



FIRE

Foundation for Individual
Rights and Expression

July 27, 2023

Daniel W. Park
Office of the Chancellor
University of California, San Diego
9500 Gilman Drive #0005
5998 Alcalá Park
La Jolla, California 92093-0005

Sent via U.S. Mail and Electronic Mail (dpark@ucsd.edu)

Dear Mr. Park:

FIRE appreciates your response to our July 6 letter detailing our concerns with UC San Diego's handling of a disruption at a campus alumni awards ceremony in May. We also appreciate your stated commitment to supporting the right "to engage in lawful protest activities." We remain concerned, however, that UC San Diego's handling of this disruption risks significantly chilling campus expression and has violated students' due process rights.

Your response to our letter suggests charges against students may be dismissed "at any time," but in public statements UC San Diego said the disciplinary process would allow students to "tell their side of the story,"¹ leading a reasonable student to believe charges can be dismissed only *after* a formal investigation. UC San Diego's effective admission that it knowingly charged students without probable cause—some of whom were not even present at the protest—for purposes of forcing students to prove their innocence, is contrary to not only basic tenets of due process, but UC San Diego's own policies.²

¹ Paul Sission, *Dozens of UCSD graduate students face possible discipline after May 5 protest*, L.A. TIMES, June 22, 2023, <https://www.latimes.com/california/story/2023-06-22/59-ucsd-grad-students-face-possible-expulsion-after-may-5-protest>.

² *Policies Applying to Campus Activities, Organizations and Students (PACAOS)*, UNIV. OF CAL. SAN DIEGO, <https://policy.ucop.edu/doc/2710530/PACAOS-100> ("Procedural due process is basic to the proper enforcement of University policies and campus regulations. Chancellors shall establish and publish campus regulations providing for the handling of student conduct cases in accordance with basic standards of procedural due process."). A presumption of innocence is a bedrock principle of any fair system of adjudication and is constitutionally mandated in all criminal and civil cases. *See In re Winship*, 397 U.S. 358, 361 (1970) (holding that the prosecution must prove every element of the crime for the court to find guilt); *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56 (2005); *see also* François Quintard-Morénas, *The Presumption of Innocence in the French and Anglo-American Legal Traditions*, 58 AM. J. COMP. L. 107, 110 (2010) ("[A]n elementary principle of justice requires that plaintiffs prove their allegations and that the accused be

While your response invokes “federal privacy laws” to avoid commenting on individual student disciplinary cases, FIRE is not concerned with any particular student’s disciplinary record subject to those laws—rather, we are concerned with whether UC San Diego is meeting its legal responsibilities on the whole in responding to this event.

Those responsibilities include providing due process, as noted, as well as protecting students’ expressive rights on campus. For example, the university must prevent significant disruptions to expressive events, whether by invited speakers or students protesting them, as failure in either regard effectively endorses an unconstitutional “heckler’s veto.”³ By publicly announcing it is pulling students into formal disciplinary proceedings wholesale, without first determining whether they were even *in attendance* at the protest, UC San Diego is chilling student speech.

That UC San Diego is doubling down on its clear error is deeply concerning. Accordingly, we request a substantive response to this letter no later than close of business on Thursday, August 10, confirming UC San Diego will reevaluate any charges against student protesters in line with the university’s binding obligations.

Sincerely,



Graham Piro
Program Officer, Campus Rights Advocacy

Cc: Jason Thibodeaux, Ed.D., Dean of Student Affairs

considered innocent in the interval between accusation and judgment.”); JOHN SASSOON, ANCIENT LAWS AND MODERN PROBLEMS: THE BALANCE BETWEEN JUSTICE AND A LEGAL SYSTEM 42 (2001) (“[T]he burden of proof rested in the third millennium BC where it would rest today—with the accuser.”).

³ See, e.g., Zach Greenberg, *Rejecting the ‘heckler’s veto,’* FIRE, June 14, 2017, <https://www.thefire.org/news/rejecting-hecklers-veto>.