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Dear Presidents and Provosts of District of Columbia Colleges and Universities:[1]

We write on behalf of the American Civil Liberties Union of the District of Columbia, in response to recent executive orders and other communications from Trump Administration officials attempting to pressure university officials to target students, faculty, and staff for exercising their First Amendment rights. In the spirit of our commitment to defending and advancing the First Amendment rights of all those who live in, work in, study in, or visit Washington, D.C., we write to share a legal framework for considering these rights and to offer our solidarity and support.

This letter is prompted by two executive orders—Executive Order 14161, titled "Protecting the United States from Foreign Terrorists and other National Security and Public Safety Threats," signed on January 20, 2025,[2] and Executive Order 14188, titled "Additional Measures to Combat Anti-Semitism," signed on January 29, 2025[3]—and related communications from the Trump Administration, including U.S. Attorney Ed Martin's letter dated February 17 to Georgetown University Law Center threatening to blackball its students in retaliation for the school's teaching of ideas the administration disfavors,[4] and President Trump's March 4 social media post threatening arrest, expulsion, and deportation of disfavored student speakers and termination of federal funding for universities at which disfavored speech occurs.[5]

Executive Order 14161 states that it is the United States' policy to "protect its citizens" from noncitizens who "espouse hateful ideology," and to ensure that noncitizens "do not bear hostile attitudes toward [America's] citizens, culture, government, institutions, or founding principles, and do not advocate for, aid, or support designated foreign terrorists and other threats to our national security." The order directs the secretary of state to "[r]ecommend any actions necessary to protect the American people from" noncitizens who, among other things, "preach or call for . . . the overthrow or replacement of the culture on which our constitutional Republic stands."

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[1] This letter has been sent to the American University, Catholic University of America, Gallaudet University, George Washington University, Georgetown University, Howard University, Trinity Washington University, and University of the District of Columbia.
[2] Exec. Order No. 14161, 90 Fed. Reg. 8451, *Protecting the United States from Foreign Terrorists and Other National Security and Public Safety Threats*, https://perma.cc/82VD-C7ND (Jan. 20, 2025).
[3] Exec. Order No. 14188, 90 Fed. Reg. 8847, *Additional Measures to Combat Anti-Semitism*, https://perma.cc/QF6W-2BMT (Jan 29, 2025).
[4] https://www.ncronline.org/files/2025-03/3.7.24%20Ed%20Martin%20letter%20%20to%20Georgetown%20law.pdf.
[5] https://truthsocial.com/@realDonaldTrump/posts/114104167452161158.

Executive Order 14188 requests from the Attorney General "an inventory and analysis of all court cases . . . involving institutions of higher education alleging civil-rights violations related to or arising from post-October 7, 2023 campus anti-Semitism" and directs the secretaries of state, education, and homeland security to recommend ways to "familiariz[e] institutions of higher education with the grounds for inadmissibility under 8 U.S.C. 1182(a)(3) so that such institutions may monitor for and report activities" by noncitizen students and staff and ensure that such reports lead "to investigations and, if warranted, actions to remove such aliens." In a fact sheet explaining Executive Order 14188, the White House made clear its purpose of targeting "leftist, anti-American colleges and universities," and described it as a "promise" to "quickly cancel the student visas of all Hamas sympathizers on college campuses, which have been infested with radicalism like never before."

U.S. Attorney Martin's February 17 letter to Georgetown Law stated, "First, have you eliminated all DEI from your school and its curriculum? Second, if DEI is found in your courses or teaching in any way, will you move swiftly to remove it? At this time, you should know that no applicant for our fellows program, our summer internship, or employment in our office who is a student or affiliated with a law school or university that continues to teach and utilize DEI will be considered."

President Trump's March 4 post warned, "All Federal Funding will STOP for any College, School, or University that allows illegal protests. Agitators will be imprisoned/or permanently sent back to the country from which they came. American students will be permanently expelled or, depending on on [sic] the crime, arrested."

Four Guiding Principles

In combination, these orders and other communications from the Trump Administration are a direct attack on the First Amendment rights of both universities and their students. The administration is attempting to enlist university officials in censoring and punishing noncitizen scholars and students for their speech and scholarship. Relatedly and no less concerningly, the administration is also targeting disfavored ideas as a means to threaten and bully vulnerable populations whom it likewise disfavors—in spite of their constitutional rights not only to freedom of speech but also to due process and equal protection of the laws. We urge you to stand up for both your students' and your school's rights in accordance with these four key principles.

1. The First Amendment prohibits the government from accomplishing indirectly, through coercion of third parties, what it cannot do directly: suppressing ideas it does not like and punishing the speakers who espouse them.

Ideologically motivated efforts by the government to police speech on campus—including speech critical of America's "citizens, culture, government, institutions, or founding principles,"[6] or of the acts of the U.S. government or foreign governments—are an affront to the First Amendment. Though the precise implementation of the executive orders remains to be

[6] Exec. Order No. 14161, 90 Fed. Reg. 8451.

seen, Executive Order 14161 articulates the administration's desire to target individuals who "advocate for, aid, or support designated foreign terrorists and other threats to our national security," those who hold "hateful" views, and those who "bear hostile attitudes toward [America's] citizens, culture, government, institutions, or founding principles." In the fact sheet on Executive Order 14188, the White House makes clear that it believes many institutions of higher education are "leftist" and "anti-American," and are home to "Hamas sympathizers" and "radical[s]." U.S. Attorney Martin's letter to Georgetown Law singled out a set of viewpoints ("DEI") for retaliation. And in the context of the executive orders, President Trump's social media warnings to "[a]gitators" strongly suggest he is threatening people whose views are contrary to his administration's position.

The message is clear: immigrant students, faculty, and staff on college and university campuses should think twice before they criticize the United States or this administration, express support for Palestinians, condemn Israeli government policies, or tout efforts to promote the inclusivity of their schools—or indeed anything else President Trump and other federal officials might possibly find objectionable—and colleges and universities that allow such speech, debate, and protest should think twice, too.

These executive orders and threatening communications violate the First Amendment. Protected political speech and association alone—no matter how offensive to the president, members of his administration, or members of the campus community—cannot be the basis for discipline, nor should it lead to immigration consequences. Just last year, the Supreme Court unanimously reaffirmed that "[g]overnment officials cannot attempt to coerce private parties in order to punish or suppress views that the government disfavors." *Nat'l Rifle Ass'n of America v. Vullo*, 602 U.S. 175, 180 (2024). Viewpoint neutrality is a cornerstone of the First Amendment. "It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys," and thus "[d]iscrimination against speech because of its message is presumed to be unconstitutional." *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995).

Accordingly, particular viewpoints—whether reprehensible or popular in the eyes of the majority of the community, or whether singled out in executive orders and related communications—must not be targeted for censorship, discipline, or disproportionate punishment. Harassment directed at individuals because of their race, ethnicity, or religion is, of course, impermissible; protected political speech likewise cannot be the basis for punishment. As suggested by its executive orders, the Trump Administration would like to censor and punish, among other things, expressions of "from the river to the sea," or advocacy to "replace[] the culture on which our Constitutional Republic stands," or a course on the history of white supremacy in America. Such censorship, even of speech that is offensive to many listeners, is anathema to the First Amendment.

The ability to criticize governments, their policies, and even their foundational philosophies is a critical component of our democracy. Political speech is "at the core of what the First Amendment is designed to protect." *Morse v. Frederick*, 551 U.S. 393, 403 (2007). It enables the "unfettered interchange of ideas for the bringing about of political and social changes desired by the people." *Roth v. United States*, 354 U.S. 476, 484 (1957). Our country has a "profound national commitment to the principle that debate on public issues should be uninhibited, robust,

and wide-open." *N.Y. Times v. Sullivan*, 376 U.S. 254, 270 (1964). And that commitment extends to college and university campuses, where the First Amendment safeguards free speech and free association. In *Healy v. James*, for example, the Supreme Court affirmed that the First Amendment protects the right of student groups to associate and speak out on matters of public concern, free from censorship by public university officials, even when the student groups are aligned with political viewpoints considered radical and unpopular. 408 U.S. 169 (1972).

Outside the classroom, including on social media, students and professors must be free to peaceably express even the most controversial political opinions without fear of discipline or censure. Inside the classroom, speech can be and always has been subject to more restrictive rules to ensure civil dialogue and a robust learning environment. But such rules have no place in a public forum like a campus green—and in any event, it is not the proper role of the White House to set those rules.

2. Nothing obligates universities to act as deputies in immigration law enforcement—on the contrary, universities have good reason not to veer so far from their core mission.

The Trump Administration has also indicated that it will seek to deport students who are not U.S. citizens if they engage in disfavored speech, and may seek to secure the participation of university officials and staff through coercive means, such as by threatening withdrawal of federal funding. The federal government cannot force state or local institutions, including universities and colleges, to participate in certain types of immigration enforcement. Federal courts have consistently upheld the right of state and local authorities to limit their collaboration with federal immigration enforcement. *See United States v. California*, 921 F.3d 865 (9th Cir. 2019) (holding anticommandeering doctrine prohibits the federal government from requiring states to participate in certain immigration enforcement actions); *City of El Cenizo v. Texas*, 890 F.3d 164, 178 (5th Cir. 2018) ("Tenth Amendment prevents Congress from compelling . . . municipalities to cooperate in immigration enforcement"). Additionally, the federal government cannot coerce state and local authorities into enforcing federal immigration laws by improperly withholding funding. *See City of Chicago v. Sessions*, 888 F.3d 272, 277 (7th Cir. 2018) (holding that the government cannot use the "sword of federal funding to conscript state and local authorities to aid in federal civil immigration enforcement"); *see generally Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012) (holding federal funding conditions for regulatory policies cannot be unduly coercive). Public universities and colleges are thus not obligated to act as deputies in immigration enforcement.

Indeed, if university officials acquiesced to such demands to participate in immigration enforcement, there would be harmful consequences for the primary mission of the university. Students and faculty from other countries are crucial members of university communities. They contribute to the advancement of higher education, offering diverse experiences and global understanding, driving innovation and research, enabling economic and social growth for their institutions and communities, and adding to the richness of university life. Immigrant populations, including visa holders, lawful permanent residents, and undocumented immigrants, account for a significant proportion of U.S. colleges and universities. The U.S. hosted more than

1.1 million international students in 2024, comprising more than 5 percent of all students in higher education and about 27 percent of students at the graduate level.[7] In recent years, immigrant-origin students, including first-generation immigrants born abroad and U.S.-citizen students with one or more immigrant parents, have broadly accounted for 32 percent of the student population in higher education, with more than 80 percent of these being people of color.[8]

If universities were to participate in viewpoint-based immigration enforcement against students and faculty and the curtailment of their constitutional rights, it could lead to dire consequences for them personally. It could also damage institutions of higher learning by sowing distrust, reducing the major contributions immigrants provide to universities,[9] and undermining recruitment efforts. Engaging in such enforcement would represent a breakdown of the principles upon which our higher education systems are built.

3. Schools must protect the privacy of all students, including immigrant and international students.

University officials are responsible for ensuring the integrity and confidentiality of student records. The Family Educational Rights and Privacy Act (FERPA) requires universities to protect the confidentiality of personally identifiable student information, including that of all noncitizen students (whether on immigrant or nonimmigrant visas or otherwise), against unwarranted disclosure to the government or private parties.[10]

When federally funded colleges and universities collect information from students, FERPA requires the school to define what it designates as "directory information"—meaning it can be subject to release without a student's prior written consent[11]—and inform students of their right to object to such a designation.[12] Only information that "would not generally be considered harmful or an invasion of privacy if disclosed" may be deemed directory information.[13] Releasing such information to outside sources, including government officials and agencies in connection with immigration enforcement, will violate FERPA if public notice and other conditions are not met.[14] Similarly, information that would "generally be considered harmful" if disclosed, such as a student's sex, ethnicity, or race, may not be released as "directory information."[15]

This includes disclosures to law enforcement. Unless a law enforcement officer has a

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[7] Open Doors, U.S. Dept. of State, *Report on International Educational Exchange* (2024), https://perma.cc/8AW6-KA38; Higher Ed Immigration Portal, *Immigrant and International Students in Higher Education* (2024), https://perma.cc/8QF7-S85H.
[8] *Id.*
[9] Higher Ed Immigration Portal; *Economic Contributions of International Students in the State*, available at https://perma.cc/LG24-66E5.
[10] 20 U.S.C. § 1232g(b)(1)(A); 34 C.F.R. pt. 99.
[11] 34 C.F.R. § 99.1; 34 CFR § 99.31(a)(11).
[12] *See* 20 U.S.C. § 1232g(e).
[13] 34 C.F.R. § 99.3 (definition of "directory information").
[14] 34 C.F.R. § 99.37; *see also*, 20 U.S.C. § 1232g(a)(5)(b).
[15] Kala Shah Surprenant, Acting Director, *Student Privacy Policy Office, 2020 Census and FERPA* 3 (2020).

valid court order or a lawfully issued subpoena, universities cannot release personally identifiable information without the student's permission, absent another exception to FERPA.[16] Mere requests do not qualify. Likewise, administrative warrants, which are commonly used by U.S. Immigration and Customs Enforcement (ICE), are not enforceable on their own, absent a separate judicial order or legal proceeding to enforce the subpoena.[17] Any subpoena presented by immigration agents should be reviewed carefully by legal counsel before any information is produced. Further, a reasonable effort must generally be made to alert students to the subpoena before information is produced.[18]

4. Schools must abide by the Fourteenth Amendment and Title VI of the Civil Rights Act.

Public universities are bound by the Fourteenth Amendment's guarantee of equal protection,[19] and both public and private universities are bound by Title VI of the Civil Rights Act, which prohibits discrimination by recipients of federal financial assistance on the basis of "race, color, or national origin."[20] Title VI prohibits schools from "utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin."[21] In this context, those obligations are particularly relevant in two ways.

First, if universities were to fulfill immigration law enforcement requests that single out immigrant students or faculty for punishment for their exercise of free speech, they would run the risk of creating an environment that discriminates against students and faculty based on national origin or that substantially impairs their ability to participate equally in university programming—both of which are illegal under Title VI.

Second, these obligations also mean that universities can, and indeed must, protect students from discriminatory harassment, including on the basis of "shared ancestry or ethnic characteristics" or "citizenship or residency in a country with a dominant religion or distinct religious identity."[22] While offensive and even racist or xenophobic speech is constitutionally protected, shouting an epithet at a particular student or pinning an offensive sign to their dorm room door can constitute impermissible harassment. Antisemitic, anti-Palestinian, or anti-immigrant speech targeting individuals because of their ethnicity or national origin constitutes invidious discrimination and cannot be tolerated. Physically intimidating students by blocking their movements or pursuing them aggressively is unprotected conduct, not protected speech. It should go without saying that violence is never an acceptable protest tactic.

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[16] 34 C.F.R. 99.31(a)(9)(i).
[17] *See* National Immigration Law Center, *Warrants and Subpoenas: What to Look Out For and How to Respond*, 4-6 (2025), https://perma.cc/9JB4-UEJZ.
[18] 34 C.F.R. 99.31(a)(9)(ii).
[19] See U.S. Const. amend. XIV, § 1.
[20] 42 U.S.C. § 2000d.
[21] 28 C.F.R. § 42.104(b)(2); 34 C.F.R. § 100.3(b)(2).
[22] U.S. Dep't. of Educ., *Discrimination Based on Shared Ancestry or Ethnic Characteristics* (Jan. 10, 2025), https://perma.cc/VLQ2-2LUL.

Speech that is not targeted at an individual or individuals because of their ethnicity or national origin but merely expresses impassioned views about Israel, Palestine, immigration policy, or any other subject the White House may find objectionable is not discrimination and should be protected. The only exception for such untargeted speech is where it is so severe or pervasive that it denies students equal access to an education—an extremely demanding standard.

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We stand ready to assist American universities and colleges in protecting their students' First Amendment rights, defending their missions of fostering debate and diversity, and rejecting baseless calls to investigate or punish international and immigrant communities for exercising their fundamental rights.

Sincerely,

Scott Michelman
Legal Director
American Civil Liberties Union of the District of Columbia

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