FIRE
Foundation for Individual Rights in Education

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Sent via Electronic Mail (charles.robinson@ucop.edu)

Dear Mr. Robinson:

FIRE[1] appreciates that the University of California Los Angeles (UCLA) remains one of the few institutions in the country whose policies earn a "green light" rating from FIRE. However, a commitment to freedom of expression in policy also requires adherence to those principles in practice. We are concerned that UCLA may have departed from its commitment to academic freedom and its obligations under the First Amendment by investigating university lecturer Lt. Col. W. Ajax Peris for vocalizing a racial slur in reading aloud from Martin Luther King, Jr.'s "Letter from a Birmingham Jail."

I. Peris' Reading of Martin Luther King, Jr.'s "Letter from a Birmingham Jail"

Our understanding of the pertinent facts, as follows, is based on public information. We appreciate that you may have additional information and invite you to share it with us.

Lt. Col. W. Ajax Peris is a lecturer at UCLA. Peris previously served in the U.S. Air Force.[2]

On April 16, 1963, while imprisoned for holding a march on Good Friday in violation of a court order, the Rev. Dr. Martin Luther King, Jr. sent an open letter in response to criticism by white clergymen, who resented his use of direct action to protest racial injustice and preferred less aggressive measures. King's now-famous letter, known as the "Letter from a Birmingham

[1] As you will recall from prior correspondence, the Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.
[2] Janet Nguyen, *Veteran draws on personal experience in teaching, gay rights research*, DAILY BRUIN, Feb. 4, 2014, https://dailybruin.com/2014/02/04/veteran-draws-on-personal-experience-in-teaching-gay-rights-research.

Jail," argued for the moral necessity of direct action, faulting the white clergymen for criticizing the demonstrations while failing to "express a similar concern for the conditions that brought about the demonstrations," while "[w]e have waited for more than 340 years for our constitutional and God given rights."

King's letter marshals the experience of Jim Crow laws and the racism they fostered, illustrating the moral case for disobeying unjust laws and confronting the white clergymen—themselves ostensibly allies—with candid, ugly events:

> Perhaps it is easy for those who have never felt the stinging darts of segregation to say, "Wait." But when you have seen vicious mobs lynch your mothers and fathers at will and drown your sisters and brothers at whim; when you have seen hate filled policemen curse, kick and even kill your black brothers and sisters; when you see the vast majority of your twenty million Negro brothers smothering in an airtight cage of poverty in the midst of an affluent society; when you suddenly find your tongue twisted and your speech stammering as you seek to explain to your six year old daughter why she can't go to the public amusement park that has just been advertised on television, and see tears welling up in her eyes when she is told that Funtown is closed to colored children, and see ominous clouds of inferiority beginning to form in her little mental sky, and see her beginning to distort her personality by developing an unconscious bitterness toward white people; when you have to concoct an answer for a five year old son who is asking: "Daddy, why do white people treat colored people so mean?"; when you take a cross county drive and find it necessary to sleep night after night in the uncomfortable corners of your automobile because no motel will accept you; when you are humiliated day in and day out by nagging signs reading "white" and "colored"; when your first name becomes "nigger," your middle name becomes "boy" (however old you are) and your last name becomes "John," and your wife and mother are never given the respected title "Mrs."; when you are harried by day and haunted by night by the fact that you are a Negro, living constantly at tiptoe stance, never quite knowing what to expect next, and are plagued with inner fears and outer resentments; when you are forever fighting a degenerating sense of "nobodiness"—then you will understand why we find it difficult to wait. There comes a time when the cup of endurance runs over, and men are no longer willing to be plunged into the abyss of despair. I hope, sirs, you can understand our legitimate and unavoidable impatience. You express a great deal of anxiety over our willingness to break laws. . . . One may well ask: "How can you advocate breaking some laws and obeying others?" The answer lies in the fact that there are two types of laws: just and

> unjust. I would be the first to advocate obeying just laws. One has not only a legal but a moral responsibility to obey just laws. Conversely, one has a moral responsibility to disobey unjust laws. I would agree with St. Augustine that "an unjust law is no law at all."[3]

On June 2, 2020, a UCLA student used Twitter to share a video of Peris' in-class reading of the foregoing passage.[4] The user indicated that Peris had "refused to omit" the "n word" and had "apologized for our 'discomfort' but not for his words" after declining students' request not to say the word during the reading.[5] The student added her view that Peris "needs to be fired immediately" because his use of the word was "absolutely ridiculous and disgusting."[6]

In response, the UCLA College of Letters and Science tweeted that this "information has been shared with UCLA's Office of Equity, Diversion and Inclusion for review."[7] According to the *Washington Free Beacon*, Professor and Chair of the Department of Political Science Michael Chwe sent a department-wide email condemning Peris and stating that the department had referred Peris to UCLA's Discrimination Prevention Office (DPO) for review.[8]

The *Free Beacon* further reported that Chwe's email also complained that Peris had shown a documentary in which lynching was described:

> The lecturer also showed a portion of a documentary which included graphic images and descriptions of lynching, with a narrator who quoted the n-word in explaining the history of lynching. Many students expressed distress and anger regarding the lecture and the lecturer's response to their concerns during the lecture. . . . We share students' concerns that the lecturer did not simply pause and reassess their teaching pedagogy to meet the students' needs.[9]

The title of that documentary has not been disclosed. UCLA has not disclosed the results of Peris' referral to DPO, which other media outlets have widely characterized as an investigation, and has declined journalists' requests for comment.

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[3] MARTIN LUTHER KING, JR., LETTER FROM A BIRMINGHAM JAIL (1963), *available at* http://web.cn.edu/kwheeler/documents/letter_birmingham_jail.pdf.
[4] @heavynne_, TWITTER (June 2, 2020, 5:08 PM), https://twitter.com/heavynne_/status/1267971350074757122.
[5] *Id.*
[6] @heavynne_, TWITTER (June 2, 2020, 5:08 PM), https://twitter.com/heavynne_/status/1267971351748345856.
[7] UCLA College (@UCLACollege), TWITTER (June 2, 11:20 PM), https://twitter.com/UCLACollege/status/1268065018563555330.
[8] Chrissy Clark, *University to Investigate Lecturer for Reading MLK's Letter from Birmingham Jail*, WASH. FREE BEACON, June 6, 2020, https://freebeacon.com/issues/university-to-investigate-lecturer-for-reading-mlks-letter-from-birmingham-jail.
[9] *Id.* (quoting email from Michael Chwe).

II. Peris' Reading of MLK's "Letter from a Birmingham Jail" Is Protected by the First Amendment and Academic Freedom

Peris' reading of Martin Luther King, Jr.'s "Letter from a Birmingham Jail" is unequivocally protected by fundamental principles of academic freedom and the First Amendment. If UCLA does not intend to initiate a formal investigation, it should publicly clarify as much in order to mitigate the possibility of a chilling effect. If it has mounted such an investigation, it must abandon it.

A. UCLA is bound by the First Amendment.

It has long been settled law that the First Amendment is binding on public colleges like UCLA.[10] Accordingly, the decisions and actions of a public college—including the pursuit of disciplinary sanctions,[11] recognition and funding of student organizations,[12] interactions with student journalists,[13] conduct of police officers,[14] and maintenance of policies implicating student and faculty expression[15]—must be consistent with the First Amendment.

The First Amendment likewise governs the university's employment relationships with its faculty members, who retain constitutional and contractual rights to freedom of expression and academic freedom.[16] For example, UCLA explicitly promises its faculty freedom of expression within its Faculty Code of Conduct, which provides protection for "free inquiry, and [the] exchange of ideas," and the "enjoyment of constitutionally protected freedom of expression."[17]

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[10] *Healy v. James*, 408 U.S. 169, 180 (1972) ("[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, 'the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.'") (internal citation omitted).
[11] *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 667–68 (1973).
[12] *Bd. of Regents of the Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 221 (2000).
[13] *Stanley v. Magrath*, 719 F.2d 279, 282 (8th Cir. 1983); *see also Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829–30 (1995).
[14] *Glik v. Cunniffe*, 655 F.3d 78, 79 (1st Cir. 2011).
[15] *Dambrot v. Central Mich. Univ.*, 55 F.3d 1177 (6th Cir. 1995).
[16] *See, e.g., Hardy v. Jefferson Cmty. College*, 260 F.3d 671, 680 (6th Cir. 2001) (The "argument that teachers have no First Amendment rights when teaching, or that the government can censor teacher speech without restriction" is "totally unpersuasive."); *McAdams v. Marquette Univ.*, 2018 WI 88 (2018) (a private university breached its contract with a professor over a personal blog post because, by virtue of its adoption of the AAUP's standards on academic freedom, the post was "a contractually-disqualified basis for discipline").
[17] UNIV. OF CAL., LOS ANGELES, FACULTY CODE OF CONDUCT at 3 (last revised July 1, 2017), https://www.ucop.edu/academic-personnel-programs/_files/apm/apm-015.pdf.

B. The First Amendment and UCLA policy protect academic freedom, which encompasses a right to confront and exhibit offensive material.

Peris' reading from the "Letter from a Birmingham Jail" and his in-class exhibition of a documentary describing the horror of lynching are unquestionably protected under both the First Amendment and UCLA's policies embracing academic freedom.

i. The First Amendment protects the academic freedom of faculty members to discuss and present pedagogically-relevant material.

Courts have long recognized that the First Amendment's protection of freedom of speech is closely intertwined with academic freedom. Universities "occupy a special niche in our constitutional tradition,"[18] and "academic freedom" is an area "in which government should be extremely reticent to tread."[19] As the Supreme Court has explained:

> Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern to the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom.[20]

To be sure, in *Garcetti v. Ceballos*, the Supreme Court upheld the power of non-academic government employers to regulate their employees' speech that is pursuant to their employment duties.[21] The *Garcetti* court, however, reserved the question of "whether the analysis we conduct today would apply in the same manner to a case involving speech related to scholarship or teaching."[22] As Justice Souter's opinion stressed, that ruling should not be read to "imperil First Amendment protection of academic freedom in public colleges and universities," which freedom encompasses "the teaching of a public university professor."[23] Accordingly, the United States Court of Appeals for the Ninth Circuit—the decisions of which are binding on the University of California—has expressly recognized that expression "related to scholarship or teaching" falls outside of *Garcetti*.[24]

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[18] *Grutter v. Bollinger*, 539 U.S. 306, 329 (2003).
[19] *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957).
[20] *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967).
[21] *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006).
[22] *Id.* at 425.
[23] *Id.* at 438 (Souter, J., dissenting).
[24] *Demers v. Austin*, 746 F.3d 402, 406 (9th Cir. 2014). Other courts have reached similar conclusions. *See, e.g.*, *Adams v. Trs. of the Univ. of N.C.-Wilmington*, 640 F.3d 550, 562 (4th Cir. 2011) (*Garcetti* does not apply in the "academic context of a public university"); *Van Heerden v. Bd. of Supervisors of La. State Univ.*, No. 3:10-cv-155, 2011 U.S. Dist. LEXIS 121414, at *19–20 (M.D. La. Oct. 20, 2011) (sharing "concern that wholesale application of the *Garcetti* analysis . . . could lead to a whittling-away of academics' ability to delve into issues or express opinions that are unpopular, uncomfortable or unorthodox"); *Sheldon v. Dhillon*, No. C-08-03438, 2009 U.S. Dist. LEXIS 110275, at *14 (N.D. Cal. Nov. 25, 2009) (terminated community college instructor's lecture on heredity and homosexuality was protected by the First Amendment if it was "within the parameters of the approved

ii. UCLA must adhere to its policy commitments to academic freedom.

UCLA has committed itself to academic freedom by expressly embracing it in written policy. Even leaving aside the important First Amendment concerns and their intersection with academic freedom, discussed below, the university is legally and morally obligated to adhere to the commitments it has made.

The Wisconsin Supreme Court's recent meditation on the obligations attendant with a promise of academic freedom is illustrative.[25] In *McAdams v. Marquette University*, Marquette, a private Catholic university, had adopted the 1940 American Association of University Professors' Statement of Principles on Academic Freedom.[26] A member of the university's faculty, aggrieved by a graduate student instructor's exchange with a student about whether LGBTQ rights were an "appropriate" topic of class discussion, criticized the instructor on his personal blog, providing a link to the instructor's contact information and assailing her attitude as "totalitarian."[27] Marquette punished the professor, citing the post as falling short of the university's "standards of personal and professional excellence... ."[28] However, Wisconsin's Supreme Court overturned Marquette's imposition of discipline, holding that the private university's commitment to academic freedom rendered the blog post "a contractually-disqualified basis for discipline,"[29] as even extramural speech was protected by academic freedom.[30]

UCLA explicitly promises "freedom of teaching" in its academic freedom policy, which states:

> The University of California is committed to upholding and preserving principles of academic freedom. These principles reflect the University's fundamental mission, which is to discover knowledge and to disseminate it to its students and to society at large. The principles of academic freedom protect freedom of inquiry and research, freedom of teaching, and freedom of expression and publication.[31]

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curriculum and within academic norms" and the punishment "not reasonably related to legitimate pedagogical concerns.").

[25] *McAdams v. Marquette University*, 914 N.W.2d 708 (Wis. 2018) ("*Marquette*").

[26] *Id.* at 730.

[27] *Id.* at 713–14.

[28] *Id.* at 714.

[29] *Id.* at 737.

[30] *Id.* at 731–32.; AAUP, POLICY DOCUMENTS AND REPORTS, COMMITTEE A STATEMENT ON EXTRAMURAL UTTERANCES 31 (11th ed. 2014)).

[31] *Academic Freedom*, UCLA, at 1 (last revised Sept. 29, 2003), https://www.ucop.edu/academic-personnel-programs/_files/apm/apm-010.pdf.

The American Association of University Professors (AAUP), in 2013, issued a statement concerning faculty members' right to determine how to teach their courses:

> The freedom to teach includes the right of the faculty to select the materials, determine the approach to the subject, make the assignments, and assess student academic performance in teaching activities for which faculty members are individually responsible, without having their decisions subject to the veto of a department chair, dean, or other administrative officer.[32]

It follows, naturally, that faculty members' judgment on whether and how to confront challenging material is also not subject to the veto of students or administrators who object.

iii. The right to academic freedom extends to a right to confront, use, and discuss offensive language in teaching and scholarship.

Academic discussions require that faculty members and students alike have the freedom to discuss, touch upon, and view materials that may shock or offend others, including materials and literature reflecting and illustrating our nation's long struggle with racism.

The exhibition, presentation, and discussion of racial slurs in a pedagogical context is not uncommon: Princeton University, for example, defended a professor who used the word "nigger" in an anthropology course to discuss cultural and linguistic taboos.[33] Law professors reference it to teach the "fighting words" doctrine, and in discussions of systemic racism in the judicial system;[34] journalism professors discuss how to tell stories that involve it;[35] and sociology professors study the impact of the term in defining who is welcomed in various spaces.[36]

Courts have grappled specifically with the use of this particular word in the context of higher education and have consistently ruled on the side of academic freedom. In *Hardy v. Jefferson Community College*, the United States Court of Appeals for the Sixth Circuit denied qualified immunity to administrators who terminated a Caucasian adjunct instructor who led a

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[32] *Statement on the Freedom to Teach*, AAUP (Nov. 7, 2013), https://www.aaup.org/file/2013-Freedom_to_Teach.pdf.
[33] Colleen Flaherty, *The N-Word in the Classroom,* INSIDE HIGHER ED, Feb. 12, 2018, https://www.insidehighered.com/news/2018/02/12/two-professors-different-campuses-used-n-word-last-week-one-was-suspended-and-one.
[34] *See, e.g.*, Colleen Flaherty, *Professor Who Said N-Word Twice Reinstated,* INSIDE HIGHER ED, March. 13, 2020, https://www.insidehighered.com/quicktakes/2020/03/13/professor-who-said-n-word-twice-reinstated; Frank Yan, *Free Speech Professor Takes Heat for Using Racial Epithets in Lecture at Brown*, CHICAGO MAROON, Feb. 9, 2017, https://www.chicagomaroon.com/article/2017/2/10/free-speech-professor-takes-heat-using-racial-epit/.
[35] Frank Harris III, *Without Context, N-Word Goes Best Unsaid*, HARTFORD COURANT, Feb. 13, 2018, https://www.courant.com/opinion/hc-op-harris-ct-teacher-uses-n-word-20180209-story.html.
[36] *See, e.g.*, Elijah Anderson, *The White Space*, SOCIOLOGY OF RACE & ETHNICITY, 2015 Vol. I pp. 10–21, *available at* https://sociology.yale.edu/sites/default/files/pages_from_sre-11_rev5_printer_files.pdf.

"classroom discussion examining the impact of such oppressive and disparaging words as 'nigger' and 'bitch.'"[37] The Sixth Circuit upheld the finding that "the use of the racial and gender epithets in an academic context, designed to analyze the impact of these words upon societal relations, touched upon a matter of public concern and thus fell within the First Amendment's protection."[38] In denying qualified immunity to the college administrators, the court held that "reasonable school officials should have known that such speech, when it is germane to the classroom subject matter and advances an academic message, is protected by the First Amendment."[39]

Nor is it likely that pedagogically-relevant discussion of racially-offensive material will amount to a hostile environment, as that concept is defined under the law. The Ninth Circuit—whose decisions, again, are binding on UCLA—has explained that faculty members' expression of offensive viewpoints, as they pertain to matters of public concern, will rarely amount to actionable workplace harassment.[40] In ruling on a hostile environment claim prompted by a math professor's "racially-charged" emails sent to a listserv that reached every employee in the district, the Ninth Circuit distinguished between protected expression and targeted harassment:

> Harassment law generally targets conduct, and it sweeps in speech as harassment only when consistent with the First Amendment. For instance, racial insults or sexual advances directed at particular individuals in the workplace may be prohibited on the basis of their non-expressive qualities, as they do not "seek to disseminate a message to the general public, but to intrude upon the targeted [listener], and to do so in an especially offensive way[.]"[41]

The Ninth Circuit was particularly concerned that limitations on faculty members' expression would cast a chilling effect on higher education, which has "historically fostered" the exchange of views.[42] "The desire to maintain a sedate academic environment does not justify limitations on a teacher's freedom to express himself on political issues in vigorous, argumentative, unmeasured, and even distinctly unpleasant terms."[43]

iv. Subjectively offensive language and material are protected by the First Amendment.

The First Amendment, distilled to its most fundamental concepts, is intended to protect expression when it is controversial or upsetting to others. The Supreme Court has repeatedly,

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[37] *Hardy v. Jefferson Cmty. Coll.*, 260 F.3d 671, 674 (6th Cir. 2001) (cleaned up).
[38] *Id.* at 678.
[39] *Id.* at 683.
[40] *Rodriguez v. Maricopa Cty. Cmty. Coll. Dist.*, 605 F.3d 703, 710 (9th Cir. 2009).
[41] *Id.* (cleaned up).
[42] *Id.* at 708.
[43] *Id.* at 708–09 (cleaned up).

consistently, and clearly held that expression may not be restricted merely because some, many, or even most find it to be offensive or disrespectful. This core First Amendment principle is why the authorities cannot ban the burning of the American flag,[44] prohibit the wearing of a jacket emblazoned with the words "Fuck the Draft,"[45] penalize cartoons depicting a pastor losing his virginity to his mother in an outhouse,[46] or disperse civil rights marchers out of fear that "muttering" and "grumbling" white onlookers might lead to violence.[47] In ruling that the First Amendment protects protesters holding signs outside of soldiers' funerals (including signs that read "Thank God for Dead Soldiers," "Thank God for IEDs," and "Fags Doom Nations"), the Court reiterated this fundamental principle, remarking that "[a]s a Nation we have chosen . . . to protect even hurtful speech on public issues to ensure that we do not stifle public debate."[48]

This principle applies with particular strength to public universities, where students and faculty engage in debate and discussion about the issues of the day in pursuit of advanced knowledge and understanding. This dialogue may encompass speech that offends. For example, the Supreme Court unanimously upheld as protected speech a student newspaper's front-page use of a vulgar headline ("Motherfucker Acquitted") and a "political cartoon . . . depicting policemen raping the Statue of Liberty and the Goddess of Justice."[49] These images were no doubt deeply offensive to many at a time of political polarization and civil unrest, yet "the mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of 'conventions of decency.'"[50]

This is because "governmental officials cannot make principled distinctions" between what speech is sufficiently inoffensive to remain protected.[51] As the Supreme Court aptly observed in *Cohen v. California*, although "the immediate consequence of this freedom may often appear to be only verbal tumult, discord, and even offensive utterance," that people will encounter offensive expression is "in truth [a] necessary side effect[] of the broader enduring values which the process of open debate permits us to achieve."[52]

While the word at issue here is widely seen as perhaps the most offensive word in the English language, the First Amendment does not allow officials to proscribe isolated words, no matter how offensive. In *Cohen*, the Court held that a jacket emblazoned with the words "Fuck the Draft" was protected by the First Amendment, explaining that it could not "indulge the facile assumption that one can forbid particular words without also running a substantial risk of

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[44] *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (burning the American flag was protected by the First Amendment, the "bedrock principle underlying" the holding being that government actors "may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable").
[45] *Cohen v. California*, 403 U.S. 15, 25 (1971).
[46] *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 50 (1988).
[47] *Cox v. Louisiana*, 379 U.S. 536, 557 (1965).
[48] *Snyder v. Phelps*, 562 U.S. 443, 448, 461 (2011).
[49] *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 667–68 (1973).
[50] *Id.*
[51] *Cohen v. California*, 403 U.S. 15, 25 (1971).
[52] *Id.* at 24–25.

suppressing ideas in the process," as "governments might soon seize upon the censorship of particular words as a convenient guise for banning the expression of unpopular views." 403 U.S. 15, 16–26 (1971). The possibility that "the air may at times seem filled with verbal cacophony is, in this sense not a sign of weakness but of strength," because "governmental officials cannot make principled distinctions" between what speech is sufficiently inoffensive, and the "state has no right to cleanse public debate to the point where it is . . . palatable to the most squeamish among us." *Id.* at 25.

C. UCLA investigated into protected expression chills free expression and academic freedom.

An investigation into constitutionally-protected speech—like the one Lt. Peris' is apparently being subjected to at present—can itself violate the First Amendment. Such is the case even if no formal punishment is ultimately imposed. When "an official's act would chill or silence a person of ordinary firmness from future First Amendment activities," that act violates the First Amendment.[53] The Supreme Court has noted that government investigations "are capable of encroaching upon the constitutional liberties of individuals" and have an "inhibiting effect in the flow of democratic expression."[54] Similarly, the Court has subsequently observed that when issued by a public institution like UCLA, "the threat of invoking legal sanctions and other means of coercion, persuasion, and intimidation" might violate the First Amendment.[55]

Accordingly, government investigations into protected expression violate the First Amendment.[56] For example, a public university launched an investigation into a tenured faculty member's offensive writings on race and intelligence, announcing an *ad hoc* committee to review whether the professor's expression—which the university's leadership said "ha[d] no place at" the college—constituted "conduct unbecoming of a member of the faculty."[57] The United States Court of Appeals for the Second Circuit upheld the district court's finding that the investigation itself constituted an implicit threat of discipline and that the resulting chilling effect constituted a cognizable First Amendment harm.[58]

III. UCLA Must End its Investigation

Lt. Peris' right to decide whether and how to confront America's painful legacy of lynching and racism is well within his academic freedom rights under both the First Amendment and UCLA's own policies. Importantly, these freedoms do not immunize him from criticism for his choice in doing so, whether that criticism flows from his students, colleagues, or the general

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[53] *Mendocino Envtl. Ctr. v. Mendocino Cty.*, 192 F.3d 1283, 1300 (9th Cir. 1999).
[54] *Sweezy v. New Hampshire*, 354 U.S. 234, 245–48 (1957).
[55] *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67 (1963).
[56] *See, e.g., White v. Lee*, 227 F.3d 1214, 1228 (9th Cir. 2000).
[57] *Levin v. Harleston*, 966 F.2d 85, 89 (2d Cir. 1992).
[58] *Id.* at 89–90.

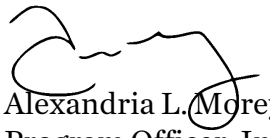
public. But UCLA may not override Peris' pedagogical choices without departing from its commitments to expressive freedoms.

UCLA's silence on whether it is investigating Peris, when all outward indications are that it is doing so, will likewise have an unacceptable chilling effect on the academic freedom and freedom of expression rights of its students and faculty. We therefore call on UCLA to transparently explain what steps it has taken and, if it has initiated an investigation, to immediately and publicly disband it.

We respectfully request receipt of a response to this letter no later than the close of business on July 14, 2020.

Sincerely,

Adam Steinbaugh
Director, Individual Rights Defense Program



Alexandria L. Morey
Program Officer, Individual Rights Defense Program

Cc: Allison Woodall, Deputy General Counsel of the Labor, Employment and Benefits Group, Office of the General Counsel, Office of the President, University of California.