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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

YITZCHOK FRANKEL *et al.*,

Plaintiffs,

v.

REGENTS OF THE UNIVERSITY OF
CALIFORNIA *et al.*,

Defendants.

Case No. 2:24-cv-04702-MCS-PD

**ORDER RE: MOTION FOR
PRELIMINARY INJUNCTION (ECF
NO. 48)**

1 In the year 2024, in the United States of America, in the State of California, in
2 the City of Los Angeles, Jewish students were excluded from portions of the UCLA
3 campus because they refused to denounce their faith. This fact is so unimaginable and
4 so abhorrent to our constitutional guarantee of religious freedom that it bears repeating,
5 *Jewish students were excluded from portions of the UCLA campus because they refused*
6 *to denounce their faith.* UCLA does not dispute this. Instead, UCLA claims that it has
7 no responsibility to protect the religious freedom of its Jewish students because the
8 exclusion was engineered by third-party protesters. But under constitutional principles,
9 UCLA may not allow services to some students when UCLA knows that other students
10 are excluded on religious grounds, regardless of who engineered the exclusion.

11 In response to the exclusion of Jewish students from portions of UCLA’s campus,
12 Plaintiffs Yitzchok Frankel, Joshua Ghayoum, and Eden Shemuelian moved for a
13 preliminary injunction against Defendants Regents of the University of California,
14 Michael V. Drake, Gene D. Block, Darnell Hunt, Michael Beck, Monroe Gorden, Jr.,
15 and Rick Braziel (hereinafter, “UCLA”). (Mot., ECF No. 48-1.) UCLA opposed,
16 (Opp’n, ECF No. 62), and Plaintiffs filed a reply, (Reply, ECF No. 64). Amici Agudath
17 Israel of America, Union of Orthodox Jewish Congregations of America, and Faculty
18 for Justice in Palestine at UCLA filed amicus briefs. (First Amicus Br., ECF No. 76;
19 Second Amicus Br., ECF No. 88.) The Court heard oral argument on July 29, 2024.
20 (Mins., ECF No. 77.) At the hearing, the Court ordered the parties to meet and confer
21 on the terms of a proposed preliminary injunction that would protect Plaintiffs’ rights
22 while allowing UCLA the flexibility needed to administer the UCLA campus. (*Id.*)
23 Plaintiffs and UCLA filed separate responses to the order, but were unable to make
24 meaningful ground on a compromise position. (*See* Pls.’ Resp., ECF No. 82; Defs.’
25 Resp., ECF No. 83.) The Court deems this matter appropriate for decision without
26 further oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. R. 7-15.

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1 **I. BACKGROUND¹**

2 At the outset, the Court notes that this case does not litigate the merits of the
3 armed conflict in Gaza or the merits of protest or counterprotest movements responding
4 thereto.² This case is narrowly focused on the materially undisputed factual allegations
5 presented to the Court in the complaint and motion papers.³

6 On April 25, 2024, a group of pro-Palestinian protesters occupied a portion of the
7 UCLA campus known as Royce Quad and established an encampment. (Beck Decl. ¶ 5,
8

9 ¹ Evidence in support of and in opposition to this motion includes the sworn declarations
10 of Plaintiffs Frankel, Ghayoum, and Rassbach; Defendants Beck, Braziel, and Gorden;
11 Plaintiffs’ counsel Eric Rassbach; defense counsel Matthew Cowan; and third party
12 Kamran Shamsa, as well as exhibits including various news articles, social media posts,
13 emails, and documents. At later stages of this case, some of this evidence may be
14 inadmissible for many reasons, including as hearsay. “A district court may, however,
15 consider hearsay in deciding whether to issue a preliminary injunction.” *Johnson v.*
16 *Couturier*, 572 F.3d 1067, 1083 (9th Cir. 2009) (citing *Republic of Phil. v. Marcos*, 862
17 F.2d 1355, 1363 (9th Cir. 1984)); *see also Flynt Distrib. Co. v. Harvey*, 734 F.2d 1389,
18 1394 (9th Cir. 1984) (“The urgency of obtaining a preliminary injunction necessitates
19 a prompt determination and makes it difficult to obtain affidavits from persons who
20 would be competent to testify at trial. The trial court may give even inadmissible
21 evidence some weight, when to do so serves the purpose of preventing irreparable harm
22 before trial.”). The Court exercises its discretion to consider evidence that might
23 otherwise be inadmissible in connection with the motion because Defendants do not
24 place the key facts upon which this Order relies in material dispute.

25 ² Nor is this case about the content or viewpoints contained in any protest or
26 counterprotest slogans or other expressive conduct, which are generally protected by
27 the First Amendment. *See Virginia v. Black*, 538 U.S. 343, 358 (2003) (“The hallmark
28 of the protection of free speech is to allow ‘free trade in ideas’—even ideas that the
overwhelming majority of people might find distasteful or discomfoting.” (quoting
Abrams v. United States, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting)); *see also*
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.”).

³ Amicus Faculty for Justice in Palestine at UCLA asserts several allegations in its brief
that, if true, could support claims for violations of the constitutional or civil rights of
pro-Palestinian activists. (Second Amicus Br. 7–12.) Those possible claims would be
better addressed in a separately filed action.

1 ECF No. 62-3; Shemuelian Decl. Ex. 15, ECF No. 48-23.) Royce Quad is a major
2 thoroughfare and gathering place and borders several campus buildings, including
3 Powell Library and Royce Hall. (Shemuelian Decl. ¶¶ 49–52, ECF No. 48-8; Ghayoum
4 Decl. ¶¶ 16–18, ECF No. 48-4.) The encampment was rimmed with plywood and metal
5 barriers. (Frankel Decl. ¶¶ 29, 34, ECF No. 48-2; Ghayoum Decl. ¶ 37.) Protesters
6 established checkpoints and required passersby to wear a specific wristband to cross
7 them. (*See* Ghayoum Decl. ¶¶ 39–41.) News reporting indicates that the encampment’s
8 entrances were guarded by protesters, and people who supported the existence of the
9 state of Israel were kept out of the encampment. (Rassbach Decl. Ex. 22, ECF No. 48-
10 59.)⁴ Protesters associated with the encampment “directly interfered with instruction by
11 blocking students’ pathways to classrooms.” (Shemuelian Decl. Ex. 19, ECF No. 48-
12 27.)

13 Plaintiffs are three Jewish students who assert they have a religious obligation to
14 support the Jewish state of Israel. (Frankel Decl. ¶¶ 11–13; Ghayoum Decl. ¶ 11;
15 Shemuelian Decl. ¶¶ 11, 128.) Prior to the protests, Plaintiff Frankel often made use of
16 Royce Quad. (Frankel Decl. ¶¶ 23–25.) After protesters erected the encampment,
17 Plaintiff Frankel stopped using the Royce Quad because he believed that he could not
18 traverse the encampment without disavowing Israel. (*Id.* ¶¶ 26, 38, 41.) He also saw
19 protesters attempt to erect an encampment at the UCLA School of Law’s Shapiro
20 courtyard on June 10, 2024. (*Id.* ¶ 45.) Similarly, Plaintiff Ghayoum was unable to
21 access Powell Library because he understood that traversing the encampment, which
22

23 ⁴ In its brief, Amicus Faculty for Justice in Palestine at UCLA disputes the facts
24 presented in the complaint and motion papers and asserts, *inter alia*, that no one “was
25 denied entrance to the Palestinian solidarity encampment based on their identity.”
26 (Second Amicus Br. 5.) This conclusory assertion is in tension with Plaintiffs’ record
27 evidence, which UCLA declined to refute. Further, Amicus’ assertion that no one was
28 excluded from the encampment based on identity does not grapple with an important
nuance—that Plaintiffs here assert that supporting the Jewish state of Israel is their
sincerely held religious belief.

1 blocked entrance to the library, carried a risk of violence. (Ghayoum Decl. ¶¶ 34–38.)
2 He also canceled plans to meet a friend at Ackerman Union after four protesters stopped
3 him while he walked toward Janss Steps and repeatedly asked him if he had a wristband.
4 (*Id.* ¶¶ 39–45.) Plaintiff Ghayoum also could not study at Powell Library because
5 protesters from the encampment blocked his access to the library. (*Id.* ¶ 48.) And
6 Plaintiff Shemuelian also decided not to traverse Royce Quad because of her knowledge
7 that she would have to disavow her religious beliefs to do so. (Shemuelian Decl. ¶¶ 111,
8 118–20, 128.) The encampment led UCLA to effectively make certain of its programs,
9 activities, and campus areas available to other students when UCLA knew that some
10 Jewish students, including Plaintiffs, were excluded based of their genuinely held
11 religious beliefs.

12 The encampment persisted for a week, until the early morning of May 2, when
13 UCLA directed the UCLA Police Department and outside law enforcement agencies to
14 enter and clear the encampment. (Shemuelian Decl. Ex. 19.)

15 Since UCLA dismantled the encampment, protesters have continued to attempt
16 to disrupt campus. For example, on May 6, protesters briefly occupied areas of the
17 campus. (Braziel Decl. ¶ 28, ECF No. 62-5.) And on May 23, protesters established a
18 new encampment, “erecting barricades, establishing fortifications and blocking access
19 to parts of the campus and buildings,” and “disrupting campus operations.” (Shemuelian
20 Decl. Ex. 25, ECF No. 48-33; Rassbach Decl. Ex. 20, ECF No. 48-57; *see* Braziel Decl.
21 ¶ 29.)

22 Most recently, on June 10, protesters “set up an unauthorized and unlawful
23 encampment with tents, canopies, wooden shields, and water-filled barriers” on
24 campus. (Rassbach Decl. Ex. 21, ECF No. 48-58 (emphasis removed); *see* Braziel Decl.
25 ¶ 30.) These protesters “restricted access to the general public” and “disrupted nearby
26 final exams.” (Rassbach Decl. Ex. 21. (emphasis removed).) Some students “miss[ed]
27 finals because they were blocked from entering classrooms,” and others were
28 “evacuated in the middle” of finals. (Shemuelian Decl. Ex. 27, ECF No. 48-35.)

1 Based on these facts and other allegations, Plaintiffs assert claims for violations
2 of their federal constitutional rights, including violation of the Equal Protection Clause,
3 the Free Speech Clause, and the Free Exercise Clause; claims for violations of their
4 federal civil rights, including violations of Title VI of the Civil Rights Act of 1964,
5 conspiracy to interfere with civil rights, and failure to prevent conspiracy; claims for
6 violations of their state constitutional rights, including violation of the California Equal
7 Protection Clause and the California Free Exercise Clause; and claims for violations of
8 their state civil rights, including violations of section 220 of the California Education
9 Code, the Ralph Civil Rights Act of 1976, and the Bane Civil Rights Act. (Compl.
10 ¶¶ 320–430, ECF No. 1.)

11 12 **II. STANDING**

13 UCLA raises a challenge to Plaintiffs’ constitutional standing to sue. (Opp’n 8–
14 12.) Since the challenge pertains to the Court’s jurisdiction, the Court addresses it first.
15 *See Shell Offshore Inc. v. Greenpeace, Inc.*, 864 F. Supp. 2d 839, 842 (D. Alaska 2012)
16 (“A district court may not grant a preliminary injunction if it lacks subject matter
17 jurisdiction over the claim before it.”), *aff’d*, 709 F.3d 1281 (9th Cir. 2013).

18 19 **A. Legal Standard**

20 At the preliminary injunction stage, a plaintiff “‘must make a clear showing of
21 each element of standing,’ proving (1) an injury in fact that is ‘concrete and
22 particularized’ and ‘actual or imminent’; (2) ‘a causal connection between the injury
23 and the conduct complained of’; and that (3) ‘the injury will likely be redressed by a
24 favorable decision.’” *Yazzie v. Hobbs*, 977 F.3d 964, 966 (9th Cir. 2020) (quoting
25 *Townley v. Miller*, 722 F.3d 1128, 1133 (9th Cir. 2013)). To have standing “for
26 injunctive relief . . . the threat of injury must be ‘actual and imminent, not conjectural
27 or hypothetical.’” *Davidson v. Kimberly-Clark Corp.*, 889 F.3d 956, 967 (9th Cir. 2018)
28 (quoting *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009)). In determining

1 standing to pursue injunctive relief, courts “presume the truth of [plaintiffs’]
2 allegations” and “construe all of the allegations in [plaintiffs’] favor.” *Id.* at 971.

3 UCLA’s challenge to Plaintiffs’ standing focuses on the first two elements. The
4 Court considers each in turn.

6 **B. Imminent Likelihood of Future Injury**

7 UCLA argues that Plaintiffs lack standing because they fail to allege an imminent
8 likelihood of future injury. (Opp’n 8–11.) But, “[i]t is well settled that evidence of past
9 instances of enforcement is important in a standing inquiry.” *LSO, Ltd. v. Stroh*, 205
10 F.3d 1146, 1155 (9th Cir. 2000) (citing *San Diego Gun Rights Comm. v. Reno*, 98 F.3d
11 1121, 1128 (9th Cir. 1996)); accord *American-Arab Anti-Discrimination Comm. v.*
12 *Thornburgh*, 970 F.2d 501, 507 (9th Cir. 1991)). While, “[p]ast wrongs are ‘insufficient
13 by themselves to grant standing,’ [they] are ‘evidence bearing on whether there is a real
14 and immediate threat of repeated injury.’” *Wright v. Serv. Emps. Int’l Union Loc. 503*,
15 48 F.4th 1112, 1118 (9th Cir. 2022) (quoting *Davidson*, 889 F.3d at 967). “When a
16 plaintiff’s standing is grounded entirely on the threat of repeated injury, a plaintiff must
17 show ‘a sufficient likelihood that [s]he will again be wronged in a similar way.’” *Id.* at
18 1119 (alteration in original) (quoting *City of Los Angeles v. Lyons*, 461 U.S. 95, 111
19 (1983)). “Past exposure to illegal conduct does not in itself show a present case or
20 controversy regarding injunctive relief . . . if unaccompanied by any continuing, present
21 adverse effects.” *Index Newspapers LLC v. U.S. Marshals Serv.*, 977 F.3d 817, 825 (9th
22 Cir. 2020) (ellipsis in original) (quoting *Lyons*, 461 U.S. at 102). “Courts have also
23 considered the Government’s failure to disavow” unconstitutional acts “as a factor in
24 favor of a finding of standing.” *LSO, Ltd.*, 205 F.3d at 1155 (citing *Babbitt v. United*
25 *Farm Workers Nat’l Union*, 442 U.S. 289, 302 (1979), *Bland v. Fessler*, 88 F.3d 729,
26 737 (9th Cir. 1996), and *American-Arab*, 970 F.2d at 508). When government action
27 “implicates First Amendment rights, the inquiry tilts dramatically toward a finding of
28 standing.” *Id.*

1 UCLA contends that its remedial actions following the Royce Quad encampment
2 make any “future injury speculative at best.” (Opp’n 8–9.) These actions include the
3 creation of a new Office of Campus Safety and the transfer of day-to-day responsibility
4 for campus safety to an Emergency Operations Center. (Braziel Decl. ¶¶ 12–16, 21,
5 ECF No. 62-5.) The changes, while commendable, do not minimize the risk that
6 Plaintiffs “will again be wronged” by their exclusion from UCLA’s ordinarily available
7 programs, activities, and campus areas based on their sincerely held religious beliefs
8 below “a sufficient likelihood.” *Wright*, 48 F.4th at 1119 (internal quotation marks
9 omitted). First, since UCLA’s changes, protesters have violated UCLA’s protest rules
10 at least three times: on May 6, May 23, and June 10. (Braziel Decl. ¶¶ 28–30.) While
11 these events may not have been as disruptive as the Royce Quad encampment,
12 according to a UCLA email, the June 10 events “disrupted final exams,” temporarily
13 blocked off multiple areas of campus, and persisted from 3:15 p.m. to the evening.
14 (Shemuelian Decl. ¶ 151 & Ex. 27.) Similarly, also according to UCLA emails, the May
15 6 and 23 events disrupted access to several campus areas. (*Id.* ¶¶ 145, 148 & Exs. 25–
16 26, ECF No. 48-33 to 34.) Further, any relative quiet on UCLA’s campus the past few
17 months, (Braziel Decl. ¶ 26), is belied by the facts that fewer people are on a university
18 campus during the summer and that the armed conflict in Gaza continues, Fed R. Evid.
19 201(b)(1). Finally, while UCLA’s focus on safety is compelling, UCLA has failed to
20 assuage the Plaintiffs’ concerns that some Jewish students may be excluded from
21 UCLA’s ordinarily available programs, activities, and campus areas based on their
22 sincerely held religious beliefs should exclusionary encampments return. In response to
23 these concerns raised at the hearing, UCLA did “not state[] affirmatively that” they
24 “will not” provide ordinarily available programs, activities, and campus areas to non-
25 Jewish students if protesters return and exclude Jewish students. *Bland*, 88 F.3d at 737.

26 It remains to be seen how effective UCLA’s policy changes will be with a full
27 campus. While the May and June protests do not appear to have resulted in the same
28 religious-belief-based exclusion as the prior encampment that gives rise to the

1 Plaintiffs’ free exercise concerns, the Court perceives an imminent risk that such
2 exclusion will return in the fall with students, staff, faculty, and non-UCLA community
3 members. As such, given that when government action “implicates First Amendment
4 rights, the inquiry tilts dramatically toward a finding of standing,” *LSO, Ltd.*, 205 F.3d
5 at 1155, the Court finds that Plaintiffs have sufficiently shown an imminent likelihood
6 of future injury for standing purposes.

7 8 **C. Causation**

9 UCLA also argues that Plaintiffs lack standing because “they have not pleaded
10 facts demonstrating that *UCLA* would be the *cause* of any future injury that they might
11 suffer, such that an injunction directed *at UCLA* would redress those alleged injuries.”
12 (Opp’n 11–12.) “To show causation, the plaintiff must demonstrate a ‘causal connection
13 between the injury and the conduct complained of—the injury has to be fairly traceable
14 to the challenged action of the defendant, and not the result of the independent action
15 of some third party not before the court.” *Salmon Spawning & Recovery All. v.*
16 *Gutierrez*, 545 F.3d 1220, 1227 (9th Cir. 2008) (quoting *Lujan v. Defenders of Wildlife*,
17 504 U.S. 555, 560–61 (1992)).

18 UCLA, however, misconstrues the Plaintiffs’ injuries. The injuries are not simply
19 the exclusion of Plaintiffs from certain of UCLA’s ordinarily available programs,
20 activities, and campus areas. The injuries result when Plaintiffs are excluded from
21 certain of UCLA’s ordinarily available programs, activities, and campus areas *and*
22 *UCLA still provides* those programs, activities, and campus areas to other students
23 knowing that Plaintiffs and students like them are excluded based on their religious
24 exercise. *See Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 458
25 (2017) (“The Free Exercise Clause ‘protect[s] religious observers against unequal
26 treatment’ and subjects to the strictest scrutiny laws that target the religious for ‘special
27 disabilities’ based on their ‘religious status.’” (alteration in original) (quoting *Church*
28 *of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533, 542 (1993)); *Carson*

1 *v. Makin*, 596 U.S. 767, 778 (2022) (“[W]e have repeatedly held that a State violates
2 the Free Exercise Clause when it excludes religious observers from otherwise available
3 public benefits.”). The complaint is replete with allegations that Plaintiffs and other
4 students were denied access to ordinarily available programs, activities, and campus
5 areas based on their sincerely held religious beliefs. (*See, e.g.*, Compl. ¶¶ 16, 113, 115,
6 118, 121–22, 124, 134, 203, 249, 255, 278, 287, 348.) Taking these allegations as true,
7 as the Court must at this stage, and given that when government action “implicates First
8 Amendment rights, the inquiry tilts dramatically toward a finding of standing,” *LSO*,
9 *Ltd.*, 205 F.3d at 1155, the Court finds that Plaintiffs have sufficiently shown causation
10 for standing purposes.

11 The Court rejects UCLA’s standing challenge and proceeds to the merits of
12 Plaintiffs’ motion.

14 **III. PRELIMINARY INJUNCTION**

15 **A. Legal Standard**

16 “A preliminary injunction is an extraordinary remedy never awarded as of right.”
17 *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). “A plaintiff seeking a
18 preliminary injunction must establish that he is likely to succeed on the merits, that he
19 is likely to suffer irreparable harm in the absence of preliminary relief, that the balance
20 of equities tips in his favor, and that an injunction is in the public interest.” *Winter*, 555
21 U.S. at 20. The Ninth Circuit also employs a “version of the sliding scale approach”
22 where “a stronger showing of one element may offset a weaker showing of another.”
23 *All. for Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). Under this
24 approach, an injunction may issue if the plaintiff shows that serious questions go to the
25 merits, the balance of hardships tips sharply toward the plaintiff, the plaintiff is likely
26 to suffer irreparable injury, and an injunction is in the public interest. *Fraihat v. U.S.*
27 *Immigr. & Customs Enf’t*, 16 F.4th 613, 635 (9th Cir. 2021). A “serious question” is
28 one on which the movant “has a fair chance of success on the merits.” *Sierra On-Line*,

1 *Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1421 (9th Cir. 1984). “When, like here,
2 the nonmovant is the government, the last two *Winter* factors ‘merge.’” *Baird v. Bonta*,
3 81 F.4th 1036, 1040 (9th Cir. 2023) (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)).
4

5 **B. *Winter* Factors**

6 1. Likelihood of Success on the Merits

7 Plaintiffs assert that they are likely to succeed on the merits of their federal equal
8 protection, free speech, free exercise, and Title VI claims. (Mot. 15–24.) Because
9 analysis of Plaintiffs’ free exercise claim resolves this motion, the Court addresses only
10 that claim in the interest of judicial economy.

11 The Free Exercise Clause provides that “Congress shall make no
12 law . . . prohibiting the free exercise [of religion].” U.S. Const. amend. I; *see also*
13 *Cantwell v. State of Connecticut*, 310 U.S. 296, 303 (1940) (recognizing the Free
14 Exercise Clause extends to the states under the Fourteenth Amendment). The clause
15 “‘protect[s] religious observers against unequal treatment’ and subjects to the strictest
16 scrutiny laws that target the religious for ‘special disabilities’ based on their ‘religious
17 status.’” *Trinity Lutheran*, 582 U.S. at 458 (alteration in original) (quoting *City of*
18 *Hialeah*, 508 U.S. at 533, 542). “[A] State violates the Free Exercise Clause when it
19 excludes religious observers from otherwise available public benefits.” *Carson*, 596
20 U.S. at 778. “[A] law targeting religious beliefs as such is never permissible.” *Trinity*
21 *Lutheran*, 582 U.S. at 466 n.4 (quoting *Lukumi*, 508 U.S. at 533). In other free exercise
22 cases, challenged laws “must be subjected to ‘the strictest scrutiny.’” *Carson*, 596 U.S.
23 at 780 (quoting *Espinoza v. Mont. Dep’t of Revenue*, 591 U.S. 464, 478 (2020)). “To
24 satisfy strict scrutiny, government action must advance interests of the highest order
25 and must be narrowly tailored in pursuit of those interests.” *Id.* (internal quotation marks
26 omitted).

27 Here, UCLA made available certain of its programs, activities, and campus areas
28 when certain students, including Plaintiffs, were excluded because of their genuinely

1 held religious beliefs. For example, Plaintiff Frankel could not walk through Royce
2 Quad because entering the encampment required disavowing the state of Israel. (Frankel
3 Decl. ¶¶ 11, 26, 38; *see* Rassbach Decl. Ex. 22.) Similarly, Plaintiff Ghayoum was
4 prevented from entering a campus area at a protester checkpoint, (Ghayoum Decl. ¶¶ 11,
5 39–45), and Plaintiff Shemuelian could not traverse Royce Quad, unlike other students,
6 (Shemuelian Decl. ¶ 111, 118–120, 128).

7 In other contexts, the Supreme Court has invalidated state acts that had the effect
8 of excluding individuals from public benefits based on their religious status. *See*
9 *Sherbert v. Verner*, 374 U.S. 398, 404 (1963) (holding a state cannot withhold
10 unemployment benefits from Seventh-day Adventist who refused to work on the
11 Sabbath); *Thomas v. Review Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 709, 720 (1981)
12 (similar holding as to Jehovah’s Witness who refused to participate in the production of
13 weapons). As such, Plaintiffs’ exclusion from campus resources while other students
14 retained access raises serious questions going to the merits of their free exercise claim.
15 *See All. for Wild Rockies*, 632 F.3d at 1131.

16 UCLA argues that their acts focused on deescalating and preventing violence
17 satisfy strict scrutiny. (Opp’n 15–18.) This might be true, but the acts related to
18 deescalating and preventing violence are not the acts which led to the likely Free
19 Exercise Clause violation. As such, UCLA’s strict scrutiny argument is not relevant to
20 the free exercise issue.

21 22 2. Likelihood of Irreparable Injury

23 “It is axiomatic that the loss of First Amendment freedoms, for even minimal
24 periods of time, unquestionably constitutes irreparable injury.” *Fellowship of Christian*
25 *Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 694 (9th Cir. 2023)
26 (en banc) (cleaned up). “Irreparable harm is relatively easy to establish in a First
27 Amendment case” because the plaintiff “need only demonstrate the existence of a
28 colorable First Amendment claim.” *Cal. Chamber of Com. v. Council for Educ. & Rsch.*

1 on *Toxics*, 29 F.4th 468, 482 (9th Cir. 2022) (internal quotation marks omitted). For all
2 the reasons stated above, Plaintiffs have put forward a colorable claim that UCLA’s acts
3 violated their Free Exercise Clause rights. Further, given the risk that protests will return
4 in the fall that will again restrict certain Jewish students’ access to ordinarily available
5 programs, activities, and campus areas, the Court finds that Plaintiffs are likely to suffer
6 an irreparable injury absent a preliminary injunction.

7 8 3. Balancing the Equities and Public Interest

9 “Where the government is a party to a case in which a preliminary injunction is
10 sought, the balance of the equities and public interest factors merge.” *Roman v. Wolf*,
11 977 F.3d 935, 940–41 (9th Cir. 2020). As discussed above, Plaintiffs have demonstrated
12 serious questions as to the merits. “[I]t is always in the public interest to prevent the
13 violation of a party’s constitutional rights.” *De Jesus Ortega Melendres v. Arpaio*, 695
14 F.3d 990, 1002 (9th Cir. 2012) (cleaned up). And the state “cannot reasonably assert
15 that it is harmed in any legally cognizable sense by being enjoined from constitutional
16 violations.” *Zepeda v. U.S. Immigr. & Naturalization Serv.*, 753 F.2d 719, 727 (9th Cir.
17 1983). As such, the Court finds that the balance of the equities tips sharply toward
18 Plaintiffs, and the public interest favors the issuance of an injunction.

19 20 4. Summary

21 For the reasons stated above, the Court finds that all the *Winter* factors favor
22 granting a preliminary injunction. Because the Court analyzes only the facts pertinent
23 to the federal free exercise claim, the Court issues a preliminary injunction addressing
24 only those risks. The Court’s injunction is thus narrower than Plaintiffs’ proposed
25 preliminary injunction.⁵

26 _____
27 ⁵ The Court does not issue the injunction against Defendant Regents of The University
28 of California. “The Eleventh Amendment bars suits which seek either damages or

1 Under the Court’s injunction, UCLA retains flexibility to administer the
2 university. Specifically, the injunction does not mandate any specific policies and
3 procedures UCLA must put in place, nor does it dictate any specific acts UCLA must
4 take in response to campus protests. Rather, the injunction requires only that, if any part
5 of UCLA’s ordinarily available programs, activities, and campus areas become
6 unavailable to certain Jewish students, UCLA must stop providing those ordinarily
7 available programs, activities, and campus areas to any students. How best to make any
8 unavailable programs, activities, and campus areas available again is left to UCLA’s
9 discretion.

10 11 C. Security

12 “The court may issue a preliminary injunction . . . only if the movant gives
13 security in an amount that the court considers proper to pay the costs and damages
14 sustained by any party found to have been wrongfully enjoined or restrained.” Fed. R.
15 Civ. P. 65(c). “Rule 65(c) invests the district court with discretion as to the amount of
16 security required, *if any*.” *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003)
17 (internal quotation marks omitted).

18 UCLA does not request a bond. (Defs.’ Resp. 9.) Courts have issued preliminary
19 injunctions “without requiring security based on” likelihood of success of prevailing on
20 a First Amendment claim. *NetChoice, LLC v. Bonta*, 692 F. Supp. 3d 924, 966 (N.D.

21 _____
22 injunctive relief against a state, an ‘arm of the state,’ its instrumentalities, or its
23 agencies.” *Franceschi v. Schwartz*, 57 F.3d 828, 831 (9th Cir. 1995) (citation omitted).
24 “The Regents, a corporation created by the California constitution, is an arm of the state
25 for Eleventh Amendment purposes, and therefore is not a ‘person’ within the meaning
26 of section 1983.” *Armstrong v. Meyers*, 964 F.2d 948, 949–50 (9th Cir. 1992). That
27 said, the injunction may issue as against the other defendants; immunity under the
28 Eleventh Amendment is not absolute, and under the *Ex parte Young* doctrine, immunity
does not apply when plaintiffs sue state officials in their official capacities for
prospective injunctive relief. *See Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 73
(1996).

1 Cal. 2023); *see also Weaver v. City of Montebello*, 370 F. Supp. 3d 1130, 1139 (C.D.
2 Cal. 2019). As such, the Court does not require security.

3 4 **D. Stay**

5 UCLA requests a stay of any preliminary injunction pending appeal. (Defs.’
6 Resp. 8–9.) The request is denied for failure to comply with rules governing motion and
7 *ex parte* practice. *E.g.*, C.D. Cal. Rs. 6-1, 7-3, 7-4, 7-19; *Smith v. Premiere Valet Servs.,*
8 *Inc.*, No. 2:19-cv-09888-CJC-MAA, 2020 U.S. Dist. LEXIS 228465, at *42 (C.D. Cal.
9 Aug. 4, 2020) (collecting cases for the proposition that “a request for affirmative relief
10 is not proper when raised for the first time in an opposition”). Denial is without
11 prejudice to reraising the request in a properly noticed motion or *ex parte* application
12 after an appeal is taken, if any.

13 14 **IV. CONCLUSION**

15 “If a movant makes a sufficient demonstration on all four *Winter* factors (three
16 when as here the third and fourth factors are merged), a court must not shrink from its
17 obligation to enforce [movant’s] constitutional rights, regardless of the constitutional
18 right as issue.” *Baird*, 81 F.4th at 1041 (cleaned up). Thus, the Court orders:

19 1. Defendants Drake, Block, Hunt, Beck, Gordon, and Braziel
20 (“Defendants”) are prohibited from offering any ordinarily available programs,
21 activities, or campus areas to students if Defendants know the ordinarily available
22 programs, activities, or campus areas are not fully and equally accessible to Jewish
23 students.

24 2. Defendants are prohibited from knowingly allowing or facilitating the
25 exclusion of Jewish students from ordinarily available portions of UCLA’s programs,
26 activities, and campus areas, whether as a result of a de-escalation strategy or otherwise.

27 3. On or before August 15, 2024, Defendants shall instruct Student Affairs
28 Mitigator/Monitor (“SAM”) and any and all campus security teams (including without

1 limitation UCPD and UCLA Security) that they are not to aid or participate in any
2 obstruction of access for Jewish students to ordinarily available programs, activities,
3 and campus areas.

4 4. For purposes of this order, all references to the exclusion of Jewish
5 students shall include exclusion of Jewish students based on religious beliefs
6 concerning the Jewish state of Israel.

7 5. Nothing in this order prevents Defendants from excluding Jewish students
8 from ordinarily available programs, activities, and campus areas pursuant to UCLA
9 code of conduct standards applicable to all UCLA students.

10 5. Absent a stay of this injunction by the United States Court of Appeals for
11 the Ninth Circuit, this preliminary injunction shall take effect on August 15, 2024, and
12 remain in effect pending trial in this action or further order of this Court or the United
13 States Court of Appeals for the Ninth Circuit.

14
15 **IT IS SO ORDERED.**

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17 Dated: August 13, 2024



18 MARK C. SCARSI
19 UNITED STATES DISTRICT JUDGE
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