



March 23, 2023

VIA E-MAIL

President M. Elizabeth Magill
University of Pennsylvania
Office of the President
president@upenn.edu

Dear President Magill:

We are attorneys at the Louis D. Brandeis Center for Human Rights Under Law, a national non-profit legal advocacy organization that works to combat anti-Semitism in higher education and to protect the rights of Jewish students. We write at the request of several Jewish students at your University to address an upcoming event at Penn, sponsored by Penn Students Against the Occupation (“PAO”) and featuring Mohammed El-Kurd.¹ Mr. El-Kurd is a Palestinian activist notorious for promoting anti-Semitic conspiracy theories, including modern day blood libels, against Jews; he disguises his anti-Semitic rants that vilify Israel and Jewish supporters of Israel under the rubric of legitimate criticism, a common feature of contemporary anti-Semitism.² For instance, Mr. El-Kurd has stated that “[Israelis] harvest the organs of the martyred [Palestinians], [and] feed their warriors our own;” that Zionists have an “unquenchable thirst for Palestinian blood;” has described the Jewish state as “blood thirsty and violent;” has described Zionism as a “death cult” and “genocidal;” and has compared Israelis to Nazis.³ At the invitation of student groups like PAO, Mr. El-Kurd has been spreading anti-Semitic vitriol on college campuses like Penn’s in recent months.

We write not to urge the University to prevent Mr. El-Kurd from speaking at Penn. Rather we urge the University to be prepared to speak out promptly and clearly against such anti-Semitic rhetoric, and to use this disgraceful event as a teaching moment to educate the University community about the world’s oldest form of hatred, anti-Semitism. The remedy for hate speech is neither to silence it nor to remain silent. Instead, the University should use its own voice to clearly and unequivocally condemn anti-Semitic speech that runs counter to the University’s values of “inclusivity,”⁴ “dignity and respect,”⁵ and that threatens to create a hostile environment for Jewish students on campus.

¹ penn.against.the.occupation, INSTAGRAM, (Mar. 23, 2023), <https://www.instagram.com/p/CpvgV4SjG5K/>.

² Anti-Defamation League, “Mohammed El-Kurd,” <https://www.adl.org/resources/backgrounders/mohammed-el-kurd>.

³ *Id.*

⁴ University of Pennsylvania, About, <https://www.upenn.edu/about>.

⁵ Penn’s Commitment to Diversity, Equity and Inclusion,” <https://www.pennmedicine.org/about/mission-and-history/commitment-to-diversity-equity-and-inclusion>.

I. The University must recognize pernicious forms of contemporary anti-Semitism that target Jews on the basis of their shared ethnic and ancestral identity connected to Israel.

On today's college campuses, anti-Semitic vitriol and discrimination is often directed at Jews as a people rather than just as a religious or faith community.⁶ This form of anti-Semitism often manifests as vilification, shunning, marginalization, harassment and/or exclusion of Jewish students who support Israel's existence, sometimes alongside the demonization and delegitimization of Israel because it is a Jewish state.⁷ For many Jews, including many Jewish students at Penn, identifying with and expressing support for the Jewish homeland is a sincere and deeply felt expression of their Jewish ethnic and ancestral identity.⁸ Anti-Semitism directed at Jewish ethnicity is often part of a concerted strategy to marginalize Jewish students on campus and make them feel unwelcome.⁹

On campus, Jewish and Israeli students who celebrate their Jewish ethnic heritage and consider themselves "Zionists" are too often branded as "racist," "oppressors," "settler colonialists" and "white" (an ironic inversion of the Nazi claim that Jews polluted the pure white Aryan race). Those who employ these labels frequently ignore, falsify, or deny Jewish history, contemporary facts about Israel, and the existence of Jews of color. They utilize these terms to shun, marginalize, and ostracize Jewish individuals who support Israel and believe in the right of Jewish self-determination while also promoting negative misperceptions among neutral onlookers.

Mr. El-Kurd pretends to be merely criticizing Israeli policy, while spewing hateful ideas like those recited in the first paragraph of this letter. Indeed, Mr. El-Kurd himself has admitted that he invokes odious canards against Israel, *regardless of their accuracy*, in order to inflame and provoke his audiences.¹⁰ We understand that Mr. El-Kurd has promoted anti-Semitic narratives at speaking engagements on other campuses across the country. At Arizona State University on April 10, 2022, Mr. El-Kurd falsely accused Israel of "ethnic cleansing," promoted the anti-Semitic conspiracy theory that Jews control the media;¹¹ vilified supporters of Israel in the audience as "apartheid

⁶ Mark Goldfeder, *Defining Antisemitism* (Feb 1, 2021). Seton Hall Law Review, Forthcoming, available at SSRN: <https://ssrn.com/abstract=3798093>.

⁷ "Understanding Campus Antisemitism," AMCHA INITIATIVE, (July 2020), available at <https://amchainitiative.org/wp-content/uploads/2020/07/Antisemitism-Report-2019.pdf>.

⁸ Alyza D. Lewin, *Zionism: The Integral Component of Jewish Identity that Jews are Historically Pressured to Shed*, 26 ISRAEL AFFAIRS 330 (2020), <https://www.tandfonline.com/doi/abs/10.1080/13537121.2020.1754577>

⁹ See, generally, U.S. Commission on Civil Rights, *Briefing Report: Campus Anti-Semitism* (July 2006), p.3, <https://www.usccr.gov/pubs/docs/081506campusantibrief07.pdf> ("Anti-Semitic bigotry is no less deplorable when camouflaged as anti-Israelism or anti-Zionism.").

¹⁰ HonestReporting, TWITTER, (Mar. 8, 2023), https://twitter.com/HonestReporting/status/1633598014349803520?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1633598014349803520%7Ctwgr%5E7fc15fc5b67d6183ce4263ebd7cd3b19163a7d9c%7Ctwcon%5Es1&ref_url=https%3A%2F%2Fhonestreporting.com%2Fmohammed-el-kurd-destroys-his-own-credibility-with-apartheid-israel-confession%2F.

¹¹ TWITTER, StopAntisemitism, (Apr. 13, 2022), <https://twitter.com/StopAntisemites/status/1514370370039652360>.

lovers” and threatened to shoot them if they dared to “heckle” him.¹² Such a hateful performance must not go unaddressed by the host university. Penn should anticipate a similar performance.

I. The University must use its own voice to condemn anti-Semitic speech on campus that contributes to a hostile environment for Jewish students.

The University cannot ignore Mr. El-Kurd’s anti-Semitic rhetoric, which is disguised as criticism of Israel but aims to demonize Israel and vilify Israeli and Jewish students who support Israel. It has become apparent on campuses throughout the country that when universities fail to speak out against anti-Semitic speech, the community perceives that the university condones the hateful ideas. This perception emboldens anti-Semites and fosters a hostile environment for Jewish students that often leads to anti-Semitic and discriminatory conduct, including the exclusion of Jewish students from student organizations, campus activities, and educational programs. It is vital that Penn respond to such anti-Semitic speech with clear condemnation in order to educate and enlighten the campus community against baseless hate, protect Jewish students from a hostile environment and ensure a campus climate that is safe and welcoming for all students, including Jews. Indeed, Penn has an affirmative obligation to do so under Title VI of the Civil Rights Act of 1964 (“Title VI”).¹³

A university can and must exercise moral leadership by expressing its own views in opposition to hate speech. Penn’s own Guidelines on Open Expression recognize that, “members of the University community likewise have the right to criticize a proposed speaker’s or event’s substance or viewpoint.”¹⁴ As Penn acknowledges, the University has its own free speech rights – and those rights encompass the freedom to condemn racism, anti-Semitism, and discrimination in all its forms. The University can and should identify and condemn anti-Semitic speech that fails to meet the University’s community standards for tolerance and civility.

Penn has demonstrated just how far it will go to uphold these principles in the face of actual or allegedly offensive speech that the University deemed to be at odds with its institutional values of inclusivity and respect. Not only did Penn Law School Dean Theodore Ruger denounce Professor Amy Wax’s “anti-intellectual and racist comments” about Asian immigrants being “diametrically

¹² TWITTER, StopAntisemitism, (Apr. 12, 2022), <https://twitter.com/stopantisemitism/status/1514045823809695745>.

¹³ Title VI prohibits discrimination on the basis of race, color, or national origin in programs that receive federal funds. Guidance issued by the Education Department’s Office for Civil Rights, Executive Office of the President, and U.S. Department of Justice clarifies that Title VI covers discrimination on the basis of Jewish shared ancestry and ethnicity. See Deputy Assistant Secretary of Education for Enforcement Kenneth L. Marcus, “Dear Colleague Letter” (Sep. 13, 2004) available at <https://www2.ed.gov/about/offices/list/ocr/letters/religious-rights2004.pdf>; Assistant Attorney General Thomas E. Perez, “Letter to Russlynn H. Ali” (Sep. 8, 2010) [“2010 Dear Colleague Letter”] available at https://www.justice.gov/sites/default/files/crt/legacy/2011/05/04/090810_AAG_Perez_Letter_to_Ed_OCR_Title%20VI_and_Religiously_Identifiable_Groups.pdf. Title VI protects students from harassment that creates a hostile environment on campus by requiring a university to “take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment, and prevent the harassment from recurring.” See “2010 Dear Colleague Letter” pp. 2-3.

¹⁴ University of Pennsylvania, Guidelines on Open Expression, <https://catalog.upenn.edu/pennbook/open-expression/#interpretativeguidelinestext>.

opposed to the policies and ethos of this institution,” and “a persistent and tangible reminder that racism, sexism, and xenophobia are not theoretical abstractions but are real and insidious beliefs in this country and in our building;¹⁵ the University reportedly went even further by taking punitive action against Professor Wax, prohibiting her from teaching mandatory first year law school courses due to her allegedly racist remarks about African Americans.¹⁶

The University’s previous stern treatment of actual or allegedly offensive speech necessitates its clear and unequivocal rejection of Mr. El-Kurd’s blatantly anti-Semitic rhetoric that maligns Jewish students and all Jews who support Israel. Penn should not have a blind spot when Jews are the target. If Penn is going to provide Mr. El-Kurd with yet another platform to spread such baseless vitriol, it must not remain silent.

II. Conclusion: Penn must speak out and educate its community about anti-Semitism.

Penn is a leader on many issues, and we hope that you and your university will rise again to this occasion. We urge you to remain vigilant about your legal obligations to protect Jewish students from a hostile environment on your campus, by closely monitoring the El-Kurd event, and by taking the necessary steps to speak out promptly and forcefully in condemnation of any anti-Semitic rhetoric that threatens to poison the atmosphere on your campus against Jewish students. The University should use its own voice to specifically and unequivocally condemn anti-Semitic speech, not merely all hate speech, and should explain to the campus community how anti-Semitic speech is antithetical to the University’s institutional values of respect and inclusion.

The University has previously acknowledged that while hateful speech “may be protected [it] does not permit this [] School to ignore the real harms such speech causes” and that “[t]his reality sharpens and deepens our commitment to support our community as we continue to work to advance equity and inclusion.”¹⁷ As one of the oldest institutions of higher education in the United States, Penn cannot tolerate the ignorance that would lead members of its community to sponsor an event that promotes the basest form of bigotry. It is incumbent upon the University to alleviate this ignorance by promptly educating the campus community about the world’s oldest form of hatred, anti-Semitism. This would be important for any institution of higher learning; expectations are that much higher for Penn in light of your University’s mission to “offer[] students an unparalleled education informed by inclusivity, intellectual rigor, research, and the impetus to create new knowledge to the benefit of individuals and communities around the world.”¹⁸

¹⁵ PennCareyLaw, “A Statement from Dean Ruger in response to recent comments made by Professor Wax,” (Jan. 3, 2022), <https://www.law.upenn.edu/live/news/14369-a-statement-from-dean-ruger-in-response-to-recent>.

¹⁶ Colleen Flaherty, “What a Professor Can’t Say,” Inside Higher Ed (Mar. 15, 2018), <https://www.insidehighered.com/news/2018/03/15/penn-says-amy-wax-will-no-longer-teach-required-first-year-law-courses-after-more>.

¹⁷ PennCareyLaw, “A Statement from Dean Ruger in response to recent comments made by Professor Wax,” (Jan. 3, 2022), <https://www.law.upenn.edu/live/news/14369-a-statement-from-dean-ruger-in-response-to-recent>.

¹⁸ University of Pennsylvania, About, <https://www.upenn.edu/about>.

We urge you to take these steps in order to meet the University's obligations under Title VI of the Civil Rights Act while simultaneously protecting the institution's commitment to the noble principles of free speech and expression.

We are available at the emails listed below to share our expertise on these issues and further discuss our recommendations with you.

Sincerely,



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