



May 14, 2021

Dr. JoAnna Schilling
Office of the President
Cypress College
9200 Valley View Street
Cypress, California 90630

URGENT

Sent via U.S. Mail and Electronic Mail (jschilling@cypresscollege.edu)

Dear President Schilling:

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.

FIRE is concerned by Cypress College's decision to force professor Faryha Salim to take a leave of absence after a viral video of Salim—engaged in a pedagogically relevant classroom discussion with a student—yielded vociferous public criticism. While others may have been offended by Salim's remarks, Salim's speech lies clearly within the First Amendment's protection of freedom of expression and academic freedom.

I. A Recording of Salim's Class Discussion Goes Viral, Drawing Criticism and Anger

The following is our understanding of the pertinent facts. We appreciate that you may have additional information to offer and invite you to share it with us. To these ends, please find enclosed an executed privacy waiver authorizing you to share information about this matter.

Faryha Salim is an adjunct professor at Cypress College who taught "COMM 100C – Human Communication." Salim started as an adjunct professor at Cypress College in Spring 2021, and was scheduled to teach a class this summer.¹

¹ Email from Salim to Sharon Cox, Div. Office Manager, Language Arts, Cypress Coll. (Feb. 17, 2021, 10:04 AM) (on file with author).

Human Communication teaches “interpersonal and public communication” and “focuses on message organization, development of thought processes, support of ideas and evidence, criticism, evaluation, and delivery.”² Salim teaches the course online due to the pandemic.

On April 28, 2021, four students in the class presented their “persuasive assignment” through Zoom. The assignment required students to persuade the audience about a topic of their choice for five to seven minutes.³ Braden Ellis, a student in the class, chose “cancel culture” as his persuasive presentation topic.

Ellis’s speech—lasting just shy of seven minutes—highlighted “non-hateful things” that had been cancelled over the last two years, including Paw Patrol, The Muppets, Cream of Wheat, Mr. Potato Head, and the television show Cops. After the speech, Salim opened the discussion to a question-and-answer session, which lasted about 11 minutes. Salim says the question-and-answer session is meant to teach students about how to think critically and handle “monopolizers,” or critics, when making arguments. Salim then asked Ellis about his concern related to police, stating that the reason we have police departments “stems from people in the South wanting to capture runaway slaves.”⁴

Another student argued that police shouldn’t be on kids shows or seen as heroes.⁵ Ellis responded that he believes “cops are heroes,” to which Salim questioned, “All of them?”⁶ Salim and Ellis debated for almost three minutes, disagreeing with each other about whether police officers are heroes and how they should be seen in society.⁷

On April 29, Ellis shared a recording of the final three minutes of the question-and-answer period from Salim’s April 28 class with Chrissy Clark, a staff writer with *The Daily Wire*,⁸ who published the video.⁹ The video received substantial media coverage and public criticism—typically criticizing Salim’s opinions about police—including a condemnation by the National Fraternal Order of Police.¹⁰ Ellis refused to identify Salim in response to media inquiries and

² Syllabus, COMM 100 C-010: Human Communication, CYPRESS COLL. (last visited May 11, 2021) (on file with author).

³ Persuasive Assignment Details, CYPRESS COLL. (last visited May 11, 2021) (on file with author).

⁴ Chrissy Clark, *Cypress College Prof Berates Student For Pro-Police Views*, YOUTUBE (Apr. 29, 2021), <https://www.youtube.com/watch?v=ex2gl3VvXfQ>.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Chrissy Clark, THE DAILY WIRE (last visited May 11, 2021), <https://www.dailywire.com/author/chrissy-clark>.

⁹ *Supra* note 4; Chrissy Clark, *WATCH: Professor Berates Student For Calling Police ‘Heroes’*, THE DAILY WIRE (Apr. 29, 2021), <https://www.dailywire.com/news/watch-professor-berates-student-for-calling-police-heroes>.

¹⁰ *See, e.g.*, Jordan Lancaster, *Professor Can Barely Hide Her Disdain When Student Calls Police ‘Heroes’*, DAILY CALLER (Apr. 29, 2021), <https://dailycaller.com/2021/04/29/cypress-college-professor-student-police-heroes>; *Larry Kudlow on professor’s ‘absolutely nutty’ scolding of student who defended police officers*, FOX NEWS (Apr. 30, 2021), <https://www.foxnews.com/media/professor-scolds-student-police-heroes-kudlow>; Paul Sacca, *VIDEO: Woke professor becomes combative when student says police officers are ‘heroes’*, THE BLAZE (Apr. 30, 2021), <https://www.theblaze.com/news/professor-berates-student-police-heroes>; National Fraternal Order of Police (@GLFOP), TWITTER (May 1, 2021, 7:57 AM), <https://twitter.com/GLFOP/status/1388507948926836736>.

said he disagreed with calls for Salim to be fired, pointing out that while Salim disagreed with his “argument for police” and Salim’s approach to discussion could be “a little rude,” Salim did not discriminate between students with conservative or liberal views.¹¹

On April 29, Eldon Young, the Dean of Language Arts at Cypress College, called Salim and left a voicemail saying that there is an “issue with one of your students which is kind of blowing up on social media right now.”¹² When Salim called Young back, Young said he was in a meeting with you and Marc Posner, Cypress College’s Director of Campus Communications. You told Salim not to “change what you are doing in the classroom.” Young added that students should think critically and professors should challenge their ideas.

On April 30, Salim was identified by “Chris c” in a comment on the YouTube video Chrissy Clark had posted, stating, “Is that Adjunct professor” [sic] Faryha Salim?”¹³ Salim then spoke with you by phone. Salim wanted to continue teaching classes, but you stated you had concerns about the continued public discussion of the video, and that another professor would take over the class for the rest of the semester. You told Salim that the decision to remove Salim from the class was not disciplinary. When Salim asked about summer classes, you said you would have to circle back on that point.

That same day, the College issued the following statement:

Cypress College takes great pride in fostering a learning environment for students where ideas and opinions are exchanged as a vital piece of the educational journey. Our community fully embraces this culture; students often defend one another’s rights to express themselves freely, even when opinions differ. Any efforts to suppress free and respectful expression on our campus will not be tolerated.

The adjunct professor will be taking a leave of absence for the duration of her [sic] assignment at Cypress College. This was her [sic] first course at Cypress and she [sic] had previously indicated her [sic] intention to not return in the fall.

¹¹ Eric Lucas, *Cypress College instructor on leave after interrupting, objecting to student’s pro-police argument*, ORANGE CTY. REG. (May 2, 2021), <https://www.oregister.com/2021/05/02/cypress-college-instructor-on-leave-after-interrupting-objecting-to-students-pro-police-argument>.

¹² Voicemail from Young to Salim (Apr. 29, 2021, 4:01 PM) (on file with author).

¹³ Comment from Chris c, YOUTUBE (Apr. 30, 2021), *available at* <https://www.youtube.com/watch?v=ex2gl3VvXfQ>.

We are reviewing the full recording of the exchange between the adjunct professor and the student and will address it fully in the coming days.¹⁴

On May 2, Salim’s access to Canvas was revoked without notice.¹⁵

The next day, Salim received a letter from Irma Ramos, North Orange County Community College District Vice Chancellor of Human Resources, stating, in pertinent part:

As a result of a video clip being posted online from one of your recent classes, Cypress College has received extensive negative communications and we understand you have been receiving threatening messages. The totality of the circumstances provides the College and the District with serious concern for your safety and well-being. The purpose of this letter is to confirm that we have placed you on paid administrative leave, effective April 30, 2021, and continuing through the end of the semester to address this safety concern. Please be assured this is not a disciplinary measure.¹⁶

The United Faculty union, which represents professors in the North Orange County Community College District, released a letter on May 3 “stand[ing] in solidarity with our faculty in protecting their academic freedom.”¹⁷ The union criticized Cypress College for not supporting faculty enough.

Cypress College closed campus on May 3 because of a “threatening email” received by an employee.¹⁸ Salim is not aware of the specific nature or content of these threats.¹⁹

On May 4, you sent an email to Salim stating that Salim has “not been disciplined” and “will be paid” for the rest of the semester.²⁰ You also said that Salim and Young “mutually agreed” that Salim will not teach a course in the summer.²¹ Salim says there was no such agreement.

¹⁴ Marc S. Posner, Campus Statement Regarding Video in the News, CYPRESS COLL. (Apr. 30, 2021), <https://www.cypresscollege.edu/2021/04/30/campus-statement>. Salim uses they/them pronouns.

¹⁵ Email from Salim to Young (May 2, 2021, 7:31 AM) (on file with author).

¹⁶ Letter from Ramos to Salim (May 3, 2021) (on file with author).

¹⁷ Statement by Christie Diep, United Faculty President, et. al. (May 3, 2021), *available at* <https://wpdash.medianewsgroup.com/wp-content/uploads/2021/05/United-Faculty-Statement-of-Support-2.pdf>.

¹⁸ Email from Schilling to Cypress College Faculty (May 3, 2021, 1:30 PM) (on file with author). Please find enclosed a request pursuant to the California Public Records Act seeking a copy of this email.

¹⁹ Email from Salim to Conza (May 10, 2021, 2:06 PM) (on file with author).

²⁰ Email from Schilling to Salim (May 4, 2021, 7:04 AM) (on file with author).

²¹ *Id.*

After receiving your May 4 email, Salim sent a letter detailing the events to a number of faculty at Cypress College, copying you and Young.²² In the letter, Salim clarified that Ellis was given time to express his viewpoint and that the video that was published online was “the tail end of a question-and-answer session taken out of context and distorted.”²³ Salim said you “advised me not to speak up.”²⁴ In the letter, Salim addresses “the District,” stating, “if academic freedom only belongs to one group, let me know.”²⁵

On May 7, Cypress College updated its public statement regarding this situation, stating that the “decision to remove [Salim] from the classroom was done to protect her [sic] safety, maintain her [sic] confidentiality, and mitigate attacks from those who sought to threaten her [sic] as well as the students in her [sic] class.”²⁶ The statement also urged that the college “has supported and will continue to support the academic freedoms we know are essential in an institution of higher learning.”²⁷

After Salim showed interest in teaching the previously scheduled summer course, Ramos sent a letter on May 13 stating that Salim had two choices: The College could “reinstate the class for [Salim] to teach” or “compensate [Salim] for the loss of the class if do you [sic] not feel safe teaching.”²⁸ Ramos averred that the “College and District administration continue to have sincere concerns about whether your teaching this summer, so soon after this negative national attention, would expose you to further personal and professional attacks.”²⁹ These concerns included students enrolling in Salim’s course to attack Salim and interfere with class discussions as well as students enrolling in the course to collect information on or discredit Salim.³⁰

II. Salim’s Suspension Violates the First Amendment

Academic freedom at its core requires freedom to discuss in the classroom subjects and viewpoints to which some outside the classroom—or even in it—might object. These exchanges can sometimes appear tense. While we understand that Cypress College faces challenges in responding to vociferous public criticism, the response chosen by the College—suspending a professor, ostensibly for their own safety—incites a heckler’s veto, allowing those outside of the classroom to dictate who may speak, and what they may say, by issuing threats or hostile responses.

²² Email from Salim to Schilling, et al. (May 4, 2021, 7:07 PM), *available at* <https://www.facebook.com/photo?fbid=10157628909331046&set=a.10150679438941046>.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Supra* note 15.

²⁷ *Id.*

²⁸ Letter from Ramos to Salim (May 13, 2021) (on file with author).

²⁹ *Id.*

³⁰ *Id.*

A. *The First Amendment Protects Salim’s Discussion at Cypress College, a Public Institution*

It has long been settled law that the First Amendment is binding on public colleges like Cypress College.³¹ The First Amendment protects both student and faculty expression, including faculty members’ academic freedom, which is of “special concern to the First Amendment,” as “[o]ur Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned.”³² The argument that teachers have no First Amendment rights when teaching, or that the government can censor teacher speech without restriction” is “totally unpersuasive.”³³ The First Amendment therefore protects faculty members’ “speech related to scholarship or teaching,”³⁴ including in-class discussions which are “germane to the classroom subject matter[.]”³⁵

While others objected to Salim’s viewpoint, or the content or tenor of the discussion between Salim and Ellis, we do not understand there to be any doubt that the discussion was relevant to the class. The assignment—which required students to persuade others through a presentation and responses to questions and answers—allowed students to select any topic they preferred. Ellis selected “cancel culture” and made an argument about the public debate over policing. Salim’s questions occurred during the question-and-answer sessions—not as interruptions of his speech—as an experiential lesson in answering difficult questions after a presentation. Acting as an inquisitive and skeptical interlocutor is a traditional function of faculty members.

B. *Academic Freedom Protects Discussions or Viewpoints that Offend Others*

That others found the viewpoints or content offensive does not modify its protected status, as First Amendment principles do not waver where some, many, or most people find lectures, materials, or remarks offensive. The principle of freedom of speech does not exist to protect only non-controversial expression. Rather, it exists precisely to protect speech that some or even most members of a community may find controversial or offensive. Speech cannot be restricted simply because it offends others, on or off campus.³⁶

This is particularly so on the campus of a public college. For example, in holding that a student newspaper’s political cartoon depicting the Statue of Liberty and Goddess of Justice being raped by police officers was protected speech, the Supreme Court explained that “the mere dissemination of ideas—no matter how offensive to good taste—on a state university campus

³¹ *Healy v. James*, 408 U.S. 169, 180 (1972).

³² *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967).

³³ *Hardy v. Jefferson Cmty. Coll.*, 260 F.3d 671, 680 (6th Cir. 2001).

³⁴ *Demers v. Austin*, 746 F.3d 402, 406 (9th Cir. 2014).

³⁵ *Hardy*, 260 F.3d at 683.

³⁶ *See, e.g., Texas v. Johnson*, 491 U.S. 397, 414 (1989) (“If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”).

may not be shut off in the name alone of ‘conventions of decency.’”³⁷ Indeed, in applying these principles, one federal appellate court denied qualified immunity to college administrators who terminated a Caucasian adjunct instructor who led a “classroom discussion examining the impact of such oppressive and disparaging words” as racial and sexist slurs, which the instructor and students uttered.³⁸ The court explained 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,” even if the language at issue was “highly offensive” to others.³⁹

C. Salim’s Suspension, Ostensibly Intended as a Safety Measure, Effectuates a Heckler’s Veto in Violation of the First Amendment

The First Amendment bars not only termination and non-renewal based on protected expression,⁴⁰ but also any “materially adverse employment actions that are reasonably likely to deter protected speech.”⁴¹ Salim’s suspension undoubtedly qualifies as an adverse employment action motivated by the protected speech.⁴²

While we appreciate that Cypress College received considerable hostile attention, its suspension of Salim is not an appropriate response to threats or public anger. Doing so effectuates a “heckler’s veto.” This pernicious form of censorship, in which those angered by expression seek to silence it through the threat or use of violence, incentivizes outsiders to issue *more* threats whenever they dislike a speaker’s views. Silencing a speaker in order to quell public outrage is fundamentally inconsistent with higher education and the First Amendment, which rejects efforts to cast a “pall of orthodoxy” over the classroom⁴³—whether by force of law or threat of force.

When public institutions are faced with the “balance between two important interests — free speech on one hand, and the [need to] maintain peace on the other,” the “scale is heavily weighted in favor of” freedom of speech.⁴⁴ Wherever there is speech that angers a great many people, there is almost certainly some faction likely to make threats, veiled or otherwise, concerning the offending speaker. As a result, there is almost always *some* security risk—however serious or trivial—that authorities could cite to justify measures to silence the speaker. Invocations of the need for security naturally arouse sympathy.⁴⁵ A “heckler’s veto

³⁷ *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 670 (1973).

³⁸ *Hardy*, 260 F.3d at 674 (cleaned up).

³⁹ *Id.* at 674–75.

⁴⁰ *Perry v. Sindermann*, 408 U.S. 593, 598 (1972).

⁴¹ *Thomas v. Cty. of Riverside*, 763 F.3d 1167, 1168 (9th Cir. 2014) (cleaned up).

⁴² *Konig v. Dal Cerro*, No. C-04-2210 MJJ, 2005 U.S. Dist. LEXIS 24560, 2005 WL 2649198, at *17 (N.D. Cal. Oct. 11, 2005), *aff’d sub nom. Konig v. State Bar of Cal.*, 256 F. App’x 900 (9th Cir. 2007) (decision to suspend an employee, although never implemented, was an adverse employment action for First Amendment purposes).

⁴³ *Keyishian v. Bd. of Regents of Univ. of State of N.Y.*, 385 U.S. 589, 603 (1967).

⁴⁴ *Bible Believers v. Wayne Cty., Mich.*, 805 F. 3d 228, 252 (6th Cir. 2015).

⁴⁵ *Id.* at 251-55.

effectuated by the [authorities] will nearly always be susceptible to being reimagined and repackaged as a means for protecting the public, or the speaker himself, from actual or impending harm.”⁴⁶

Accordingly, steps premised upon the need for security demand transparency. While institutions are not required to submit to risks of violence that cannot reasonably be mitigated, the removal of the speaker is permitted only as the “last resort” after making “bona fide efforts” to mitigate the risks.⁴⁷ The propriety of Cypress College’s removal of Salim turns on the actual risks faced by the college and the “bona fide efforts” undertaken to avoid this drastic step. If Cypress College is merely concerned about students disrupting Salim’s classes, the proper response is to remove the disruptive student, not the undisruptive professor who is doing their job.

Salim’s suspension does not meaningfully advance Cypress College’s security interests. Salim’s Human Communication course is taught online, so neither instructor nor students would have been present on campus. Salim is no more or less safe continuing to teach than not continuing to teach the class. Suspending Salim because angry members of the public misidentified *other* members of the faculty as the video’s offending speaker would—under the College’s flawed reasoning—justify *their* suspension as a safety measure, not *Salim’s* suspension.

Because security risks demand transparency if they are to justify any adverse action against a speaker who angers others, we call on Cypress College to detail the precise nature of the security risks that it claims justify its suspension of Salim.

III. Cypress College Must Restore Salim’s Academic Freedom and Make Clear Publicly That Salim Is Permitted to Return to the Classroom

Salim’s exchange with Ellis regarding his presentation is clearly protected by freedom of expression and academic freedom. Cypress College’s decision to impose a mandatory leave of absence not only violates Salim’s rights, but will cast a chilling effect on other faculty at Cypress College. The College’s public-facing statements appear designed to suggest to the public that Salim’s suspension is punitive, incentivizing similar heckler’s vetoes in the future and sending the implicit message to other faculty that Cypress College is willing to sacrifice their rights in order to appease an angry public.

While we appreciate that the College is taking steps towards restoring Salim’s role, it is important that the College be transparent in explaining how its actions are justified by security interests, and likewise important that the College’s public messaging not imply that faculty members’ protected expression will be subject to investigation or punishment. The

⁴⁶ *Id.* at 255.

⁴⁷ *Id.* at 253, 255.

chilling effect occasioned by the college's response is an unacceptable outcome at a public institution of higher education.

Given the urgent nature of this matter, we request receipt of a response to this letter no later than the close of business on May 21, 2021, confirming that Cypress College will restore Salim's status as an adjunct professor, publicly clarify that Salim's removal from the classroom was not punitive, and transparently ascertain whether or how its actions were justified by interests in security or safety.

Sincerely,



Sabrina Conza
Program Analyst, Individual Rights Defense Program

Cc: Eldon Young, Dean of Language Arts, Cypress College
Irma Ramos, Vice Chancellor of Human Resources, North Orange County Community
College District

Encl.

Authorization and Waiver for Release of Personal Information

I, Faryha Salim, do hereby authorize Cypress College (the "Institution") to release to the Foundation for Individual Rights in Education ("FIRE") any and all information concerning my employment, status, or relationship with the Institution. This authorization and waiver extends to the release of any personnel files, investigative records, disciplinary history, or other records that would otherwise be protected by privacy rights of any source, including those arising from contract, statute, or regulation. I also authorize the Institution to engage FIRE and its staff members in a full discussion of all information pertaining to my employment and performance, and, in so doing, to disclose to FIRE all relevant information and documentation.

This authorization and waiver does not extend to or authorize the release of any information or records to any entity or person other than the Foundation for Individual Rights in Education, and I understand that I may withdraw this authorization in writing at any time. I further understand that my execution of this waiver and release does not, on its own or in connection with any other communications or activity, serve to establish an attorney-client relationship with FIRE.

If the Institution is located in the State of California, I request access to and a copy of all documents defined as my "personnel records" under Cal. Ed. Code § 87031 or Cal. Lab. Code § 1198.5, including without limitation: (1) a complete copy of any files kept in my name in any and all Institution or District offices; (2) any emails, notes, memoranda, video, audio, or other material maintained by any school employee in which I am personally identifiable; and (3) any and all phone, medical or other records in which I am personally identifiable.

This authorization and waiver does not extend to or authorize the release of any information or records to any entity or person other than the Foundation for Individual Rights in Education, and I understand that I may withdraw this authorization in writing at any time. I further understand that my execution of this waiver and release does not, on its own or in connection with any other communications or activity, serve to establish an attorney-client relationship with FIRE.

I also hereby consent that FIRE may disclose information obtained as a result of this authorization and waiver, but only the information that I authorize.



AF85D28C6F9644C...
Signature

5/13/2021

Date



Sabrina Conza <sabrina.conza@thefire.org>

California Public Records Act from FIRE

Sabrina Conza <sabrina.conza@thefire.org>

Fri, May 14, 2021 at 3:40 PM

To: publicaffairs@nocccd.edu

To whom it may concern:

This is a request for the following records pursuant to the California Public Records Act (Gov. Code § 6250 *et seq.*).

Records Requested:

Any records, including emails, phone calls, or other documents, that concern or form the basis for Cypress College's decision to close its campus on May 3, 2021.

Any correspondence, including emails, phone calls, text messages, and voicemails, between President JoAnna Schilling and Director of Campus Communications Marc Posner regarding the decision to close Cypress College's campus on May 3, 2021.

Any documents, including emails, phone calls, or reports, reflecting any communication with any law enforcement agency concerning any threats or other public response to the video of Faryha Salim.

Any documents, including emails or other electronic messages, sent to the students in any class taught by Salim concerning the video, public response, or threats.

Fee waiver request: This request is made on behalf of the Foundation for Individual Rights in Education, a nonprofit and nonpartisan organization that works to preserve civil liberties on college campuses. We request a waiver of any fees or costs associated with this request.

This request concerns a matter of public interest. The public has an interest in understanding if there are threats to the safety of individuals on a public college campus. The records are not sought for a commercial or personal interest, but rather for the purpose of providing the public with information concerning civil liberties in higher education.

Request for expedited processing: The records pertain to a matter of public importance and current debate. Providing expedited production of the records will facilitate the public understanding of these matters before they are fully resolved. Any undue delay in production will undermine the purpose of the public records laws, which serve to allow public input and oversight of government affairs.

Please provide a determination, if not responsive records, within ten days, as required by Cal. Gov. Code § 6253(c). If providing the records will take longer, please cite the extenuating circumstances and let me know when I should expect the requested records.

Request for Privilege Log: If any otherwise responsive documents are withheld on the basis that they are privileged or fall within a statutory exemption, please provide a privilege log setting forth (1) the subject matter of the document; (2) the person(s) who sent and received the document; (3) the date the document was created or sent; and (4) the basis on which the document is withheld.

Please note that this request does not seek a search of faculty or student email accounts or records. These requests should in no way be construed to include a review or search of email accounts, websites, or other forms of data or document retention which are controlled by students, alumni, or faculty members, nor by governmental or advisory bodies controlled by the same. Any search should be limited to documents held

by the administration and/or its staff members, including records created or maintained by persons acting in the capacity of administrators or staff members.

If I can be of assistance in interpreting or narrowing this request, please don't hesitate to ask.

Best,

Sabrina Conza

Program Analyst, Individual Rights Defense Program

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