



Via Email

May 12, 2016

Elliot Hirshman, President, San Diego State University
Marc Mootchnik, General Counsel for San Diego State, California State University

Re: Inadequate Response to Defamatory Poster Campaign at San Diego State University

Dear President Hirshman and General Counsel Mootchnik:

We write on behalf of San Diego State University Students for Justice in Palestine (SJP) and Muslim Students Association (MSA), and a number of current students targeted by the Horowitz Freedom Center's poster campaign at San Diego State University (SDSU). To fulfill your responsibilities under Title VI of the Civil Rights Act of 1964, we request that you immediately denounce the posters and correct the damaging statements you made to the campus community on April 26, 2016 and April 27, 2016 regarding the posters. We also propose other actions the University should take to address this escalating campaign of fear and intimidation against SJP and MSA and individual members of the two organizations.

1. Factual Background

a. The students and their speech activity

SJP at SDSU is a student organization that "envisions a world where humans are treated equally with respect and dignity." Their website explains, "We believe that our mission as students living in a relative democracy is to promote the cause of justice and speak out against oppression. We will work to educate members of our community specifically about the plight of the Palestinian people."¹ MSA at SDSU is a cultural and religious organization whose mission is "to serve the best interests of the Muslim students of San Diego State University."² Both organizations have a record of student activities that reflect their mission statements.

¹ See Students for Justice in Palestine-SDSU facebook page, available at https://www.facebook.com/sdsusjp/info/?tab=page_info

² See MSA San Diego State website: <http://msasdsu.weebly.com/msa-sdsu.html>

Membership in and involvement with SJP and MSA undoubtedly serve an important educational purpose.

SJP supports boycotts, divestment and sanctions (BDS) as a tactic adopted by a grassroots movement to hold Israel accountable to international law. The factual record of student activism at SDSU, like that of the BDS movement more broadly, demonstrates unequivocally that it is a non-violent movement to achieve freedom, justice and equality for Palestinians.³

b. Summary of Harassment Directed at SJP and MSA and SDSU's insufficient response

On April 14, 2016, posters from the David Horowitz Freedom Center naming individual students, past and present, of SDSU were posted around campus. These posters made accusations that are defamatory on their face, describing individual students as having “allied themselves with Palestinian terrorists” and that BDS is “genocidal.” David Horowitz, who has been described by the Southern Poverty Law Center as “a driving force of the anti-Muslim, anti-immigrant and anti-black movements,”⁴ took responsibility for similar posters appearing on numerous campuses throughout California, and boasted about the campaign on his website and in right-wing news outlets.⁵

The targeted students made multiple attempts to discuss the University's response to the posters with various administration officials, but 12 days passed before President Hirshman issued any response. His first statement, on April 26, 2016, failed to condemn the posters, and instead stated, “when parties adopt a specific political position they become responsible for their actions and these actions may produce criticism,” implying that the students targeted by the posters' defamatory accusations brought it upon themselves. President Hirshman escalated his message in defense of the posters and against SDSU students when he told student protestors on April 27, 2016, “it is fair to say” that students who support BDS have a “common goal” with terrorists.⁶ This is equivalent to claiming that more than 1,700 SDSU students who supported a 2015 referendum regarding divestment from companies profiting from Israel's occupation share goals with terrorists.⁷

³ For example, in 2015, SJP at SDSU worked with a coalition of student groups on a referendum asking the student body whether it supported divestment of university funds from companies profiting from the Israeli occupation of Palestine. The resolution was supported by 1,701 SDSU students, or 5.6 % of the total student population (and 53% of all voting students). (See, <https://www.facebook.com/sdsudivest/>)

⁴ See Southern Poverty Law Center's page on David Horowitz in its “Extremist Files,” <https://www.splcenter.org/fighting-hate/extremist-files/individual/david-horowitz>

⁵ On a podcast hosted by Mark Larson, days before his event at SDSU, Horowitz stated that [REDACTED] was a “terrorist supporter” and had falsely imprisoned President Hirshman. That audio recording is available here: <http://www.hipcast.com/podcast/H03WfTdB0>. (Mark Larson Podcast, May 3rd, 2016). See also, “David Horowitz Statement on San Diego State University Protest,” Frontpage Mag, May 5th, 2016, available at: http://www.horowitzfreedomcenter.org/frontpage_david_horowitz_statement_on_san_diego_state_university_protests.

⁶ See Students for Justice in Palestine-SDSU facebook page at <https://www.facebook.com/sdsusjp/?fref=ts>

⁷ See footnote 3, above.

After his meeting with students on May 2nd, President Hirshman released a “joint” statement with students, again characterizing the Horowitz posters as protected speech, again failing to condemn the posters, and again failing to correct the false accusations made against SDSU students. The joint statement did not clarify that the students vociferously disagreed with the President’s assertion that the posters contained protected free speech.

While paying lip service to a concern for students’ safety, the University welcomed David Horowitz himself to speak on campus May 5, 2016 and failed to offer any counter speech to suggest that the University does not endorse his views.

Meanwhile, Horowitz escalated his harassment campaign by stating in a radio interview on May 3rd 2016 that an individual SDSU student, [REDACTED], is a “terrorist supporter,” an “agent of terrorists,” and that SJP groups are the “propaganda organ” of Hamas.⁸ Each of these statements is unsubstantiated, false and damaging to the student and the student groups.

2. SDSU’s Legal Obligation

President Hirschman’s April 26th statement characterizing Horowitz’s accusations as merely an expression of “criticism” ignores the fact that Horowitz accused SDSU students of committing a federal crime.⁹ This goes far beyond expressing a counter political viewpoint – this is a defamatory attack based on untrue statements. Compare San Diego State University’s response to that of UCLA Vice Chancellor Kang’s description of these posters – a version of which were also posted on that campus – as “hateful” and a clear escalation of the tactics of fear and intimidation that would not be tolerated at UCLA against the SJP and MSA.¹⁰ Kang stated in clear terms that SJP and MSA are student organizations in good standing and that the accusations in the posters are false.

SDSU’s response to the Horowitz posters represents an abdication of your legal responsibilities. SDSU has an obligation, under the First Amendment, and Title VI of the Civil Rights Act of 1964, to ensure that Palestinian students and Palestine solidarity activists enjoy the right to speak out in favor of Palestinian freedom without discrimination based on the viewpoint they express, and that students are protected from harassment, intimidation, and discrimination based on their race, color, or national origin. As you know, Title VI prohibits discrimination based on a group’s actual or perceived shared ancestry or ethnic characteristics, as with the anti-Muslim attacks SJP members have faced here. It is important to note that all but one of the current students listed on the posters at SDSU are of Muslim and/or Arab origin.

Additionally, as General Counsel Mootchnik may know, the U.S. Department of Education (DOE) issued a “Dear Colleague” guidance letter in 2015 urging institutions to recognize the particular vulnerabilities of Arab and Muslim students amid rising anti-Muslim

⁸ Mark Larson Podcast, May 3rd, 2016, <http://www.hipcast.com/podcast/H03WfTdBO>

⁹ Specifically, 18 U.S.C. §2339B (1996).

¹⁰ See, Jerry Kang, UCLA Vice Chancellor for Equity, Diversity and Inclusion, “Dialogue Over Demagoguery,” April 19, 2016, <https://equity.ucla.edu/crosscheck/2016-04-19-dialogue-over-demagoguery/>.

sentiment at American universities.¹¹ The DOE raised caution about the “dissemination of misinformation” as a form of harassment based on race, religion, or national origin.¹² The DOE noted:

Such inappropriate conduct in schools can take many forms, from abusive name-calling to defamatory graffiti to physical violence directed at a student because of a student’s actual or perceived race or ancestry, the country the student’s family comes from, or the student’s religion or cultural traditions. If ignored, this kind of conduct can jeopardize students’ ability to learn, undermine their physical and emotional well-being, provoke retaliatory acts, and exacerbate community conflicts.

There is a pattern of online and on-campus harassment and discrimination specifically targeting SJP and MSA members at SDSU, including at least one physical assault of a Muslim student on campus.¹³ Given DOE’s clear guidance and SDSU’s other legal obligations, the University must take action to ensure that their educational opportunities are not obstructed, their safety is protected, and their right to speak out in favor of Palestinian human rights is not further violated.

Unfortunately, the University’s actions so far – including the April 26, 2016 statement supporting Horowitz’s efforts to spread false and defamatory information about students, in violation of school policies, the President’s comments reinforcing the erroneous claim that SJP and terrorists share the same goals, and the failure to make any public comments regarding Horowitz’s public appearance on the SDSU campus on May 5, 2016 – all send the message that the administration condones and concurs in Horowitz’s defamatory message, as well as condones harassment based on race, national origin, and shared ethnic characteristic at SDSU. While the students appreciate the efforts by some in your administration to review your current policies, they see the May 2nd joint statement as insufficient to resolve the issue or meet your legal obligation.

At a minimum, the University should take the following actions:

1. Issue a clarifying public statement:
 - Correcting the misinformation about SJP and MSA. The administration must clarify that regardless of one’s views on SJP and MSA’s political positions, or Israel/Palestine generally, the facts show that SJP and MSA are student organizations in good standing that pursue their educational, cultural, and political agendas in the same manner as any other student group.

¹¹ See, Emma Brown, *Washington Post*, “Amid growing anti-Muslim sentiment, Education Department urges schools to prevent discrimination,” January 4, 2016, <https://www.washingtonpost.com/news/education/wp/2016/01/04/amid-growing-anti-muslim-sentiment-education-department-urges-schools-to-prevent-discrimination/>.

¹² See, Arne Duncan, Secretary of the U.S. Department of Education, Letters from the Education Secretary or Deputy Secretary, December 31, 2015, <http://www2.ed.gov/policy/gen/guid/secletter/151231.html>.

¹³ See, <http://www.sandiegouniontribune.com/news/2015/nov/20/sdsdu-student-assault-investigated-hate-crime/>.

- Affirming the rights of students to speak out in favor of Palestinian freedom, and affirming the value of SJP and MSA to a healthy campus environment where vigorous debate and diversity is nurtured.
 - Condemning anti-Muslim, anti-Palestinian, and anti-Arab rhetoric and harassment generally and as directed toward SJP and MSA.
 - Distinguishing between protected speech and defamatory speech, and condemning the Horowitz posters as clearly false and inflammatory.
2. Work with SJP and MSA to ensure that the attacks and accusations made against individuals do not negatively impact educational and/or employment prospects.
 3. Institute training for administrators and student affairs staff on Islamophobia and anti-Arab racism, including how it manifests on campus, and appropriate responses.
 4. Commit the University's resources to preventing and responding to discrimination against Arab and Muslim students, as the DOE called for in its December 31, 2015 "Dear Colleague" Letter.
 5. Write to the Horowitz Freedom Center to demand that they cease and desist from further defamatory postings on your campus, and if necessary, taking legal action if they do not agree to desist from such future activity. The Horowitz Freedom Center has admitted responsibility for these postings. The University must take responsibility for messages posted on its institutional property and defend its students and policies more vigorously.

We look forward to hearing from you regarding the University's response by Friday, May 27, 2016. You may reply to Liz at [REDACTED].

Sincerely,

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Cooperating Counsel, Center for Constitutional Rights

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Deputy Legal Director,
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Kate Yavenditti
San Diego Chapter of the National Lawyers Guild

cc: Eric Rivera, Vice President, Student Affairs, SDSU,
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