



August 2, 2018

Dr. Marc Tessier-Lavigne
President, Stanford University
450 Serra Mall, Bldg. 10
Stanford, CA 94305

Dear Dr. Tessier-Lavigne:

The American Center for Law and Justice (ACLJ) has been retained by a current Stanford University undergraduate student, on behalf of himself and several other students, regarding activity involving a Stanford University Resident Assistant that has created a hostile and discriminatory environment for a group of University students. While the safety of all students has been threatened, it is those students of Jewish or Israeli heritage and/or supporters of the State of Israel who have been particularly targeted and affected by the conduct of Mr. Hamzeh Daoud. In addition to its harmful effects on members of the College's own community, his actions are also in violation of non-discrimination laws and University policies. The purpose of this letter is to express the basis for our concerns and to request a time to speak with you further about how the College can (1) return its campus to a place where the rights and voices of all students are respected and (2) avoid violating applicable non-discrimination laws.

By way of introduction, the ACLJ is an organization dedicated to the defense of constitutional liberties secured by law. ACLJ attorneys have argued before the Supreme Court of the United States in a number of significant cases involving the freedoms of speech and religion.¹ As a part of the organization's commitment to the freedom of speech, ACLJ attorneys regularly handle cases specifically involving the protection of

¹ See, e.g., *Pleasant Grove v. Sumnum*, 555 U.S. 460 (2009) (unanimously holding that the Free Speech Clause does not require the government to accept counter-monuments when it has a war memorial or Ten Commandments monument on its property); *McConnell v. FEC*, 540 U.S. 93 (2003) (unanimously holding that minors have First Amendment rights); *Lamb's Chapel v. Center Moriches Sch. Dist.*, 508 U.S. 384 (1993) (unanimously holding that denying a church access to public school premises to show a film series on parenting violated the First Amendment); *Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990) (holding by an 8-1 vote that allowing a student Bible club to meet on a public school's campus did not violate the Establishment Clause).

★



academic freedom.² Our organization is dedicated to protecting constitutional liberties—especially the rights to free speech and religious expression—by engaging legal, legislative, and cultural issues through advocacy, education, and litigation, the ACLJ has had years of experience negotiating the lines between rights and wrongs.

The ACLJ firmly believes that in both public and private institutions, the freedom of speech, even offensive speech, should be cherished and respected as part of what makes our democracy great. But as the U.S. Department of Education’s Office for Civil Rights has made clear, there are times when speech crosses over into harassment and invidious discrimination. Harassment can be verbal if, for example, it is severe, persistent, or pervasive enough to limit or deny a student’s ability to participate in or benefit from an educational program. Title VI of the Civil Rights Act of 1964 prohibits discrimination in federally assisted programs and activities, on the basis of race, color, or national origin. A violation of Title VI may be found if discrimination is encouraged, tolerated, not adequately addressed, or ignored by administrators. Complaints alleging a violation of Title VI may be filed with the U.S. Department of Education’s Office for Civil Rights or in the federal district courts.³

The matter giving rise to this letter involves blatant and open anti-Semitism, which has no place on any American university campus. The U.S. Department of State has defined anti-Semitism as “a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of anti-Semitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.”⁴ The State Department notes that such manifestations could also target the state of Israel, conceived as a Jewish collectivity. Anti-Semitism frequently charges Jews with conspiring to harm humanity, and it is often used to blame Jews for “why things go wrong.” It is expressed in speech, writing, visual forms and action, and employs sinister stereotypes and negative character traits. Particularly as it relates to the State of Israel, the State Department lists several examples of what would constitute problematic anti-Semitic speech in this context. These include, but are not limited to: denying the Jewish people their right to self-determination; accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interest of their own nations; applying double standards by requiring of Israel a behavior not expected or demanded of any other democratic nation; multilateral organizations focusing solely on Israel for peace or human rights investigations; and holding Jews

² *E.g.*, *Adams v. Trs. of the Univ. of North Carolina-Wilmington, et al.*, No. 7:07-cv-00064-H (E.D.N.C. Apr. 10, 2007); *Enstrom v. Rice, et al.*, No. 2:12-cv-5168-JGB-SSx (C.D. Cal. June 13, 2012); *Jenkins v. Kurtinitis, et al.*, No. 1:14-cv-1346-ELH (D. Md. Apr. 21, 2014); *Buxton v. Kurtinitis, et al.*, No. 1:14-cv-2836-ELH (D. Md. Sep. 8, 2014).

³ Title VI protects Jewish students from discrimination based on their perceived ethnic, racial or ancestral background.

⁴ U.S. Department of State, *Defining Anti-Semitism*, June 8, 2010, <http://www.state.gov/j/drl/rls/fs/2010/122352.htm>.

collectively responsible for actions of the state of Israel.⁵ Some of the worst cases of anti-Semitism in recent years have been at institutions within California,⁶ including on college campuses.⁷

Last week, Hamzeh Daoud, both a rising junior at Stanford and one of its Residential Assistants (RA), posted a status update on social media that threatened students on campus with physical violence if they disagreed with him politically. Hours later, Daoud attempted to edit his comment, but a copy had already been saved by one of the student organizations on campus. The post is attached to this letter and recreated below:

im gonna physically fight zionists on campus next year if someone comes at me with their "israel is a democracy" bullshit. :) and after i abolish your ass i'll go ahead and work every day for the rest of my life to abolish your petty ass ethnosupremacist, settler-colonial state.⁸

Disagreements on college campuses are not uncommon, and the ACLJ supports the free exchange of ideas protected by the First Amendment. Mr. Daoud's post, however, contains the kind of hate, vitriol, and direct threats of physical violence that have no place on campus whatsoever.

What is particularly distressing about this situation is Stanford's failure to address the problem immediately. A week later, the University still has not done anything to address the situation other than state that they are investigating, and this is unacceptable. Had Daoud made a similar threat to commit violence upon a member of another group—had he, for instance, threatened women, a member of the LGBTQ+ community, or a person of color—indeed had he simply threatened violence without targeting a group—this letter would undoubtedly be unnecessary as we are sure that Stanford would have swiftly, and justifiably, taken action. And yet a week since Daoud made a credible threat of violence against members of the Stanford community and the University's administration—your administration—has done nothing.

Moreover, a threat of violence against a student must not be allowed to stand; recent memory has shown that a threat can quickly turn into violent acts that jeopardize the safety of all those involved. It is important to note that, according to a report last year by

⁵ *Id.*

⁶ <http://www.amchainitiative.org/UC-worst-antisemitism-record-in-2015>.

⁷ See, e.g., <http://mondoweiss.net/2015/03/apartheid-administration-attempts/> (photos available on the Claremont SJP Facebook page and elsewhere online); <http://archive.jewhatredoncampus.org/news/pitzer-college-holds-panel-jew-hatred-campus>; <http://tsl.news/opinions/5547/>; <http://www.amchainitiative.org/wp-content/uploads/2016/03/MOCK-EVICTION-NOTICES-TARGETING-JEWISH-STUDENTS-AT-CLAREMONT-UNIVERSITY-CONSORTIUM.pdf>; <http://palestinelegal.org/news/2016/3/22/claremontcollegespolicespeechcriticalofisrael>.

⁸ <https://www.jta.org/2018/07/23/news-opinion/stanford-student-threatens-physically-fight-zionist-students>.

the FBI, the majority of religiously motivated hate crimes in the United States were committed against Jewish people- and this despite Jews making up less than 2% of the population.⁹ In fact, since the FBI began reporting these statistics in 1993, there has not been a single year in which Jewish people were not the victims of the majority of religiously motivated hate crimes.¹⁰ Threats of physical violence made because a student does not like the ‘ethnosupremacy’ of a “Jewish state” need to be taken very seriously.

In just a few weeks, hundreds of students will return to Stanford’s campus seeking to grow through education and the free exchange of ideas. Within that diverse student body, there will be those who disagree with Daoud, and they should not feel compelled to change their beliefs or silence their own speech out of fear. Perhaps some of these students will be placed in the very dormitories that Daoud is set to oversee. These students, many of whom are leaving home for the first time, should not be forced to suffer in silence with the knowledge that their RA—a person they are meant to physically and emotionally depend upon during their life on campus—carries the kind of animus in his heart necessary to commit violence upon another student.

In the event that the seriousness of the situation is not apparent enough on its face to move the University to action on behalf of its students, there is also the law.

California’s Unruh Civil Rights Act (the “Act”) Section 51 states, in relevant part:

(b) All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, **religion**, ancestry, **national origin**, disability, medical condition, genetic information, marital status, or sexual orientation are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever. . . .

(e)(6) “Sex, race, color, **religion**, ancestry, **national origin**, disability, medical condition, genetic information, marital status, or sexual orientation” **includes a perception that the person has any particular characteristic or characteristics within the listed categories or that the person is associated with a person who has, or is perceived to have, any particular characteristic or characteristics within the listed categories.**¹¹

⁹ <https://ucr.fbi.gov/hate-crime/2016>.

¹⁰ <https://www.tabletmag.com/scroll/249434/fbi-jews-subject-to-54-percent-of-religiously-motivated-hate-crimes-in-2016-despite-being-just-two-percent-of-u-s-population>.

¹¹ CAL. CIV. CODE §§ 51(b), (e)(6) (2014) (emphases added).

Further, Section 51.7 states, in relevant part:

(a) All persons within the jurisdiction of this state have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of political affiliation, or on account of any characteristic listed or defined in subdivision (b) or (e) of Section 51, or position in a labor dispute, or because another person perceives them to have one or more of those characteristics. The identification in this subdivision of particular bases of discrimination is illustrative rather than restrictive.¹²

The Act creates a legal cause of action for damages for violations:

Whoever denies, aids or incites a denial, or makes any discrimination or distinction contrary to Section 51 . . . is liable for each and every offense for the actual damages . . . suffered by any person denied the rights provided in Section 51, 51.5, or 51.6.¹³ A defendant sued under the Act may be held liable for “up to a maximum of three times the amount of actual damage but in no case less than four thousand dollars (\$4,000).”¹⁴

A plaintiff who brings a cause of action under the Act may also recover attorney’s fees and obtain injunctive relief, and may bring suit against any individuals who aided in the discriminatory actions, as “[c]ourts within the Ninth Circuit have routinely interpreted the Unruh Act to provide plaintiffs with recourse against individual defendants.”¹⁵

Because the Unruh Act is broadly construed,¹⁶ it applies to “all business establishments of every kind whatsoever which provide services, goods, or accommodations to the public . . . includ[ing] . . . bars and restaurants . . . [and] hotels and motels.”¹⁷ Private schools are considered businesses when they are acting like businesses, or engaging in commercial activities.¹⁸ The term “person” in Section 51(b) is also widely inclusive and

¹² CAL. CIV. CODE § 51.7(a) (2014).

¹³ CAL. CIV. CODE § 52(a) (2014) (emphases added).

¹⁴ *Stevens v. Optimum Health Inst.*, 819 F. Supp. 2d 1074, 1085 (S.D. Cal. 2011) (citations omitted).

¹⁵ *J.F. v. New Haven Unified Sch. Dist.*, 2014 U.S. Dist. LEXIS 55964, *15 (N.D. Cal. 2014) (citing *Nicole M. ex rel. Jacqueline M. v. Martinez Unified Sch. Dist.*, 964 F. Supp. 1369, 1388 (N.D. Cal. 1997); *Aikins v. St. Helena Hosp.* 843 F. Supp. 1329, 1339 (N.D. Cal. 1994)).

¹⁶ See *Burks v. Poppy Construction Co.*, 57 Cal. 2d 463, 468 (Sup. Ct. Cal. 1962) (“The Legislature used the words ‘all’ and ‘of every kind whatsoever’ in referring to business establishments covered by the Unruh Act, and the inclusion of these words, without any exception and without specification of particular kinds of enterprises, leaves no doubt that the term ‘business establishments’ was used in the broadest sense reasonably possible.”).

¹⁷ State of California, Department of Justice, Office of the Attorney General, Chapter 4 – Public Accommodations, Businesses, and Services, <http://oag.ca.gov/publications/CRhandbook/ch4>.

¹⁸ See *Doe v. Cal. Lutheran High Sch. Ass’n*, 170 Cal. App. 4th 828 (2009).

protects from discrimination “any person, firm, association, organization, partnership, business trust, corporation, limited liability company, or company.”¹⁹

There is no question that Daoud’s threatening social media post is an act of discrimination in violation of the Unruh Civil Rights Act. Daoud’s language discriminates against students who are either Jewish, Israeli, or both. However, even if all parties involved were to give Daoud the greatest benefit of the doubt, there is no question that he threatened violence against others based on their political ideology or beliefs.

Further, Daoud’s conduct violates Stanford’s own Code of Conduct, which states in relevant part:

The University prohibits discrimination and harassment and provides equal opportunities for all Community members and applicants regardless of their race, color, religious creed, national origin, ancestry, physical or mental disability, medical condition, marital status, sex, age, sexual orientation, gender identity, veteran status or any other characteristic protected by law. Where actions are found to have occurred that violate this standard the University will take prompt action to cease the offending conduct, prevent its recurrence and discipline those responsible.²⁰

Expectations Moving Forward

We demand that, pursuant to University policy, Mr. Daoud be removed from his RA position. To be clear, Mr. Daoud’s removal is not just a form of punishment, but is in the interest of protecting others and ensuring their ability to have a positive college experience. What he did was in flagrant violation of the standards expected of an RA, and demonstrably proves that he is unfit to hold this particular position. Below are excerpts from the information that Stanford’s own website provides on Resident Assistants;²¹ note the bold for the numerous ways in which Daoud has flagrantly violated these rules:

Resident Assistants

RA/CA Appointment Overview and Responsibilities

Resident Assistants/College Assistants (RAs/CAs) are compensated undergraduate student staff who live in University undergraduate

¹⁹ CAL. CIV. CODE § 51.5(b) (2014).

²⁰ Stanford University Code of Conduct, Section 3, available at <https://adminguide.stanford.edu/chapter-1/subchapter-1/policy-1-1-1#anchor-22617>.

²¹ <https://resed.stanford.edu/get-involved/student-staff-selection/position-types-and-compensation/resident-assistants>.

residences to help build strong and healthy residential learning communities which complement as well as extend classroom learning.

RAs/CAs are expected to create residential environments that enhance student academic progress and success; to promote the intellectual life of the residence; to create opportunities for students to explore and clarify their interests, values, and attitudes; to build inclusive and reflective environments in which differences of background and belief are explored; to provide personal and academic advice and referral; to participate in house activities; to know and explain University policies; to be available to students; and to encourage student responsibility and accountability.

RAs/CAs are compensated student staff appointments and are expected to conduct themselves professionally. RAs/CAs serve as role models for the residents and are basically always “on duty.” RAs/CAs are expected to do the following: know and abide by University policies including but not limited to the Fundamental Standard, the Honor Code, the Controlled Substances and Alcohol Policy, the Smoking Policy, the Sexual Harassment and Sexual Assault policies, as well as the Residence Agreement; be responsible and professional community leaders; and exercise common sense and mature, good judgment in their interactions or relationships with residents.

Responsibilities

Teamwork

Whether working on an RF/RA (or CD/CA) team or in houses without RFs, RAs/CAs work with a variety of administrators, faculty, and student staff members. Together, the entire team works as a group to create reflective and responsible living/learning environments. RAs are expected to: attend and participate in regular house team meetings; work collaboratively as an entire team on community development and problem solving; and practice interpersonal skills associated with conducting difficult but tactful conversations, as well as giving and receiving feedback.

Leadership

RAs/CAs hold leadership positions and are leaders in their residence. As such, RAs/CAs are expected to: assume a primary leadership role and serve as role models for responsible behavior and personal integrity; exercise good judgment; know and educate residents about

University policies; develop strong facilitation and communication skills; know and educate residents about the University emergency (e.g., earthquake and fire) response protocols and procedures; work closely with, support, and advise other leaders in the house (e.g. other house team members and house government); and assume a leadership role in crises (e.g., earthquake, fire, and other emergencies).

Supporting the Academic Mission

In support of the University's mission and the academic progress of their residents, RAs are expected to: be knowledgeable about the general and departmental advising programs, and support the interaction of students and their advisors; know and be able to direct residents to the academic resources and support services on campus (e.g., tutors, labs, library resources, academic advising); and **help create residential environments that promote academic inquiry and discourse and are conducive to studying.**

Building Community

RAs/CAs are responsible for creating a residential environment in which all views (popular and unpopular) can be voiced, heard respectfully, and fully explored. RAs/CAs are expected to: help establish community norms and ground rules to ensure open and honest communication and responsible student conduct; be sensitive to the needs of all groups in the residence, and help residents develop empathy and awareness skills; plan programs and discussions about cultural background, sexual orientation, religious beliefs, race, class, gender, and other diversity issues; and mediate conflict and help residents to take responsibility for their residential community.

Promoting Intellectual Life

As educators and facilitators, RAs/CAs are expected to: plan and promote educational opportunities and programs in the residence; invite faculty into the residences and create opportunities for faculty to have comfortable, informal interaction with students; **promote the intellectual life of the residence through formal and informal discussions about campus, national, and international issues;** and share their intellectual and academic interests with residents and **encourage residents to discuss their academic interests, experiences, goals, and future plans.**

Personal Advising and Referral

Residents often seek advice from their RAs/CAs and, therefore, RAs/CAs should be able to: be an active and effective listener; **help each individual attain a sense of self and personal well-being**; communicate support to students without assuming responsibility for the problem or for the decision-making; identify crises that require immediate attention and work with RAs, Residence Deans and others to resolve crises; know appropriate campus offices and resources to which to refer students; maintain confidentiality of both private conversations and staff discussions; and know and utilize the services of the Residence Dean (RD) and CAPS consultant.

For further reference, the Fundamental Standard alluded to above is the following, per Stanford's community standards website²²:

Fundamental Standard

The Fundamental Standard has set the standard of conduct for students at Stanford since it was articulated in 1896 by David Starr Jordan, Stanford's first president. It states:

Students at Stanford are expected to show both within and without the university such respect for order, morality, personal honor and **the rights of others as is demanded of good citizens**. Failure to do this will be sufficient cause for removal from the university.

While it is true that Mr. Daoud has attempted to defend himself, stating that it was a "spur-of-the-moment emotional reaction" and that he realized "intellectually beating Zionists is the only way to go," such assurances are of little comfort to the students and parents of students that have entrusted the University with their safety.²³ Still, we can take Mr. Daoud at his word when he says that he is sorry for what he wrote and hope that he has learned from this experience, and as such we are not demanding that he be removed from the University, action which would in fact be warranted but which might not be necessary.

At the same time, it is inescapably clear from the above guidelines that there is no conceivable way that Mr. Daoud is fit to be an RA. No matter how vehemently he repudiates his statements and insists that it is not reflective of his personal beliefs, the fact

²² <https://communitystandards.stanford.edu/student-conduct-process/honor-code-and-fundamental-standard#fundamental-standard>.

²³ <https://www.stanforddaily.com/2018/07/22/norcliffe-ra-threatens-to-physically-fight-zionists-in-facebook-post/>.

remains that Daoud was faced with a choice during an emotional moment and chose to threaten violence. In his position as a Resident Assistant, Daoud will be placed in similar emotional circumstances, and his failure here reflects very poorly on his judgment and raises concerns about what his later choices might be. We also request that your administration issue a statement condemning the action taken, and reiterating your commitment to ensure that your campus remains a non-discriminatory environment, which includes imposing disciplinary measures where appropriate.

Conclusion

We know that no University wants to find itself in this position, and while we reserve the right to take all appropriate legal action, we would prefer to assist in a more collaborative, proactive approach. To that end, we would welcome the opportunity to engage in dialog with the University and help share with what we have learned through our experience handling these issues. It is our hope to help the University identify and execute the best possible responses and practices to prevent and, when necessary, address these types of situations. Please let us know if you would be interested in having such a meeting. We would be more than happy to come to your offices at your convenience, and would be open to inviting others you think it would be worthwhile to include in such discussions.

In order for us to determine an appropriate course of action on behalf of our client, we request that the University inform us of what remedial measures they will undertake to address our concerns before the new school year begins later in August.

Respectfully,



Stuart Roth
Senior Counsel



Mark Goldfeder
Special Counsel



Hamzeh Daoud

3 hrs · 🌐



im gonna physically fight zionists on campus next year if someone comes at me with their "israel is a democracy" bullshit. :) and after i abolish your ass i'll go ahead and work every day for the rest of my life to abolish your petty ass ethnosupremacist settler-colonial state



About this article

HAARETZ.COM

Jewish nation-state law makes discrimination in Israel constitutional

18

1 Share

Like

Share