



Laurie L. Patton
Office of the President
Old Chapel
9 Old Chapel Road
Middlebury College
Middlebury, VT 05753

Via email to president@middlebury.edu

May 5, 2021

Re: Anti-Palestinian Environment at Middlebury College

Dear President Patton:

We write on behalf of Middlebury College students Kamli Faour, Matthew Martignoni and Students for Justice in Palestine (SJP) at Middlebury College to express our concern with Middlebury College's response to anti-Palestinian harassment and infringements on speech supporting Palestinian rights on campus. Palestine Legal *is an independent organization dedicated to protecting the civil and constitutional rights of people in the U.S. who speak out for Palestinian freedom.* Our understanding is that despite being on notice about recent incidents of anti-Palestinian harassment, the College is refusing to take meaningful steps to ensure that Palestinian students and students supporting Palestinian rights know that they may speak out on this issue without fear of bullying or retaliation.

The following is our understanding of the facts:

I. BACKGROUND

A. Middlebury SJP Launches Campaign Calling for Palestinian Equality; anti-Palestinian Harassment Starts

On March 8, 2021, Students for Justice in Palestine at Middlebury College¹ – a group dedicated to educating the Middlebury community about the Israeli occupation of Palestine –

¹ Middlebury Students for Justice in Palestine (SJP) is a student organization whose purpose is “1) To provide educational programming addressing the Israeli occupation of Palestine, 2) To create forums for awareness, conversation, and activism on this topic 3) To support members’ ideas for different educational events and initiatives that reach the community at large, and 4) To advocate for the rights,

launched a website titled End Israeli Apartheid.² The website is part of an SJP campaign advocating for Palestinian rights and aims to help Middlebury students “begin or continue [their] education of the Israeli occupation of Palestine.” Sourced from several human rights organizations, as well as the United Nations, the website includes information on Israel’s decade-long blockade of Gaza, its building of settlements on Palestinian land, its unlawful transfer of Jewish settlers into the occupied Palestinian territory, its demolition of Palestinian homes and its maintenance of a facially discriminatory legal system, including the use of excessive force and discriminatory arrests of Palestinians living in the occupied Palestinian territory. The website also includes tabs with resources on apartheid in South Africa and Zionism, which it describes as “an ideology [that] emerged in the late 19th century and developed contemporaneously with the rise of European empire and (ethno)nationalist movements within the continent.”³ SJP’s mission to “advocate for the rights, freedoms, and dignity of all people” is also prominently posted on the homepage.

Upon launch, the website became accessible through Middlebury’s internal “go-link” system, which allows campus Wifi users to access websites by using the shortcut “go/” plus a word. Students with SJP also hung posters around campus directing the campus community to the End Israeli Apartheid website via campus go-links with the language “go/apartheid.”

The morning after the site was launched, Middlebury College senior and SJP co-president Kamli Faour (she/her) – who is Palestinian-American – noticed that several of SJP’s anti-apartheid posters were torn down and appeared to have been stomped on. Soon after, a text came in from a Palestinian friend informing Kamli that the friend just saw that posters SJP had hung near the freshman dorms had also been torn down. Though alarmed, SJP decided to proceed with announcing their anti-apartheid campaign on Instagram later that day. The post described go/apartheid as “an educative resource for Israeli apartheid, Palestine, and Zionism.”

A few days later, on March 13, two students with SJP decided to make additional go-links to promote SJP’s campaign supporting Palestinian equality. However, when they attempted to create “go/SJP,” “go/Palestine,” and “go/Palestinian,” they noticed that these go links had all been taken and linked to an Israel Ministry of Foreign Affairs webpage titled “Palestinian terror and incitement.”⁴ The webpage contained a list of “Palestinian terror & incitement” incidents and described Palestinians with words such as “terrorist,” “radical Islamist,” and “jihad.” The name of the student who created the links, [REDACTED], was apparent.

Upon seeing these racist go-links, SJP co-president Matthew Martignoni (they/he) sent an email from their personal account on behalf of SJP to the Middlebury Help Desk, Media Services, Student Activities Office, Assistant Director of Student Activities for Programs and

freedoms, and dignity of all people through individual activism and coalition building, including with other student groups to stand in solidarity with Black, Brown, Indigenous, Migrant, LGBTQIA+ and other marginalized communities.” Middlebury Students for Justice in Palestine, Constitution (Jan. 20, 2020), on file with Palestine Legal.

² END ISRAELI APARTHEID, <https://apartheid.godaddysites.com/> (last visited May 5, 2021).

³ *What is Zionism? A Brief History*, END ISRAELI APARTHEID, <https://apartheid.godaddysites.com/zionism> (last visited May 5, 2021).

⁴ *Palestinian Terror and Incitement*, ISRAEL MINISTRY OF FOREIGN AFFAIRS, <https://mfa.gov.il/mfa/foreignpolicy/terrorism/palestinian/pages/default.aspx>.

Events Valerie Nettleton, and Director of Student Activities Amanda Reinhardt. In their email, Matt stated that they had recently been made aware that a student had claimed the go-link “go/SJP” and linked it to a website portraying Palestinians as terrorists. Matt wrote that “by associating members of SJP with terrorism, the owner [of the link] is directly placing [SJP members] in danger of violent retribution,” and asked that the link be removed to ensure the safety of SJP’s members.⁵

A few hours later, Matt sent an email informing SJP members what happened⁶ and then posted a statement on Instagram describing the incident.⁷ That same day, Kamli posted a statement on her personal Instagram account, stating: “Stay strong. Stay vigilant. Watch out for your Palestinian & Arab friends on campus a little more in the coming days. Stay peaceful. Stay safe. In solidarity.”⁸ Thirty minutes later, at exactly 6 p.m., Kamli simultaneously received 10 follow requests from individuals she did not know. All of them had Israeli flag emojis in their profiles. She found the simultaneous follow requests from individuals identifying with a symbol of Palestinian oppression to be both alarming and intimidating given the widespread online harassment of Palestinians and their supporters,⁹ and it made her wonder whether and how her profile – which included a post describing herself as a Palestinian-American and Muslim – had been shared.

The following day, on March 14, Kamli and Matt noticed that the racist “go/Palestine,” “go/Palestinian,” and “go/SJP” links created by ██████ appeared to have been removed. They were not sure if this was a result of their complaint or if ██████ had decided to do this on his own.

That same day, Kamli also sent an email to the Community Bias Response Team (CBRT), Chief Diversity Officer Miguel Fernandez, Dean of Students Derek Doucet and Director and Professor of Gender, Sexuality, and Feminist Studies Laurie Essig, who is SJP’s faculty advisor, relaying that several students, including ones she had never spoken to before, had approached her saying that ██████ and his friends were infuriated. Kamli explained that given the false conflation of Palestinian identity with terrorism, she felt “very anxious that this could have serious safety implications” for her.¹⁰

That same day, ██████ emailed SJP requesting to meet to discuss “specifically the actions that [██████] took over the weekend and [SJP’s] response on social media.”¹¹ He wrote, “I am concerned that some of the content on the go/apartheid website is problematic for the Jewish community, and I acted out of fear and shock upon witnessing the proliferation of posters and

⁵ Email from Matt Martignoni to Helpdesk, Media Services, Student Activities Office, Valerie Nettleton, Amanda Reinhardt, and Laurie Essig (Mar. 13, 2021) (on file with Palestine Legal).

⁶ Email from Students for Justice in Palestine to SJP Members (Mar. 13, 2021) (on file with Palestine Legal).

⁷ Middlebury SJP (@sjp_middlebury), INSTAGRAM, (Mar. 13, 2021) (on file with Palestine Legal)

⁸ Kamli Faour (@kamli_faour), INSTAGRAM, (Mar. 13, 2021) (on file with Palestine Legal)

⁹ Murtaza Hussain, *The Real Cancel Culture: Pro-Israel Blacklists*, THE INTERCEPT (Oct. 4, 2020), <https://theintercept.com/2020/10/04/israel-palestine-blacklists-canary-mission/>.

¹⁰ Email from Kamli Faour to CBRT, Miguel Fernandez, Derek Doucet and Laurie Essig (Mar. 14, 2021) (on file with Palestine Legal).

¹¹ Email from ██████ to Students for Justice in Palestine (Mar. 14, 2021) (on file with Palestine Legal).

chalk writings.”¹² Kamli and Matt found the request disingenuous and decided not to reply, as ██████ appeared to be saying that an end to segregation and apartheid for Palestinians would inherently be unsafe for Jews.

The following evening, Kamli was approached while brushing her teeth in her dorm by a student she previously had little contact with. Kamli’s hallmate informed her that another student by the name of ██████ was very angry at Kamli because his friend ██████ had been suspended from two student clubs due to his actions with the go-link.¹³ The following day, Kamli received a similar text from the same hallmate warning her of ██████’s anger and that students were “afraid of ██████/retaliation” and went on to say that a friend of the hallmate:

had to talk ██████ off a cliff because [the friend] was afraid he’d do something. That something...not sure what it was. But I think [██████] calmed down after he learned it’s a temporary suspension. But my friend...was scared to leave the lib[rary] and drink her water.

Another person also found Kamli in the hall and told her that ██████ was very angry and couldn’t control himself. Kamli reported this to SJP’s club advisor, Laurie Essig.

B. Middlebury Fails to Adequately Respond to Anti-Palestinian Threats

On March 15, Essig wrote Dean of Student Life Emily G. Van Mistri stating:

I wanted to emphasize that what has been happening to Kamli is in the category of **being singled out for race, nationality and or religion and as such has put Kamli in a particularly vulnerable and potentially unsafe position on campus.** When students are threatened with "retribution" for educational websites about national policies that in no way single out anyone on the basis of race, religion or nationality, **it is a bias incient [sic] that violates our standards as a community.** I will also point out the intersectional nature of these threats since there are no doubt gendered aspects as well.

By conflating Palestine - as well as maybe Muslim and Arab- with Terrorist, all students who occupy these positions have been the objects of rhetorical violence (and subjected to fear of physical violence). By using words like "retribution" the

¹² Id.

¹³ Kamli later learned that ██████ was formerly an intern with the anti-Palestinian group StandWithUs, a right-wing pro-Israel group with a history of attacking Palestine advocates. See Corrected Brief for Jewish Voice for Peace, Palestine Solidarity Legal Support, National Lawyers Guild et al. as Amici Curiae Supporting Respondents p. 5-11, *Davis v. Cox* 183 Wn.2d 269 (2015) (No. 90233-0), https://ccrjustice.org/sites/default/files/attach/2014/12/2014-12-19_Davis_JVP-PSLS-Corrected-Amicus-Brief.pdf; see also Maria LaHood, *Legal Bullying May Chill Speech, But Ultimately Cannot Stop a Movement*, CENTER FOR CONSTITUTIONAL RIGHTS (June 17, 2015), <https://ccrjustice.org/home/blog/2015/06/17/legal-bullying-may-chill-speech-ultimately-cannot-stop-movement>.

students attacking Kamli are in fact violating the anti-bias principles to which Middlebury has committed itself.¹⁴

Van Mistri responded by encouraging Essig and Kamli to reach out to CBRT and Fernandez and asked Kamli if she “would like to touch base a bit later to talk about ways we can support you during this difficult time.”¹⁵

On approximately March 15, Dean of Students Derek Doucet called Kamli and offered to put a No Contact Order (NCO) in place, which would restrict contact between [REDACTED] and Kamli. Kamli said that she would like to take an NCO. About thirty minutes later, Van Mistri called Kamli and told her she strongly recommended against taking an NCO because it could “inflame” the situation and that “emotions [were] high on both sides.” This response made Kamli feel confused and sick. She could not understand why Middlebury, on its own, would mention an NCO as a possibly remedy only to seemingly rescind the offer thirty minutes later. Kamli agreed to not put an NCO in place.

The following day, on March 16, Essig wrote Van Mistri, Fernandez, and Doucet demanding to know why Middlebury was refusing to intervene on Kamli’s behalf, stating:

I am really confused about the **lack of response to the clear threats that have been made to Kamli as a person (and I assume as a Palestinian and as a woman) by [REDACTED]. It’s interesting to note that similar threats have not been made against the male-identified and Jewish co-president of SJP.**

Let me reiterate some of what she is going through:

Multiple students have told Kamli that [REDACTED] is extremely angry and she should be careful, ‘watch her back,’ and ‘expect retribution.’

Someone on her hall told her [REDACTED] was ‘going crazy’ and they were afraid he ‘would do something bad.’

Another friend showed Kamli a text that said they had to ‘talk [REDACTED] off a cliff’ and the friend said they were scared [REDACTED] would act out.’

These admittedly secondhand threats **have created an unsafe situation on campus and in class for Kamli and this requires some action on your part.** I am very disappointed that at the least a no contact order has not been put in place. If a no contact order would inflame the situation, as Emily suggested in a meeting with Kamli, then I believe the institution must intervene in other ways to make clear that acting out on rage is an acceptable[sic] response to disagreement and when rage is targeted at people because of gender and nationality it is, in fact, a bias incident.

¹⁴ Email from Laurie Essig to Emily Van Mistri and Kamli Faour (Mar. 15, 2021) (emphasis added) (on file with Palestine Legal).

¹⁵ Email from Emily Van Mistri to Laurie Essig and Kamli Faour (Mar. 15, 2021) (on file with Palestine Legal).

Surely this student’s rage should not be allowed to inhibit another student’s ability to study?

I am happy to contact the Title IX office since clearly these highly gendered threats are preventing Kamli from feeling safe in class or on campus, but **I do believe the Dean of Students office and the Bias Response Team should be able to at least reach out to Kamli and come up with an action plan that makes her feel safer.**

And to be clear—the group Students for Justice in Palestine—never singled anyone out for their nationality or religion—and in no way committed any acts of bias. **To suggest that ‘both sides’ have hurt feelings ignores the very different sorts of acts being committed here and how some are protected as ‘free speech’ and even ‘academic freedom’ and some are in fact singling out people for their nationality and religion and conflating that nationality and religion with terrorism.** These are not equivalent and any suggestion that they are is deeply troubling.

Thank you and I look forward to a clear action plan from your offices that involves concrete steps to make Kamli—the victim of these threats—feel safe on campus.¹⁶

C. Middlebury Email Conflates Calls for Palestinian Equality With ‘Political Discord’ and Antisemitism

On March 17 at 12:05 p.m. CBRT sent a school-wide email appearing to conflate calls for Palestinian equality and human rights with “political discord” and antisemitism.

The email opened with acknowledging that SJP’s posters advocating for Palestinian equality had been vandalized and that a go-link had been created by an individual using SJP’s name that led to a page equating Palestinians with terror, but then went on to say:

CBRT also received a copy of an open letter describing incidents of anti-Semitism at other institutions and expressing concern about recent expressions of political discord on the Middlebury College campus. In addition, CBRT has been made aware that a student associated with the Students for Justice in Palestine organization has received multiple indirect threats. The Department of Public Safety (DPS) is investigating, and all violations of campus policies will be adjudicated by the appropriate offices (Community Standards and/or Civil Rights and Title IX).

We recognize that many of our students are navigating the recent campus events as individuals with one or more targeted identities, and that the experience of embodying identities repeatedly targeted for harassment, discrimination, and violence evokes hypervigilance. There are deeply personal and community-specific fears about the ever-present interconnectedness between rhetoric about violence and actual violence towards targeted communities, and the contemporary U.S.

¹⁶ Email from Laurie Essig to Emily Van Mistry (Mar. 15, 2020) (emphasis added) (on file with Palestine Legal).

context is rife with anti- Semitism and cultural messaging conflating Palestinians with terrorism.¹⁷

The email ended by vaguely stating that Middlebury “will be in continued conversation with our campus partners to ensure a plan of action is put in place to support any students who feel threatened to ensure their safety.”

Kamli and SJP felt that Middlebury’s email minimized the harassment that Kamli was experiencing. The email branded the racist attacks on SJP’s educational campaign as “political discord” and uplifted a letter that sought to draw a link between calls for Palestinian rights and alleged acts of antisemitism on other campuses. The email seemed to place this on par with threats that Kamli was actively encountering at Middlebury, downplaying the seriousness of the threats while at the same time implying that Kamli and SJP were themselves to blame for the threats.

D. Middlebury Parents Demand Middlebury Take Action Against SJP

Meanwhile, over the course of the day on March 17, anti-Palestinian parents called for the removal of Middlebury College students supporting Palestinian rights from their campus housing in a series of posts on the Middlebury Parents Facebook group.

Within the context of a conversation that referenced SJP’s campaign for Palestinian equality, one parent wrote, “I hope Middlebury won’t be housing anti semites [sic], sadly it has been a ‘fashion’ in many liberal arts colleges and many students don’t even understand what they are signing for or the forces behind a lot of these movements.” Another parent called SJP’s posters “out of control,” adding “Anti Semitism [sic] spreads like wildfire and this is how it starts.”

Other parents chimed in, explaining how they and their Middlebury student children reached out to different administrative offices expressing their disagreement with SJP’s call for Palestinian equality.

Shaken by the rhetoric in the group and the demands for SJP to lose their housing, Matt wrote to the CBRT (subject: Re: URGENT SAFETY CONCERN), expressing their concern that anti-Palestinian parents could be contributing to an atmosphere of violence against Arab students on campus. Matt copied Doucet, Fernandez, Van Mistri, Director of Education for Equity and Inclusion Renee Wells, Essig, Kamli, and another student who is on the SJP board.¹⁸

¹⁷ Email from Chief Diversity Officer to Voting Faculty, Students, All Staff (March 17, 2021) (on file with Palestine Legal).

¹⁸ Email from Matt Martignoni to Derek Doucet, Emily Van Mistri, Miguel Fernandez, Renee Wells, [Redacted], Kamli Faour, Laurie Essig (Mar. 17, 2021) (on file with Palestine Legal).

Doucet responded the following day, on March 18, reassuring the students that they would not lose their housing as they were all in good standing and had not been found violation of any policy.¹⁹

E. Middlebury Refuses to Provide Adequate Remedy

On March 19, Kamli received a call from Tom Hodson, who described himself as an investigator with the school. During the call, Hodson asked Kamli when the posters had been ripped down and when she first heard about the threats against her and asked her questions about the go-links. Kamli shared what happened, as described above.

On March 22, Kamli and Matt emailed Doucet, Van Mistri, Fernandez, and Wells asking if Middlebury could issue a public statement affirming SJP's right to exist on campus, stating "we think that it would be immensely helpful for us, our members, and the broader Middlebury community to know that we can advocate for Palestinian human rights without fear."²⁰ The students also asked about the status of the investigation. Wells responded on March 24 stating that she hadn't been able to check in about the investigation and offering to meet with Kamli.²¹ Kamli responded that same day, again asking if she could know about the status of the investigation. Kamli also asked whether a public letter was possible, and whether Wells would be available to meet the following week.

On March 26, Fernandez replied that he had discussed SJP's request to put out a statement with Wells and Doucet, and that he feared that such a statement would "exacerbate the situation" and "start up a whole new chorus" from people opposed to SJP.²²

Fernandez did not mention the status of the investigation. On March 29, Wells responded to Kamli's March 24 email offering to meet with Kamli – but did not respond to her question about the status of the investigation.²³ On March 31, Kamli replied, stating her preference to communicate via email, as she was currently taking midterms.²⁴ In this email, Kamli also asked whether, given that she herself filed the original complaint about the harassment, she would be entitled to know whether the investigation was still open and where in the handbook the procedures for this would be laid out.

On April 1 at 11:31 a.m., Kamli again emailed Chief Diversity Officer Fernandez, copying Essig, Doucet, Van Mistri, Wells, and Matt, reiterating the need for a public statement. She stated that she had heard from SJPs around the country that public statements affirming the right of students to advocate for Palestinian human rights had been extremely helpful in protecting students' free speech and preventing anti-Arab racism. She asked for clarification

¹⁹ Email from Derek Doucet to Matt Martignoni, Emily Van Mistri, Miguel Fernandez, Renee Wells, [Name Redacted], Kamli Faour, Laurie Essig (Mar. 18, 2021) (on file with Palestine Legal).

²⁰ Email from Kamli Faour to Derek Doucet, Emily Van Mistri, Miguel Fernandez, Renee Wells, Laurie Essig, and Matt Martignoni (Mar. 22, 2021) (on file with Palestine Legal).

²¹ Email from Renee Wells to Kamli Faour (Mar. 24, 2021) (on file with Palestine Legal).

²² Email from Miguel Fernandez to Kamli Faour, Laurie Essig, Matt Martignoni, Derek Doucet, Emily Van Mistri, Renee Wells (March 26, 2021) (on file with Palestine Legal).

²³ Email from Renee Wells to Kamli Faour (Mar. 29, 2021) (on file with Palestine Legal).

²⁴ Email from Kamli Faour to Renee Wells (Mar. 31, 2021) (on file with Palestine Legal).

whether the chief diversity officer's March 26 email meant that it would not be possible for Middlebury to issue a statement. She also sought clarity on the status of the investigation of her complaint.²⁵

On April 1 at 12:20 p.m., Wells informed Kamli that the investigation had been closed and that FERPA prevented disclosure of the outcome of the judicial process "to anyone other than the student being sanctioned without a signed FERPA waiver from the student." Wells also stated that Middlebury was unable to locate any witnesses with respect to the destruction of SJP's posters and that "the investigating officer interviewed a number of students and none of them was able to provide any information to confirm a direct threat."²⁶ The next day, Kamli expressed that was at a loss for how best to proceed.²⁷ Later that day, Wells responded that Kamli should reach out any time.²⁸

On April 2, Fernandez responded to Kamli's April 1 request that Middlebury issue a public statement by stating: "given the nature of this matter and the number of folx impacted, any further messaging from the administration will most likely escalate and not diminish harm and that is not in anyone's best interest. Our focus is in reducing harm."²⁹

On April 5, Matt and Kamli emailed Fernandez, asking, a third time, for Middlebury to issue a statement and alerted Fernandez that Kamli was looking into leaving campus because she felt unsafe as a Palestinian in her own dorm room:

As you know or may not know, Kamli, as a Palestinian, has family that lives under Israeli military occupation and as refugees in the diaspora. Our club followed all the rules, and our human rights aims were in line with Middlebury's mission. But we wanted to reiterate that after we launched this campaign, our posters were repeatedly taken down and destroyed, and Kamli received multiple indications that she may be in danger, as well as other harassment. One of these incidents happened in her own dorm, while she went to brush her teeth in the evening. **She has not been feeling safe on campus and has been exploring leaving and moving back in with her parents for the rest of the semester. She really feels that she's being targeted because she's Palestinian.** As you know, Matt has luckily received no harassment or threats but is deeply concerned for his Palestinian peers. At the same time, there are calls from anti-Palestinian parents to kick us out of our housing.

The email went on to reiterate how it would:

Help to know that Middlebury has our backs and that Kamli and other Palestinians will be safe at Middlebury, we are telling you that the support we

²⁵ Email from Kamli Faour to Miguel Fernandez, Laurie Essig, Matt Martignoni, Derek Doucet, Emily Van Mistri, Renee Wells (Apr. 1, 2021) (on file with Palestine Legal).

²⁶ Email from Renee Wells to Kamli Faour (Apr. 1, 2021) (on file with Palestine Legal).

²⁷ Email from Kamli Faour to Renee Wells (Apr. 2, 2021) (on file with Palestine Legal).

²⁸ Email from Renee Wells to Kamli Faour (Apr. 2, 2021) (on file with Palestine Legal).

²⁹ Email from Miguel Fernandez to Kamli Faour, Matt Martignoni, Laurie Essig, Derek Doucet, Emily Van Mistri, Renee Wells (Apr. 2, 2021) (on file with Palestine Legal).

need is a public statement affirming that students **(including SJP) have the right to advocate for Palestinian rights at Middlebury. We would like to know that Middlebury stands against all forms of discrimination, including anti-Palestinian discrimination, since that has not been made clear.** We understand that you do not believe that this is in our interest. However, as the people at the center of this issue who hope to continue our social justice work, we believe such a statement will reduce current and future harm, so we are asking you to make that statement.³⁰

The email ended by asking Fernandez to let Matt and Kamli know if Middlebury was still refusing to put out a public statement condemning anti-Palestinian discrimination and defending the right of SJP to exist on campus.

On April 10, Kamli wrote Wells again seeking clarification about the status of the investigation, specifically, why FERPA would prevent the target of harassment from knowing the status of an investigation:

I'm just confused because it seems like you're saying that if someone complains of racist or gender-based harassment, they will never be allowed to find out if action was taken, because of FERPA. Does it just go into a black hole? Let me know if I've misunderstood something here! I think the complaints were clear that I was the target of harassment based on being a Palestinian woman."³¹

Wells replied the following day, on April 11, finally clarifying, 20 days after Kamli's initial email, that the case was closed because Public safety had not found the evidence to charge someone."³²

F. Middlebury Falsely Accuses Jewish Co-President (and grandchild of Holocaust survivors) of Anti-Semitism

On April 14, Fernandez replied to Matt's email reporting the anti-Palestinian harassment Kamli was facing, by stating: "I'd like to talk to you one on one about SJP and this matter. Can we find time to connect?"³³ Fernandez did not cc Kamli, which Matt found curious.

At this April 15 meeting, Fernandez told Matt that aspects of SJP's website, particularly the page on Zionism, were "triggering" to Jewish students. Fernandez went on to single out a paragraph about the Jewish Bund, an organization the website described as "a left-wing socialist movement that rose to prominence in the early 20th century." Fernandez stated that a quote from

³⁰ Email from Matt Martignoni to Miguel Fernandez, Kamli Faour, Laurie Essig, Derek Doucet, Emily Van Mistri, Renee Wells (Apr. 5, 2021) (emphasis added) (on file with Palestine Legal).

³¹ Email from Kamli Faour to Renee Wells (Apr. 10, 2021) (on file with Palestine Legal).

³² Email from Renee Wells to Kamli Faour (Apr. 11, 2021) (on file with Palestine Legal).

³³ Email from Miguel Fernandez to Matt Martignoni (Apr. 13, 2021) (in file with Palestine Legal).

an article by Indiana University Associate Professor Benjamin Balthasar minimized the Holocaust.³⁴ He suggested to Matt that SJP remove the paragraph entirely.³⁵

Matt shared that they are the grandchild of Holocaust survivors, how they grew up hearing stories of how lit cigarettes were pressed into their grandfather's hand when he was growing up in Vienna. Matt also said that they found the Balthasar article to be inspiring and asked Fernandez if he had a chance to look at the entirety of the article cited on the website. When Fernandez said he had not read the article, Matt explained that they did not believe it was inaccurate, historically, with respect to the founding of the State of Israel, but that they would remove that quote from the website.

Fernandez stated that "we can intellectualize it" and "talk about the accuracy" but that many people read the paragraph as antisemitic and that Matt ought to consider reworking the page on Zionism as it "has done some harm to some folks." Fernandez lectured Matt on the importance of bringing certain people into the fold "rather than pushing them away."

Matt told Fernandez that they believed it was important to center Palestinian voices and bring in Palestinian perspectives into the discussion, as those voices had been largely absent on campus. They explained how they felt that anti-Arab and anti-Palestinian harm and, in particular, the harassment Kamli faced because of her Palestinian identity was not being addressed by Middlebury.

³⁴ The full quote Fernandez was referring to is: "Had the Holocaust not wiped out the Bund and other Jewish socialists in Eastern Europe, we might be talking about Jewish nationalism in a very different context now."

³⁵ The original language stated:

As the ideology developed, "there were many [other] Jewish nationalisms of the late 19th and early 20th centuries," explains Benjamin Balthasar, associate professor of multiethnic literature at Indiana University at South Bend. He provided a few examples:

"There was the Jewish Bund, which was a left-wing socialist movement that rose to prominence in the early 20th century that articulated a deterritorialized nationalism in Eastern Europe. They felt their place was Eastern Europe, their land was Eastern Europe, their language was Yiddish. And they wanted to struggle for freedom in Europe where they actually lived. And they felt that their struggle for liberation was against oppressive capitalist governments in Europe. Had the Holocaust not wiped out the Bund and other Jewish socialists in Eastern Europe, we might be talking about Jewish nationalism in a very different context now.

Of course, there were Soviet experiments, probably most famous in Birobidzhan, but also one very brief one in Ukraine, to create Jewish autonomous zones within territories that Jews lived, or elsewhere within the Soviet Union, rooted in the Yiddish idea of doykait, diasporic hereness, and Yiddish language and culture" (Balthasar).

Evidently, Zionism has a complex but distinct history that cannot be separated from the colonial socio-political matrix from which it emerged."

Fernandez responded by twisting Matt's reporting of anti-Palestinian harassment and support for Palestinian rights by claiming it was antisemitic, replying that he is getting the "very same criticisms from the other side" and that "the other side" was upset with Middlebury over its "lack of reaction" over that page.

Demoralized, Matt asked for a final clarification whether, given what Fernandez had said, there was any possibility that Middlebury would issue a statement or take other action to protect Palestinian students and students with SJP.

Fernandez stated that Middlebury would not take further action in response to the anti-Palestinian environment at Middlebury because as long as people feel like SJP is putting out antisemitic information it didn't matter what Fernandez said because people would say that the College is "sweeping antisemitism under the rug."

Matt asked Fernandez if he thought that changing SJP's website calling for Palestinian equality would help, and Fernandez responded that yes, it would help him defend SJP with the Jewish community and allow for the possibility of dialogue. He accused Matt of "causing harm" and being "reductive" and ineffective. He asked what SJP was planning on doing if there was "hope to have conversations or presentations."

Matt replied that they had been working with Jewish Voice for Peace, that they found the group's work inspiring, and that they were happy to have conversations with individuals, especially other Jews, and that they do so frequently, but that they also wanted to focus on raising awareness about Palestinian history that is so often glazed over, such as Israel's demolition of Palestinian homes. They also expressed their frustration at the ways that antisemitism had been weaponized to silence calls for Palestinian equality and that because of their support for Palestinian rights, they were being called a self-hating Jew, which was very hurtful.

Fernandez responded that he did not believe Matt was a self-hating Jew, and noted how Matt had copied him on a complaint last semester where they expressed their discomfort with purchasing a dictionary authored by a Nazi that was required for one of their classes.³⁶ Fernandez went on to say that for "some people" the language on SJP's website had an "impact

³⁶ In that email, Matt wrote, in part: "I am reaching out to you to express my significant discomfort in purchasing the required Hans Wehr dictionary. As you may know, the dictionary was written by the Nazi, Hans Wehr, in an effort to translate Mein Kampf into Arabic. Additionally, a [Jewish contributor](#) [sic] to the dictionary died in a death camp in Auschwitz. As a queer disabled Jew whose extended family was massacred in the Holocaust, using this dictionary and financially supporting its continued production makes me profoundly uncomfortable. Every time I open the dictionary I will be reminded of its history. I know this dictionary is useful text, but I also would respectfully suggest that we use a dictionary written by someone from the Arabic speaking world, of which there are many. Ideally, I would ask you to remove the book from the syllabus. I hope you can understand/respect my concerns regarding this book. I am aware that there are other students - Jews and non-Jews - that feel similarly. Thank you for considering this request."

similar” to way the dictionary did for Matt. Fernandez spoke about the importance of engaging Jewish voices because they were going to have the greatest effect on the Israeli state.

Matt explained the importance of Palestinians narrating their own story and that they are not opposed to having conversations with people, but that engaging with certain people in a certain way would cause harm.

Fernandez agreed that while some people cannot be convinced, he feared that the language on the website, in the long run, hurt people like Kamli. He said that Matt talked about Palestinian voices but that it was Matt’s voice out on the webpage that was being seen as antisemitic and that the brunt of the harm from that was felt by Kamli and Palestinians.

Dejected at being called antisemitic and responsible for the harassment faced by Kamli and other Palestinians, Matt said they did not know what to say. Fernandez said that the website could change the dynamic and that he would give Matt a chance to think about it.

Matt said that they would let Fernandez know. Fernandez wished Matt good luck on their thesis and acknowledged that this was all very distracting.

Approximately a week later, Matt deleted the Balthasar quote to avoid further false accusations of antisemitism from Middlebury.

II. Middlebury’s Actions May Violate Title VI of the Civil Rights Act of 1964

Middlebury’s refusal to take any action to protect Kamli from veiled threats, its muddled statement seemingly blaming supporters of Palestinian rights at Middlebury for antisemitism, and its retaliation against Matt for complaining of anti-Palestinian bias incidents, may, if unchanged, give rise to a violation of Title VI of the Civil Rights Act of 1964,³⁷ which prohibits discrimination on the basis of race, color, or national origin by institutions that receive federal financial assistance. A violation of Title VI may be found where a university has created or is otherwise responsible for a hostile environment due to national origin-based harassment that is sufficiently severe, pervasive or persistent so as to interfere with or limit the ability of an individual to obtain educational services. A university violates Title VI where it causes, encourages, accepts, tolerates or fails to correct a national origin-based hostile environment of which it has notice.³⁸

Title VI also prohibits retaliation for advocacy for a right protected by Title VI.³⁹

³⁷ 42 U.S.C. §2000d (1964).

³⁸ Cf. Racial Incidents and Harassment Against Students at Educational Institutions; Investigative Guidance, 59 Fed. Reg. No. 47 (March 10, 1994), <https://www2.ed.gov/about/offices/list/ocr/docs/race394.html>.

³⁹ Middlebury’s own policies also prohibit “retaliation against an individual for raising an allegation of discrimination, for cooperating in an investigation of such a complaint, or for opposing discriminatory practices is prohibited under the Non-Discrimination Policy.” Middlebury College, “Nondiscrimination Investigations & Resolutions Procedure,” n.d., <http://www.middlebury.edu/about/handbook/policies-for-all/non-discrim-policies/anti-harassment-discrimin>.

A. Kamli Experienced Targeted Harassment on the Basis of a Protected Identity

As described above, SJP posters calling for Palestinian equality were vandalized and go-links regarding SJP and Palestinians were redirected to a website smearing all Palestinians as violent terrorists. Seeing these attacks on Palestinian identity, Kamli posted a statement to her personal Instagram – in which she identifies herself as a Palestinian-American – urging fellow Palestinians to “[s]tay strong” and urging others to “[w]atch out for your Palestinian & Arab friends on campus a little more in the coming days.”

After SJP complained about the racist go-links, Kamli received numerous veiled threats. SJP’s non-Palestinian co-president, Matt, received no such veiled threats, suggesting that anti-Palestinian animus was fueling the threats against Kamli.

Parents petitioned Middlebury to punish Palestinian students and their allies based on the racist assumption that advocating for Palestinian equality is borne out of anti-Jewish animus—and in one instance suggested these students’ removal from Middlebury housing.

Middlebury’s muddled statement reinforced this anti-Palestinian racism. By associating advocacy for Palestinian equality with antisemitism, the College implied that such advocacy is inimical to Jewish safety. And while the College acknowledged a rise in antisemitism in the U.S., it characterized the threats and anti-Palestinian actions by students and parents as “political discord” and “cultural messaging.”

Kamli’s Palestinian national origin is an immutable characteristic. “Palestinian” is not a political ideology that Kamli can choose to embrace or discard. She was born to a Palestinian father. Her name is Palestinian. And she still has family living in both Palestine and in Palestinian refugee camps. The tearing down of her posters calling for Palestinian equality, the implied threats and the efforts to conflate support for Palestinian human rights with terrorism all attacked the core of who Kamli is – a Palestinian woman.

B. Kamli’s Educational Opportunities Were Severely Interrupted and Harmed

As a result of the threats she faced both on campus and online and the lack of action from administrators, Kamli began to debate whether she should leave her dorm on campus and move back in with her parents. For four or five days, Kamli did not leave her room out of fear for her physical safety – except to go to class and get food from the dining hall. She would eat in her room, only in the company of trusted friends. She feared that [REDACTED] or another anti-Palestinian student would come to her room, because anyone on campus with a Middlebury email address could look up where she lived.

Kamli was also affected academically. She did not feel safe going to the library to study and found it difficult to focus. In the past year at Middlebury, she had never missed a class but did miss one class during this period because she was so overwhelmed.

The harassment took a significant toll on Kamli’s physical and mental health during this period. She lost seven pounds and suffered from panic attacks. She would only sleep three hours

a night and often called her parents and boyfriend in the middle of the night out of distress. In the mornings, Kamli would wake up and vomit. In April, Kamli tore a tendon in her foot. The cause of the tear is unknown, but her doctor has expressed surprise at the severity of the tear. This has led Kamli to feel that she is, quite literally, falling apart. Because Middlebury administrators would call without warning and at unpredictable times, including in the evenings, Kamli felt constantly on edge waiting to hear from them. She feared that if she missed a call from an administrator, she would be blamed. She felt constantly that she was on edge and waiting for something to happen.

As this was occurring, Kamli could not help but notice that her co-president Matt, who is white, Jewish and male-presenting, had not received any of the veiled threats and messages she had – despite the fact that they shared the role of co-president of SJP equally with Kamli.

Kamli felt that she was not being listened to and was not taken seriously. When she expressed well-founded fear for her physical safety, her complaints were met with empty platitudes that this was “an emotional time” and repeated offers to meet and talk, but no actual plan to remedy the environment. When she asked about the status of the investigation, the administration gave her convoluted responses incorrectly citing to FERPA, which does not prohibit the disclosure of *the status* of an investigation. Only after Kamli pointed this out was she informed, 20 days after her initial request, that no charges were brought. This left Kamli feeling helpless and that Middlebury was not taking her concerns seriously.

C. Middlebury Was Well-Informed of the Hostile Anti-Palestinian Environment and Responded by Retaliating Against Matt

Middlebury was well-informed of the hostile anti-Palestinian environment. As described above, Kamli notified Middlebury administrators, her co-president Matt repeatedly notified Middlebury administrators, and SJP’s faculty advisor Essig in no uncertain words laid out in multiple emails the hostile environment Kamli, as a Palestinian woman, faced – an environment that Middlebury Chief Diversity Officer Fernandez acknowledged in a conversation with Matt. (And blamed Matt for.)

However, the college ultimately declined to take any steps to ensure that Palestinian students felt that they could exist on campus as Palestinians without being bullied or retaliated against – in apparent fear of the response from vocal anti-Palestinian students and their parents.

Instead, Middlebury administrators repeatedly reached out to Kamli “to talk,” an initial remedy offered – an NCO – was seemingly revoked, and the campus-wide email discussing the vandalism and threats appeared to conflate SJP’s advocacy for Palestinians rights with antisemitism.

Rather than take action to make it possible for Kamli to benefit from her educational opportunities, Middlebury retaliated against Matt in direct response to their complaint about the anti-Palestinian hostile environment by demanding a one-on-one meeting with the chief diversity officer, where the officer blamed Matt – *who he knew was the Jewish descendent of Holocaust survivors* – for complaints from anti-Palestinian parents over SJP’s website. Indeed, it was Fernandez who showed a failure to grasp the difference between antisemitism and criticism of

Zionism when he compared Matt's previous complaint over being required to purchase a Nazi dictionary with complaints against SJP's speech criticizing Israel's policies.

Nearly two months have passed since Kamli, Matt and Essig first complained about the anti-Palestinian environment at Middlebury, and there has still been no adequate response.

III. Middlebury Failed to Protect Speech Relating to Palestinian Rights

Middlebury's justification for asking Matt to delete language on SJP's webpage on Zionism – that the language “has done some harm to some folks” and that the College was receiving pressure from “the other side” to censor SJP – violates Middlebury's policies on freedom of expression and academic freedom.

It is clear, as reflected by comments from Middlebury administrators, that they received many complaints regarding SJP's posters, website and campaign calling for Palestinian equality and an end to Israeli segregation and apartheid. It is also clear that because of the pressure Middlebury was receiving from anti-Palestinian individuals, Middlebury decided not to take steps to protect the rights of students to speak out for Palestinian rights. It instead decided to smear the Jewish grandchild of Holocaust survivors as an antisemite and bully them into self-censorship.

In doing so, Middlebury has betrayed principles of free speech to which it promises to adhere. Middlebury's Freedom of Expression policy states that:

Middlebury is a community of learners that dedicates itself to creating a world with a robust and inclusive public sphere, including on our campuses. A robust and inclusive public sphere is one where all voices can be heard and have the opportunity to contribute to the conversation. ...

Academic freedom is essential to Middlebury's mission and freedom of expression is a vital component of academic freedom. Campus community members engaging in open expression—and in response to the expression of others—are expected to do so in a way that affirms our three pillars of academic freedom, integrity, and respect.

The policy also notes that:

forms of expression that violate our Anti-Harassment/Discrimination policy, are inconsistent with our educational mission and our shared community values. We recognize that open expression can result in hurt and harm to members of our community and our sense of shared purpose, and we continue to dedicate ourselves to making Middlebury a more inclusive community.⁴⁰

⁴⁰ Middlebury College, “Policy on Open Expression,” n.d., <http://www.middlebury.edu/about/handbook/policies-for-all/genl-principles/freedom-of-expression>.

While criticism of Israel's apartheid policies may engender disagreement, complaints from those who are opposed to Palestinian equality cannot justify censorship. When Middlebury treats a particular viewpoint in a disparate manner based on how much controversy the viewpoint could provoke, it blatantly violates its promise to guarantee freedom of inquiry on campus. Middlebury's patronizing of a student for "intellectualizing" criticism of a political ideology – and strongarming them into removing such language from a website – makes a mockery of academic freedom. Debate about Zionism or any other nationalism should rightly take place at an institute of higher education, and any discussion about what is to some an uncomfortable reality that Zionism has been pursued at the expense of Palestinian human rights falls well within the free expression rights of SJP members.

To allow students and parents with one political viewpoint to block the speech of those with whom they disagree is a further insult to Middlebury's guarantee of freedom of expression and academic freedom. Presumably, Middlebury would not suggest that students during the Jim Crow era should have avoided advocating for desegregation because of "harm" that might have been felt by parents and students who support segregation and would not call a white ally during that period "anti-white" for drafting materials opposing racist ideologies.

Furthermore, such censorship contributes to an anti-Palestinian environment. It means that Palestinian students like Kamli, and allies such as Matt, are forced to confront the reality not only that their lived experiences will be discredited, but that when they attempt to engage in intellectual, historical, and academic research as to how those lived experiences came to be, they will be accused of antisemitism.

Lastly, Middlebury's reasoning that it cannot provide a remedy to Palestinian students and students supporting Palestinian rights because of complaints from "the other side" appears to be an exceptional rule applied only to Palestinians. Middlebury has unequivocally condemned discriminatory and/or dehumanizing incidents against non-Palestinians. The College has even gone to great lengths to put out statements protecting the speech of a discredited white supremacist, but claims it is unable to do so when its own students are advocating *against* apartheid out of fear of backlash from those who would like to maintain the racial status quo.

IV. Conclusion

We urge Middlebury to immediately cease encouraging an anti-Palestinian environment on campus that actively harms Palestinian students, and to meet the university's obligations under all relevant federal, state and local laws to protect Palestinian students' and their supporters' rights to openly advocate for Palestinian equality.

To rectify the harm done to Kamli, Matt and other students on campus, we request that you:

- (1) Issue a public statement clearly and unequivocally stating that Students for Justice in Palestine has a right to exist on campus and that Middlebury will not tolerate anti-Palestinian harassment;
- (2) Apologize, in writing, to Matt for falsely accusing them of antisemitism;
- (3) Mandate a training for the Community Bias Response Team (including the chief diversity officer and dean of students) on anti-Palestinian harassment and the Palestine exception to free speech, with SJP, Jewish Voice for Peace or other similar groups advocating for Palestinian rights;
- (4) Affirmatively recognize the right to advocate for Palestinian rights on campus and agree that the College will not adopt or enforce policies that limit speech supporting Palestinian rights.

We respectfully request a response by May 10.

Sincerely,



Adina Marx-Arpadi*
Legal Extern
Palestine Legal
Middlebury Class of 2013.5



Radhika Sainath
Senior Staff Attorney
Palestine Legal

*Not admitted to practice law.