Israel. Faculty with authority and expertise to judge whether the course met professional standards for educational inquiry determined that the course was intellectually rigorous and appropriate.<sup>27</sup> Complaints from others who disagree with the conclusion of the faculty that the course is a valid educational endeavor cannot override the decisions of the faculty.

UCR’s application of the Regents Policy on Course Content is consistent with guidance issued in 1970 from then-UC President Charles J. Hitch, which he wrote shortly after the Policy on Course Content was adopted.<sup>28</sup> President Hitch questioned, what does “political” mean for purposes of implementing the Regents prohibition of political indoctrination? He wrote, “certainly scholarly instruction and research on politics is not only appropriate but desirable.”<sup>29</sup> If this guidance continues to apply as it should, then ES 198, is a desirable course offering, and there is no justification for applying special scrutiny to second guess the original assessment of the faculty.

Dean Hesse’s concern about a potential violation of the Course Content Policy seems reserved only for courses on Palestine. No other course in the DeCal program – many of them explicitly framed with a “political agenda”<sup>30</sup> received similar scrutiny under the Regents Course Content Policy. Such special scrutiny for the study of Palestine is most likely attributable to the record of complaints from the same Israel advocacy organizations that have pressured the university on numerous previous occasions to apply the Regents Policy on Course Content to restrict academic endeavors that they deem politically unacceptable.<sup>31</sup>

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<sup>27</sup> Letter to Carla Hesse from Shari Huhndorf, Department of Ethnic Studies Chair, “Department Assessment of Ethnic Studies 198: Palestine: a Settler Colonial Inquiry,” September 18, 2016, attached. The Ethnic Studies departmental executive committee undertook an examination of the course with particular attention to Regents Policy 2301: Policy on Course Content, and determined the course is structured by open inquiry. (“Nothing in the syllabus indicates that a single viewpoint is taught uncritically; on the contrary, the syllabus indicates that multiple viewpoints are welcomed and debated in the class.”) This examination was special scrutiny that occurred after controversy caused Dean Hesse to suspend the course, as part of the reinstatement process. The faculty who reviewed the course during the normal approval process made the same determination.

<sup>28</sup> President Hitch issued this guidance three months after the Regents adopted the Course Content Policy in June 1970, and to our knowledge it is still in effect.

<sup>29</sup> September 18, 1970 Policy Guidance from UC President Charles J. Hitch, Restrictions on the Use of University Resources and Facilities for Political Activities, page 4, available at, <http://policy.ucop.edu/doc/1200368/FacilPolitActiv>.

<sup>30</sup> See, for example, DeCal courses offered this semester such as: “Helping the Navajo Rebuild with Project Pueblo”, which provides opportunities for students to “actually do something about [Navajo nation issues]” (<http://www.decal.org/courses/4188>), “Copwatch: Community-Based Police Accountability,” which “provides students with opportunities to participate in community organizing throughout the semester” (<http://www.decal.org/courses/4158>), or “Invisible Forces of Mass Incarceration,” which explores “how we as students can continue to push for change” (<http://www.decal.org/courses/4177>).

<sup>31</sup> In 2014 the AMCHA Initiative and other organizations complained to President Napolitano and the UC Regents after UAW 2865, the union of graduate workers, announced its intention to vote on an initiative to support Boycott Divestment Sanctions (BDS) against Israel. At that time, AMCHA and others

## **F. The UC Regents Statement of Principles Against Intolerance could not justify the suspension.**

The Regents of Statement of Principles Against Intolerance (“Intolerance Statement”) is not a policy document, and is not enforceable. During discussion prior to adoption of the Intolerance Statement, UC General Counsel Robinson stated to the Committee on Educational Policy that the statement is “aspirational rather than prohibitory” and it “does not provide basis for sanction or enforcement activity against anyone in the university community.”<sup>32</sup> He reiterated that there are already university policies in place governing speech, which the Intolerance Statement does not supersede.

Second, even as an aspirational guidance to administrators grappling with controversy, it is so vague that it provides no measurable standard as to what type of speech and scholarship constitutes “intolerance” or “antisemitic forms of anti-Zionism,” to the point that a reasonable person is unable to discern what type of speech and scholarship “has no place at the university.” Is discussion of a “decolonial Palestine” an antisemitic form of anti-Zionism? This is a question that could be the basis of endless scholarly and political debate. It is untenable under the university’s academic freedom and faculty governance policies for Dean Hesse, or any other administrator, to exercise a subjective view of what constitutes an “antisemitic form of antisemitism.” As in this case, allowing such a subjective and arbitrary interpretation of, and subsequent reliance on, the statement to justify administrative actions that restrict academic activities paves the way for serious violations of First Amendment rights and academic freedom principles.

Third, the Intolerance Statement, somewhat ironically, incorporates and reaffirms the university’s robust commitment to free speech and academic freedom. Thus by its own terms, the Intolerance Statement cannot justify the extreme and unprecedented action to usurp faculty authority and suspend a course mid-semester because an administrator has concerns about the content.

The university should make clear that the Statement of Principles Against Intolerance is not to be used by administrators in reviewing, approving, or not approving course content.

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(including the David Horowitz Freedom Center) demanded that UC enforce the UC Regents Course Content Policy against graduate student instructors to prevent them from discussing BDS in the classroom. (See, Letter from AMCHA Initiative and other organizations to President Napolitano Regarding UAW 2865, August 12, 2014, <http://www.amchainitiative.org/letter-to-uc-president-napolitano-regarding-uaw2865/>.) Vice Provost Dorr issued a memo in response to AMCHA’s demands naming the applicable policies, including the Course Content Policy. (See Letter from Provost Aimee Dorr to UC Chancellors, September 8, 2014.) The memo merely listed applicable policies but did not clarify how the policies would apply to discussion of BDS in the classroom. AMCHA issued a press release titled, “CHANUKAH SURPRISE FROM UC; MAJOR VICTORY HAILED” interpreting Dorr’s memo to mean that faculty and academic student employees are prohibited from bringing “the boycott of Israel into the classroom.” The university issued no further public clarification as to whether or not this is correct, or in what ways classroom instructors are prohibited from discussing opposition to Israeli policies.

<sup>32</sup> UC General Counsel Robinson Statement on Statement Against Intolerance, March 24, 2016, <https://www.youtube.com/watch?v=ukc9qSuJZmU>

## **G. Conclusion**

The absence of a valid justification for suspending the course, combined with the absence of similar scrutiny applied to any other DeCal course, and the ample evidence of an international pressure campaign on the university to restrict Palestinian perspectives, all point to the conclusion that the university suspended the course in response to controversy over the perceived political viewpoints in the syllabus. This is a violation of the University's obligation to uphold academic freedom and free speech under the California and U.S. Constitutions.

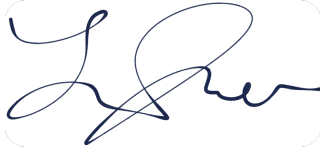
Such blatant viewpoint discrimination damages the educational environment by casting a pall of orthodoxy over the campus. Students in the course, prospective student facilitators, faculty and others in the campus community are left to wonder whether or not they are permitted to study Palestine from an anti-colonial perspective – or at all. Is critical inquiry into the process of expanding Israeli settlements in the West Bank permitted, or will that be scrutinized by administrators as potential indoctrination or antisemitism, in violation of university policy? Are students permitted to study alternatives to the “two state solution” in Palestine-Israel, or is that considered overly narrow range of viewpoints, and thus impermissible? It is intolerable for these to even be serious questions left to administrators who have no knowledge of the fields of inquiry.

To repair the harms the university's actions caused to Mr. Hadweh and the educational environment at UC Berkeley, we respectfully request the following:

1. Chancellor Dirks and Dean Hesse apologize to Mr. Hadweh and the enrolled students of ES 198, and retract the false statements blaming Mr. Hadweh for failing to follow procedures.
2. Issue a written statement to the university community recommitting to academic freedom with respect to course content on Palestine-Israel, and affirm that the university cannot and will not apply special scrutiny towards viewpoints that some might disfavor.
3. Clarify through written guidance to administrators, faculty and students that the Regents Policy on Course Content must be interpreted harmoniously with academic freedom and faculty governance policies.
4. Clarify through written guidance to administrators, faculty and students that the Regents Statement of Principles Against Intolerance is an aspirational statement of the Regents' views. As such, it cannot be used to justify university actions that infringe on First Amendment rights and the academic freedom of members of the university community, and it is not to be relied upon for approval or disapproval of course content.

I will follow up with the university counsel's office to request a meeting. Thank you for your consideration.

Sincerely yours,

A handwritten signature in black ink, enclosed in a thin black rectangular border. The signature is cursive and appears to read "Liz Jackson".

Liz Jackson  
Staff Attorney, Palestine Legal  
Cooperating Counsel, Center for Constitutional Rights