



FIRE

Foundation for Individual
Rights and Expression

March 2, 2023

Chief Jason C. Thody
Hartford Police Department
Hartford Public Safety Complex
253 High Street
Hartford, Connecticut 06103

Sent via U.S. Mail and Electronic Mail (PoliceChief@hartford.gov)

Dear Chief Thody:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is concerned by a Hartford Police Department officer's statement that the department will arrest any person who uses language that could be perceived as a threat, regardless of intent and context. FIRE understands that Hartford Police have a difficult and vitally important job of protecting public safety, and thus must investigate and take seriously reports of allegedly threatening statements. However, the Hartford Police Department and the Hartford State's Attorney must ensure their policies and practices comply with the First Amendment. The First Amendment does not protect true threats, but it does protect jokes, hyperbole, and other statements that do not communicate a serious intent to commit an act of unlawful violence against a particular individual or group of individuals.

On February 5, Hartford Police arrested University of Hartford student Tenuun Enkhbat for making allegedly threatening posts on the anonymous social media app Yik Yak. Enkhbat was charged with threatening in the first degree.² Police did not find any weapons on campus, and Enkhbat told them he made the posts as a joke, imitating how he had heard other students talk. After the arrest, Sgt. Chris Mastroianni made the following comments:

¹ For more than 20 years, FIRE has defended freedom of expression, conscience, and religion, and other individual rights on America's college campuses. You can learn more about our recently expanded mission and activities at thefire.org.

² Hartford Police Dep't, Incident Report, Case Number 23-003439 (on file with author); Chloe Mayer, *College Student Banned From Campus Says Shooting Threats Were Just a Joke*, NEWSWEEK (Feb. 7, 2023), <https://www.newsweek.com/student-joke-prank-shooting-university-hartford-arrest-banned-1779483>. The factual narrative in this letter represents our understanding of the pertinent facts based on the Hartford Police incident report and public reporting, but we appreciate that you may have additional information to offer and invite you to share it with us.

So the message here is we were able to vet these threats pretty quickly and kinda come to the conclusion that they weren't imminent. And there was some joking nature involved. However, we're going to treat them all the same. It's not going to be tolerated and I think the school would say the same thing is there's zero tolerance for any language like that.³

Sgt. Mastroianni said it did not matter “whether you think you're joking around or not; if there's certain language, certain dialogue, that occurs, we're going to take it seriously and we're going to arrest you for that.”⁴

Sgt. Mastroianni is mistaken. The First Amendment requires the government to distinguish between true threats and statements that do not communicate a serious intent to perpetrate violence against a specific individual or group.

True threats are one of the few, narrowly defined categories of speech that fall outside the First Amendment's protection. As the Supreme Court has explained, a “true threat” is a statement through which “the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.”⁵ True threats include intimidation, defined as speech that “directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death.”⁶ True threats do not include speech which amounts to a joke or rhetorical hyperbole.⁷

The Hartford Police may arrest individuals who issue true threats, and the Hartford State's Attorney has authority to pursue charges in those cases. But Hartford Police and the State's Attorney must not proceed as if true threats and jokes are the same thing, nor may they arrest or prosecute individuals for “certain language, certain dialogue” regardless of intent and context. Simply put, purported “threats” that, as Sgt. Mastroianni put it, may be “pretty quickly” dismissed as not imminent and of a “joking nature” cannot lawfully be treated “all the same” as true threats and subjected to “zero tolerance” by law enforcement. The First Amendment prohibits any such approach.⁸

FIRE recognizes that the Hartford Police have a duty to investigate reports of allegedly threatening statements. However, if during an investigation the department discovers no true threat was made, it should close the case. The accused must not be subject to arrest or prosecution on account of protected speech.

³ Jay Kenney et al., *Social media posts put UHart campus on alert; student banned*, WFSB (Feb. 6, 2023), <https://www.wfsb.com/2023/02/06/investigation-underway-university-hartford-campus>.

⁴ Mayer, *supra* note 2.

⁵ *Virginia v. Black*, 538 U.S. 343, 359 (2003).

⁶ *Id.* at 360.

⁷ *See, e.g., Watts v. United States*, 394 U.S. 705, 708 (1969) (man's statement, after being drafted to serve in the Vietnam War—“If they ever make me carry a rifle the first man I want to get in my sights is L. B. J.”—was rhetorical hyperbole protected by the First Amendment, not a true threat to kill the president).

⁸ *See, e.g., Wood v. Eubanks*, 25 F.4th 414 (6th Cir. 2022) (disorderly conduct arrest based on defendant's protected speech violated the First Amendment and thus lacked probable cause).

FIRE calls on the Hartford Police Department and the Hartford State's Attorney to confirm they will not arrest or prosecute any individual for making threats absent evidence that the individual communicated a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. We respectfully request a substantive response to this letter no later than close of business on March 16, 2023.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Terr', with a long horizontal flourish extending to the right.

Aaron Terr
Director of Public Advocacy

Cc: Sharmese L. Walcott, State's Attorney for the Judicial District of Hartford
Sergeant Chris Mastroianni, Hartford Police Department