

November 22, 2024

Sent via Email

Mona Siddiqui

Anisa Rahim

U.S. Department of Justice

Civil Rights Division

Federal Coordination and Compliance Section

Mamoonna.Siddiqui@usdoj.gov

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Re: Compliance Review
DJ# 171-8-30

Dear Ms. Siddiqui and Ms. Rahim:

I write on behalf of the Arizona State University Police Department (ASU PD) in response to Ms. Stoneman's letter of September 24, 2024, regarding a compliance review of the manner in which ASU PD interacted with five¹ individuals wearing *hijabs* who were arrested in connection with an unauthorized encampment on the university's Tempe campus on April 26, 2024² (the "Encampment").

We appreciate the Department's inquiry into this matter, as the values underlying the civil rights laws the Department is charged with enforcing align with Arizona State University's own charter commitment to academic excellence, accessibility and impact.³ The ASU community encompasses hundreds of thousands of students, alumni, faculty, staff, and visitors from every background and walk of life who hold a wide variety of beliefs and opinions,⁴ and respect for the dignity of all those individuals is central to the university's accomplishment of its mission. In addition, ASU's campuses frequently provide a forum in which individuals and groups gather peacefully to present, debate, and defend their viewpoints on a broad range of issues. ASU

¹ Ms. Stoneman's letter indicates that four arrestees were wearing *hijabs*, but ASU's records indicate that there were five.

² Ms. Stoneman's letter lists the date of the Encampment as April 29, 2024. The Encampment began on the morning of Friday, April 26, 2024, and was declared an unlawful assembly in the late evening hours. Due to the large number of individuals who refused to leave in response to this declaration, the arrests and processing of arrestees extended into the early morning hours of Saturday, April 27, 2024.

³ ASU Charter, Mission, and Goals, available at <https://newamericanuniversity.asu.edu/about/asu-charter-mission-and-goals>.

⁴ ASU Facts and Figures, available at <https://www.asu.edu/about/facts-and-figures>; see also ASU Council of Religious Advisors, <https://eoss.asu.edu/cora> (providing more information about faith-based organizations at and affiliated with ASU).

maintains an interdisciplinary team that, with support from law enforcement as needed, facilitates safe participation in those activities while also maintaining the operation of the university's campuses where thousands of individuals live, study, and work.

As the discussion below of ASU's handling of the Encampment shows, there were no violations of either university policies prohibiting discrimination or related civil rights laws. Instead, our review indicates that ASU PD and other university personnel responded in a measured and deliberate manner to a group of mostly unaffiliated protestors whose goal was to violate university policies and be arrested for their cause. The arrests of those individuals who refused to disperse (after multiple warnings over several hours) were handled in a respectful and appropriate manner. ASU has also taken additional steps to prepare for similar events in the future, including developing and distributing specific guidance for conducting searches of arrestees who observe the religious practice of wearing *hijabs*.

The April 2024 Encampment. The Encampment posed an unusual challenge for the university because of the ways in which it differed from both prior and subsequent demonstrations. Most of these events that take place on or near the university's campus are announced in advance, and many involve registered student organizations among their organizers. This provides the university opportunities to plan and prepare for the gathering, including by communicating with the organizers to ensure they are aware of the university's conduct standards and the time, place, and manner regulations applicable to their planned activities. Even with large gatherings, participants are generally peaceful and cooperative with university policies, meaning that disruptions are unusual and arrests very rare. Indeed, several other gatherings in support of Palestinians or critical of Israel's actions took place on the university campus during the same school year, both before and after the Encampment, with only a few isolated incidents of physical altercations or vandalism.

In contrast, the Encampment was intentionally planned and executed without notice to the university and with the intent to violate the university's longstanding prohibition on camping (at any time) and overnight use of university property. Shortly before 9:00 am on the final day of classes for the Spring semester, numerous individuals arrived on the Alumni Lawn bearing supplies and equipment to establish an encampment of indeterminate duration. Their actions spoke of significant preparation, not only due to the number of individuals present but due to the volume of supplies they brought with them, including numerous tents and shade structures, water and food, amplification devices, medical supplies, and even a portable toilet.

The erected Encampment violated multiple university policies. Not only does the university prohibit overnight occupancy of university property, it prohibits camping (including erecting tents or shade structures) or the driving of stakes into the ground at any time of the day. In addition, the Encampment was set up in a space that is available only on a reservation basis and where amplification is not permitted due to adjacent buildings, including a large classroom building.

Attempted De-escalation and Dispersement. After an initial effort to disperse the individuals and obtain the individuals' voluntary cooperation in removing the tents was unsuccessful, university staff spent the remainder of the day speaking with the individuals present, informing them of university policies and encouraging them to follow those policies.

During the conversations, they informed participants that camping on campus was not permitted and that no one had reserved the lawn as required. They asked participants to take down the tents and not to bring in additional camping supplies. They also explained that overnight occupancy of the space would not be permitted and that anyone present after 11:00 pm would be subject to arrest for trespass, and that students would also be subject to sanctions under the Student Code of Conduct if they refused to leave.

In these conversations, university officials also offered alternative options for the demonstrators to continue their activities, including identifying alternative locations to which the demonstration (without the impermissible tents) could relocate and to which they could return the next day and into the future. In addition to speaking with demonstrators who were onsite, university representatives also reached out to other individuals in the community, including people who had previously identified themselves as members of the local Palestinian and Muslim communities and a former faculty advisor to a student organization supporting Palestinian rights, and asked them to help in conveying this information to participants.

Throughout the day and into the evening, university staff also monitored the demonstration to address the safety of all participants. There were multiple reasons to be concerned about safety. At various points during the day and evening, both demonstrators and counter-protestors were present and interacted with each other. The size and composition of the crowd changed throughout the day, and at various points several families were present with small children and pets. The university was also aware that social media and other outlets were encouraging counter-protestors to come to campus and confront the individuals in the encampment, causing concerns about the possibility of physical violence and injury. Indeed, late in the evening, an individual wearing a visible sidearm approached the group, but left campus without incident after being informed by ASU PD that weapons are not permitted on campus.

Arrests of Individuals Who Refused to Disperse. The university's efforts to obtain voluntary compliance were unsuccessful. Multiple individuals with whom university staff spoke during the day indicated that they would not be leaving, that they intended to remain not just over that night but indefinitely, and that while some individuals would leave before 11:00 pm, others wanted to be arrested and would remain regardless.

Because of the size of the Encampment and numbers of individuals occupying the Encampment, ASU PD requested support from other law enforcement agencies including the Arizona Department of Safety, the City of Tempe Police, and the Maricopa County Sheriff's Office to assist it in maintaining safety during the arrests and removal of individuals occupying the Encampment.

As the 11:00 pm hour approached, numerous announcements were made by ASU PD that everyone present needed to disperse. The announcements declared the gathering an unlawful assembly and stated that anyone who did not leave immediately would be arrested. These announcements were made with amplification from all four corners of the lawn multiple times, beginning before any arrests took place and continuing until all individuals had been removed from the lawn.

Upon hearing the ASU PD announcements, many individuals left the Encampment before arrests started, many taking tents or other supplies along with them. Some of those individuals who left moved onto non-university property, congregating on the City of Tempe sidewalk north of the Alumni Lawn or in the nearby street, which had been closed to vehicle traffic to address safety concerns. These individuals were permitted to remain on non-university property until they left voluntarily, and numerous individuals remained there into the early hours of the morning, where they continued to film the site of the Encampment, hold signs, wave flags, chant, and bang objects on the ground.

After multiple amplified announcements were made, Arizona Department of Public Safety officers formed a line at the south side of the Alumni Lawn and began to advance slowly northward with ASU PD officers behind them to take arrestees into custody. Many of those remaining on the Alumni Lawn had moved Encampment items into barriers between them and the officers and many had interlinked arms with each other to resist arrest. ASU personnel followed after the officers clearing tents and other items from the Encampment and moving them offsite. These items included supplies for long-term occupation of the area, including a camping toilet, food and water, tents, sleeping bags, and medical supplies.

This process took more than three hours, with the first amplified announcement taking place at 10:37 pm, arrests beginning around 11:58 pm, and arrests continuing until shortly before 2:00 am. Throughout this period, individuals who wished to leave were permitted to do so. Many individuals did leave, either joining the demonstration on and near the City of Tempe sidewalk or leaving the area completely. Only individuals who refused to leave the Encampment as the line proceeded from south to north across the Alumni Lawn were arrested. This included a group of protestors who circled together interlocking their arms while continuing to refuse to leave.

Search and Transportation of Arrested Individuals. Although the ASU PD is an accredited law enforcement agency with the authority to arrest individuals, given that it serves the university's campuses, arrests are relatively rare and mass arrests unheard of. For that reason, while the ASU PD does have a small booking facility with a few cells in its Tempe headquarters, it does not have a facility capable of securing dozens of individuals as part of a mass arrest event. It also does not operate a jail facility, and instead contracts with the Maricopa County Sheriff's Office (MCSO) for jail services.

Based on the information shared by participants that they understood multiple individuals would remain on site and be arrested rather than disperse when asked, ASU PD made advance arrangements to safely detain and transport arrested individuals. This included arranging for the MCSO to bring buses and detention personnel to the Tempe campus so that, once ASU PD had arrested an individual, they could be transported to an MCSO processing facility and then to an MCSO jail. An area was designated on a side street for the buses to park, and ASU PD officers completed the initial steps of the arrest on the sidewalk adjacent to those buses before loading the arrestees on the bus to be transported for further processing. The buses were parked in a manner to restrict access to law enforcement personnel only.

While ASU PD officers effectuated the arrests, because they were using MCSO buses and personnel to transport and detain the arrested individuals during the processing stages, ASU PD

officers followed MCSO's standards, processes, and requirements in handling the arrested individuals in preparation for MCSO transport. This included MCSO's requirement that all arrested individuals must have any headwear inspected and removed prior to being transported by MCSO or transferred to their custody. As MCSO personnel reinforced during ASU PD officers' initial processing of the arrestees in preparation for MCSO transport, their policies make no exception for headwear that is religious in nature. Each of the seventy-two persons who was arrested, regardless of their sex, national origin, or religion, had any headwear they were wearing inspected, removed, and logged as personal property.

The requirement of a search incident to arrest has a specific and important purpose, namely the safety of the arrestee, other arrestees, and law enforcement and jail personnel. Searching the individual's clothing and personal effects before transporting or detaining the individual permits the arresting agency to ensure that the individual does not have anything hidden in their clothing that could permit them to attempt to escape custody or injure themselves or others, and it is a common law enforcement practice.

The importance of this practice is illustrated in this instance by the fact that, of even just the five individuals whose *hijabs* were searched and removed in connection with their arrest, one had both a baseball bat and a multi-tool knife on her person, while others had hair pins. These items could have been used to resist arrest or attempt escape, risking injury to both other arrestees and ASU PD and MCSO personnel in the process. For that reason, they were also taken from the arrestees and logged as personal property that they could reclaim upon release.

Steps Taken to Address the Religious Significance of the *Hijabs*. At the time of the Encampment, while all of the officers involved had been trained on the non-discrimination policies of both ASU and the ASU PD,⁵ they had not received specific training regarding the religious significance of the *hijab* or guidance regarding how to search a *hijab* in connection with an arrest. In addition, of the six officers involved in processing the five women whose *hijabs* were searched and removed, most had no preexisting knowledge of the religious significance of a *hijab*.

However, all clearly understood that they were required by MCSO to search and remove all headwear before those individuals could be placed on the bus for transport to the processing facility. In fact, the officer who was responsible for searching the first individual wearing a *hijab* attempted to transfer her to the bus while she was still wearing her *hijab*, and the MCSO officers refused to admit her and directed the officer to remove the *hijab* prior to boarding.⁶

In addition, the actions of the officers showed that they also understood their mandate to treat the individuals being arrested with respect and to accommodate their religious beliefs and observances to the extent possible under the circumstances. Each of the involved officers took steps to treat the arrestees respectfully and to address needs relating to the religious significance of their headwear. While each officer took a somewhat different approach, each officer's approach was

⁵ ASU Policy ACD 401: Prohibition Against Discrimination, Harassment, and Retaliation, available at <https://public.powerdms.com/ASU/documents/1541854>; ASU PD General Order PSM 012-08: Non-Bias Policing.

⁶ This first individual is also the individual who was carrying the multi-tool knife and baseball bat.

marked by an effort to understand the arrestee's concerns and address them as best they could in the circumstances.

These efforts included asking MCSO to permit the *hijab* to be worn during transit, attempting to shield the arrestee from view by removing the *hijab* inside the transport bus⁷ or while screened from view by other officers present, or requesting assistance from a female detention officer. Four of the five women were wearing garments with hoods and they were all permitted to use those hoods to re-cover their hair throughout the process.

Given the large number of arrestees and the late evening/early morning time of the arrests, it took multiple hours to process all the arrestees. The processing included transporting the individuals to a jail facility that MCSO had opened to allow ASU PD to use as an initial processing center for the arrestees. At this center, MCSO removed the arrestees from the transport buses, separated males and females into different holding areas, removed their flex cuffs, and handcuffed the arrestees to the front with handcuffs provided by MCSO. MCSO continued to manage the custody of these individuals, while ASU PD officers completed the initial processing. As ASU PD completed the initial processing, MCSO continued custody of the arrestees transporting them to the Maricopa County Intake Transfer and Release Center (ITR) where ASU PD officers walked the arrestees through the booking processes of medical inspection, booking photo, and ICE. Throughout these processing and booking steps, the females who had hoods on their clothing were permitted to continue to wear them to cover their hair.⁸

Additional Steps Taken Following the Encampment. In the months since the April Encampment, the university has examined its response with the goal of preparing for similar events in the future and has both consolidated and publicized its policies regarding expressive activities on campus for easier access by the public and members of the university community.⁹

As relevant to the subject of the Department's inquiry, this has included providing ASU PD officers with specific guidance regarding the handling of garments with religious significance, such as *hijabs*, when conducting a search incident to arrest. This guidance includes advising officers to have their body-worn camera on during the search, to expressly ask about any accommodations that may be needed, to explain the reason for the search, and to minimize both the disruption of the garment and any time it must be touched or removed.

ASU PD has also worked with MCSO to confirm that it can return the religious garment to the arrestee to put back on once the search is complete, so that the arrestee can continue to wear it during transport and processing.

⁷ The transport buses were separated by sex, meaning that the other arrestees inside the bus were also women.

⁸ It is ASU's understanding that individuals detained by MCSO in its jails, including individuals arrested by ASU for whom MCSO provides jail services, have access to an MCSO-issued headscarf to wear during their detention.

⁹ See Free Speech at ASU, available at <https://freespeech.asu.edu/>; ASU Policy FAC 115: Use of University Property and Facilities, available at <https://public.powerdms.com/ASU/documents/1557505>.

Availability of Additional Information. I trust that this information provides greater context for the university's actions and addresses your concerns regarding compliance with civil rights laws. I am available to meet with you to discuss this matter further or to provide additional information that may assist you in concluding your inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lisa Loo', with a stylized flourish at the end.

Lisa Loo
Senior Vice President and General Counsel
Arizona State University

CC:
Gary M. Restaino
U.S. Attorney, District of Arizona

John Thompson
Chief of Police, ASU PD