June 18, 2026

Michael Kotlikoff
Office of the President
Cornell University
300 Day Hall
Ithaca, New York 14853

Sent via U.S. Mail and Electronic Mail (president@cornell.edu)

Dear President Kotlikoff:

FIRE[1] is concerned that Cornell University has reported a bias incident to its Office of Civil Rights over student Austin Franco's allegedly antisemitic speech. Cornell's clear commitment to upholding student free speech rights forecloses any punishment of protected speech, even when some consider the espoused views offensive or hateful. Cornell cannot keep its promise to respect students' expressive freedoms if it also punishes Franco. FIRE therefore urges Cornell to withdraw its report to OCR and commit to ensuring it refrains from punishing protected speech moving forward.

On May 26, Franco applied for a role at VrfyID through Handshake, a digital hiring platform.[2] After Franco's application was accepted, he responded to a message from VrfyID's co-founder, Aiden Einhorn, writing, "Not interested in working for a jew."[3] On June 8, VrfyID's co-founder and CEO, Gabe Einhorn, posted about the interaction on X.[4] The next day, Cornell released a statement saying, "We take all reports of discrimination and hate speech seriously and are actively reviewing the matter. We are committed to conducting a thorough review in

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[1] For more than 25 years, FIRE has defended free expression and other individual rights on America's university campuses. You can learn more about our mission and activities at fire.org.

[2] Everett Chambala, *Student Writes 'Not Interested in Working for a Jew' on Handshake, Cornell Reports Bias Incident*, THE CORNELL DAILY SUN, (Jun. 13, 2026, 10:30 PM), https://www.cornellsun.com/article/2026/06/student-writes-not-interested-in-working-for-a-jew-on-handshake-cornell-reports-bias-incident. The recitation here reflects our understanding of the pertinent facts, which is based on publicly available information. We appreciate that you may have additional information to offer and invite you to share it with us.

[3] *Id.*

[4] Gabe Einhorn (@EinhornGabe), X (Jun. 8, 2026, 6:00 PM), https://x.com/EinhornGabe/status/2064044867970330723 [https://perma.cc/YX7T-XEE6]. While Franco's full name was initially unknown, his "identity [was] revealed to the public" by X users. Chambala, *supra* note 2.

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accordance with university policy. Cornell condemns antisemitism and all forms of hatred and discrimination in the strongest possible terms."[5] On June 13, it was announced that Cornell had reported Franco to its Office of Civil Rights for a bias incident.[6]

Cornell's response to Franco's statement undermines Cornell's free speech promises,[7] as statements such as "[n]ot interested in working for a jew"—which do not constitute discriminatory harassment—remain protected by the First Amendment standards Cornell incorporates into its free speech policies.[8] Indeed, Cornell has not shown how Franco's words fall into *any* category of unprotected speech meriting university punishment. Rather, university policy explicitly protects the expression "even of ideas some may consider wrong or offensive."[9] Cornell's "Core Value" of "Free and Open Inquiry and Expression" properly reflects the First Amendment's robust protection for offensive speech.[10]

There is no carve-out for rhetoric some may deem antisemitic. The Supreme Court has repeatedly held there is no categorical exception for expression others view as hateful.[11] The Court expressly reaffirmed this principle in refusing to establish a limitation on speech viewed

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[5] Cornell University (@Cornell), X (Jun. 9, 2026, 2:07 PM), https://x.com/Cornell/status/2064167432307007573 [https://perma.cc/8D5X-5PYG].

[6] Chambala, *supra* note 2. Whether OCR has initiated an investigation into Franco's speech has not yet been made public.

[7] *Mendocino Envtl. Ctr. v. Mendocino Cty.*, 192 F.3d 1283, 1300 (9th Cir. 1999) (institutional response short of formal punishment can violate free speech rights if it "would chill or silence a person of ordinary firmness from future First Amendment activities").

[8] "We value free and open inquiry and expression—tenets that underlie academic freedom—even of ideas some may consider wrong or offensive." *Cornell University Core Values*, Free and Open Inquiry and Expression, CORNELL UNIV., https://www.cornell.edu/about/values.cfm [https://perma.cc/Y3M3-RV7F]. While Cornell is a private institution, its invocation of "free and open inquiry and expression" means that students and faculty will reasonably look to First Amendment jurisprudence to determine their expressive rights on campus. *See also Doe v. Syracuse Univ.*, 2020 WL 871250 (N.D.N.Y. 2020) (holding that an implied contract is created between the student and university after enrollment).

[9] *Id.*

[10] *Id.* The values of free speech and the fullest exchange of ideas are furthered by allowing students to discuss controversial, offensive, and even hateful ideas. *See, e.g.*, *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 670 (1973) ("[T]he 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.") (internal quotations omitted); *Terminiello v. Chicago,* 337 U.S. 1, 4 (1949) ("[Speech] may indeed best serve its high purpose when it induces a condition of unrest ... or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea."); *see also Snyder v. Phelps*, 562 U.S. 443, 461 (2011) (holding that the picketing of soldiers' funerals was protected speech, the Court noted 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"). Courts' interpretations of the First Amendment's guarantee of "the freedom of speech" provide guidance as to what Cornell's institutional promise of that freedom means to its students.

[11] *See, e.g.*, *R.A.V. v. City of St. Paul*, 505 U.S. 377, 393 (1992) (striking down an ordinance that prohibited placing on any property symbols that "arouse[] anger, alarm or resentment in others on the basis of race, color, creed, religion or gender"); *see also Texas v. Johnson*, 491 U.S. 397, 414 (1989) (burning the American flag was protected under the "bedrock principle" that the authorities "may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable").

as "hateful" or demeaning "on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground."[12]

Furthermore, Franco's comments simply do not meet the stringent legal definition of actionable harassment as required by the First Amendment. In the higher education context, institutions may punish speech as hostile environment harassment only when it is (1) unwelcome, (2) discriminatory on the basis of gender or another protected class, and (3) "so severe, pervasive, and objectively offensive that it can be said to deprive the victim[] of access to the educational opportunities or benefits provided by the school."[13] Sanctions on speech that do not meet this standard violate students' free speech rights.

Even assuming *arguendo* that Franco's comment qualifies as objectively offensive, the direct recipient of his one-off speech was not a Cornell student, so it simply cannot be said to be pervasive or to have deprived a reasonable person from receiving his or her education.[14] Furthermore, Franco's speech did not deprive a Cornell student of an educational benefit based on a protected class; in fact, it was just the opposite, as Franco used his statement to forego the benefit of employment. Thus, Franco's statement cannot constitute punishable discrimination.

Even if Cornell's investigation does not ultimately end in punishment for Franco, the mere process of investigating Franco for his expression constitutes adverse action that would chill the speech of students of ordinary firmness from future expressive activities.[15] Cornell may not investigate Franco or threaten to impose any official disciplinary action for speech protected by university policy.

To be sure, students such as Franco are not shielded from the consequences of their expression—including criticism by students, faculty, or the broader community. And here, it appears he has received widespread public criticism.[16] Such criticism constitutes "more speech," the remedy free speech principles anticipate in eschewing censorship.[17] Indeed, that is what Cornell's own Core Values call for its students to engage in: "the corollary freedom to engage in reasoned opposition to messages to which one objects."[18]

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[12] *Matal v. Tam*, 582 U.S. 218, 246 (2017).

[13] *See Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 650 (1999).

[14] To deprive a student of educational opportunities or benefits, the speech needs to create a concrete, negative effect. *See Davis*, 526 U.S. at 654. Examples of such negative effects include a change of study habits, school transfer, or a drop in grades. *Fennell v. Marion Indep. Sch. Dist.*, 804 F.3d 398, 410 (5th Cir. 2015).

[15] *Mendocino*, 192 F.3d at 1300.

[16] "Franco learned about [Einhorn's] X post on Monday morning and wrote that he began facing doxxing and intimidation, which included 'digging up personal information, harassing via email and phone employers, and receiving threats,' according to a statement from Franco to The Sun." Chambala, *supra* note 2.

[17] *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring).

[18] *Cornell University Core Values*, *supra* note 8.

We request a substantive response to this letter no later than the close of business June 25, 2026, confirming Cornell will withdraw its report to OCR, refrain from punishing Franco, and publicly commit to upholding all its students' free speech rights.

Sincerely,

Charlotte Arneson
Program Officer, Campus Rights Advocacy

Cc: Cornell Office of Civil Rights
Katie King, AVP, Cornell Office of Civil Rights