

May 17, 2024

Chancellor Pradeep K. Khosla
University of California, San Diego
chancellor@ucsd.edu

VIA ELECTRONIC MAIL

Re: UCSD should protect student speech from retaliation and intimidation

Dear Chancellor Khosla:

Freedom of speech, freedom of assembly and the freedom to peacefully protest without retribution are bedrock principles upon which our nation was built. America's institutions of higher learning have long served as critical spaces for future generations to contest ideas, critique mainstream orthodoxies, and express dissent. In this, UC San Diego plays an essential role in empowering changemakers and accelerating social progress in our region and globally.

We, the undersigned civil rights and social justice organizations, are troubled by UC San Diego's targeting of peaceful protesters, the arrest of 40 of your students, and the threat of academic punishment and criminal charges they now face. These students were arrested on May 6 after UC San Diego deployed law enforcement to dismantle the Gaza solidarity encampment on campus. It is our understanding that despite the university's cancelation of interim suspension hearings, all student disciplinary cases will proceed to administrative resolution meetings and potentially student conduct reviews, which can result in a range of sanctions including suspension and/or expulsion. We urge UC San Diego to ensure that no disciplinary actions are taken against students engaged in peaceful protest, as such actions can affect their academic and professional futures.

It is a feature, not a failure, of free speech that "it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger." *See Terminiello v. City of Chicago*, 337 U.S. 1, 4–5 (1949). UC San Diego must take great care to distinguish between free speech that creates dissatisfaction and actual threats. It is particularly important that we protect and cherish contentious speech on university and college campuses, as "[t]he college classroom with its surrounding environs is peculiarly the 'marketplace of ideas,'" where old orthodoxies can be challenged and where new possibilities for learning and understanding the world can emerge. *See Healy v. James*, 408 U.S. 169, 180–81 (1972). For these reasons, courts have historically been especially protective of academic freedom and free speech in higher education. *See, e.g., Keyishian v. Bd. of Regents of Univ. of State of N. Y.*, 385 U.S. 589, 602–03 (1967).

UC San Diego must also ensure that free speech principles are applied evenly, regardless of political viewpoint. *See Christian Legal Soc. Chapter of the Univ. of California, Hastings Coll. of the L. v. Martinez*, 561 U.S. 661 (2010) (addressing a series of Supreme Court cases that held

public universities had unconstitutionally singled out student groups for disfavored treatment because of their points of view).

We urge UC San Diego to refrain from police action as a response to student speech and expression, to protect students from retaliation and intimidation, and to take the following steps to protect students' right to protest on campus:

1. Cease any further measures to suppress student speech on campus, including enacting any unduly harsh or unjustified procedures and penalties against students who were engaging in peaceful protest;
2. Cease all disciplinary hearings;
3. Ensure that no disciplinary actions are taken against student protesters, as any such discipline could affect their academic and professional pursuits; and
4. Ensure that no student faces the threat of losing housing.

Regardless of the nature and controversy of the speech, UC San Diego has legal and historical obligations to protect students' ability to peaceably speak and protest on campus. While the university can generally impose certain content-neutral rules on its campus, it must exercise the utmost restraint when enforcing these technical requirements against students engaged in protected speech on matters of great public concern. UC San Diego's threats to discipline, suspend and expel peaceful student protesters for violations of these technical rules betray the university's core values and undermine its essential role.

Thank you for your careful consideration of our concerns and recommendations. We welcome the opportunity to discuss them further with you.

Sincerely,

Efaon Cobb, Deputy Legal Director
American Civil Liberties Union Foundation of San Diego & Imperial Counties (ACLUF-SDIC)

Geneviève Jones-Wright, Executive Director
Community Advocates for Just and Moral Governance (MoGo)

Tazheen Nizam, Executive Director
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Kate Yavenditti,
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