

United States Court of Appeals
for the
Third Circuit

Case No. 25-2239

EYAL YAKOBY; JORDAN DAVIS; NOAH RUBIN; STUDENTS
AGAINST ANTISEMITISM, INC.,

Plaintiffs-Appellants,

-v-

THE TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA,

Defendant-Appellee.

ON APPEAL FROM AN ORDER OF THE UNITED STATES
DISTRICT
COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

**BRIEF OF AMICI CURIAE STANDWITHUS AND
NATIONAL JEWISH ADVOCACY CENTER**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and Local Rule 26.1, Amici StandWithUs and National Jewish Advocacy Center state that neither has any parent corporation, nor is there any publicly held corporation that owns 10% or more of the stock of either.

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INTEREST OF AMICI¹

StandWithUs is a nonprofit organization dedicated to educating the public about Israel and combating the extremism and antisemitism that often distort issues related to Israel. To ensure the safety and equal protection of Jewish students and staff, StandWithUs vigorously challenges antisemitism on college and university campuses, including, as appropriate, through legal action. StandWithUs has a strong interest in ensuring that the proper legal standards are applied in the context of administrations' responses (or lack thereof) to anti-Jewish harassment and hostility on their campuses.

Since its founding in 2020, the **National Jewish Advocacy Center** ("NJAC") has become recognized as a leader in combatting antisemitism by developing and supporting innovative legal solutions that drive change. Antisemitic hate crimes, discriminatory rhetoric, and biased policies have become increasingly more common since Hamas's October 7, 2023, terrorist attack on Israel. Hamas and its affiliate organizations promote violent, pro-terror rhetoric to facilitate their

¹ All parties have consented to the filing of this brief. No party's counsel authored this brief in whole or in part. Other than amici curiae and their counsel, no person (including any party or its counsel) contributed any money intended to fund preparing or submitting this brief.

efforts in their war against the Jewish people, which has led to the marked rise in antisemitism. American institutions have failed to adequately address and condemn these attitudes, normalizing the catastrophic rise of institutionalized antisemitism that has erupted across America and around the world.

The proper resolution of this case is of critical importance to amici, as it involves the University of Pennsylvania's legal obligation under Title VI of the Civil Rights Act of 1964 to protect its Jewish and Israeli students by implementing effective measures to identify and combat unlawful antisemitism on campus. Because the issues involved in this case have affected schools and campuses across the United States, its resolution will impact the experience of thousands of students in this country who seek the opportunity to receive an education in an environment free from harassment, hostility, marginalization, exclusion—or worse—based on their Jewish and/or Israeli identity.

ARGUMENT

I. THE DISTRICT COURT'S DISMISSAL OF THE AMENDED COMPLAINT APPEARS TO BE BASED IN PART ON A MISUNDERSTANDING OF JEWISH ANCESTRAL IDENTITY.²

² The content of this section comes largely from the following: Carly F. Gammill, Esq., Testimony, Hearing Before the U.S. Senate Comm. on

The allegations in the First Amended Complaint make abundantly clear that this case is about a pernicious pattern of discriminatory and harassing conduct toward (and double standards applied to complaints by) the Jewish population at the University of Pennsylvania (“Penn”), and, more importantly, the failure of Penn’s administration to take appropriate steps to remedy the pervasively hostile environment – based on Jewish identity – that such conduct created. Unfortunately, the district court misread those allegations as describing nothing more than “the expression of viewpoints which differ from [Plaintiffs’] own.”³ This mischaracterization portrays a crucial misunderstanding of what is, for the vast majority of the Jewish population, not merely a matter of viewpoint but rather an integral component of Jewish ancestral identity. In other words, the Amended Complaint details not just incidents

Health, Educ., Labor & Pensions, Antisemitic Disruptions on Campus: Ensuring Safe Learning Environments for All Students (Mar. 27, 2025), *available* *online* *at* <https://www.help.senate.gov/imo/media/doc/06e69363-9e5d-54f9-8019-dbe95168b2a9/Gammill%20HELP%20Committee%20Testimony.pdf> and *Manifestations of Zionism in Jewish Identity*, STANDWITHUS (Sep. 17, 2025), *available* *online* *at* <https://standwithus.com/library/factsheets/manifestations-of-zionism-in-jewish-identity/>.

³ *Yakoby v. Trustees of the University of Pennsylvania*, No. 2:23-cv-04789 (E.D. Pa. June 2, 2025) at *13.

involving the communication of differing opinions but, rather, an egregiously hostile campus environment resulting from direct, repeated, and unchecked attacks against Jewish ancestral identity.

A. Jewish Ancestral Identity is Integrally Connected to the Land of Israel, Which Informs a Proper Understanding of the term “Zionism.”

Jewish identity is comprised of an inseparable combination of race, ancestry, religion, shared culture, and national origin. The birthplace of this multi-faceted Jewish identity is the land of Israel, in which Jewish peoplehood originated and in which Jews have maintained a continuous presence for over 3,000 years. Thus, for the vast majority of Jews throughout the world today, including here in the United States, a connection to the land of Israel is an important part of what it means for them to be Jewish.⁴ Because the land of Israel (and sometimes Israel’s capital city of Jerusalem) was referred to historically by the Jews as

⁴ See, e.g., *The State of Antisemitism in America 2023*, AMERICAN JEWISH COMMITTEE, <https://www.ajc.org/sites/default/files/pdf/2024-07/AJC%E2%80%99s%20State%20of%20Antisemitism%20in%20America%202023%20Report%20%28Download%29.pdf> (“For eight in 10 American Jews (80%), caring about Israel is important to what being Jewish means to them. For those over the age of 50, this number jumps to 91%.”); *Jewish Americans in 2020*, PEW RESEARCH CENTER (May 11, 2021), at 137 (“Eight-in-ten U.S. Jews say caring about Israel is an essential or important part of what being Jewish means to them.”).

“Zion” (a reference to Mount Zion in Jerusalem), the term used to identify this connection, and the related belief in the right of the Jewish people to exercise self-determination in their ancestral homeland, is “Zionism.” In short, for most Jews, Zionism is not merely a matter of politics or viewpoint, or even of religious belief, but rather one of ancestral identity.

Indeed, this connection to the land of Israel, *i.e.*, Zionism, is woven into the fabric of the daily and spiritual life of Jews around the world. While a minority of Jews always remained in their ancestral home, most were scattered across Europe, the Middle East, North Africa, and beyond due to violence and oppression by the Roman Empire and others. This created what became known as the Diaspora (Jews living outside of their ancestral homeland of Israel) and contributed to the diverse tapestry that is the Jewish people today. At the same time, the land of Israel always has remained a central pillar of Jewish identity for communities around the world. The modern State of Israel exists in large part because Jews across time and space yearned to return there for thousands of years. Today, that land is home to nearly half of the world’s total Jewish population.

Scholars of comparative religion have compared Jews to other indigenous peoples who are also deeply tied to their ancestral lands. In traditional Jewish thought and practice, the land of Israel is also a spiritual homeland for the Jewish people. By Jewish law and tradition, synagogues across the world are constructed facing towards Jerusalem,⁵ and Jews regularly recite prayers that long for Israel's return and restoration.⁶ For many religious Jews, these prayers to return and restore Israel take place multiple times daily. Rituals throughout the Jewish calendar—such as concluding the Passover seder and Yom

⁵ Traditional synagogues are built with the ark containing the Torah facing in the direction of Jerusalem so that the congregation prays toward Israel.

⁶ The Mourner's Kaddish, traditionally said by Jews in mourning for a friend or loved one, states, "May Your sovereignty be accepted in our own days, in our lives, and in the life of all the House of Israel. May G-d comfort you among the other mourners of Zion and Jerusalem." When the Torah scroll is removed from the ark during the weekly prayer service so that it can be read from, worshippers proclaim, "Ki Mitzion: For out of Zion shall go forth the Torah, and the word of the Lord from Jerusalem." In Judaism's central prayer, the Amidah, traditionally recited three times a day, the return to Zion and the restoration of Jerusalem are mentioned repeatedly ("And to Jerusalem your city may you return;" "May our eyes behold your return to Zion ... Blessed are you, who restores his presence to Zion."). Even during the blessing made after meals, Jerusalem and Zion are repeatedly mentioned as places of great holiness and places for which Jews yearn ("Have mercy Lord ... on Jerusalem, Your city, on Zion the resting place of your glory" and "Blessed are you G-d who rebuilds Jerusalem in His mercy.").

Kippur with “Next year in Jerusalem,”⁷ or breaking a glass at weddings to mourn the destruction of the Temple⁸—express this enduring connection. Jewish traditions, history, and identity are rooted in sacred geography and relationships with their ancestral home and are commonly understood within the Jewish community as expressions of *Zionism*.

Jews were Zionists before there were Muslims, and even before there were Christians. In multiple places throughout the New Testament, for example, the yearning for redemption is expressed in terms of the familiar and by-then-already-classic formulation of Jewish Zionism.⁹ The Quran itself is also quite clear about the long history of Jews in the Holy Land—and especially in Jerusalem.¹⁰ It was “Zionist rhetoric,” stories of

⁷ For centuries, Jews have ended both the Passover seder and the Yom Kippur service with the refrain “L'Shana Haba'ah B'Yerushalayim,” or “Next Year in Jerusalem.” This declaration reflects the Jewish people’s yearning throughout time—and especially during eras of expulsion and persecution—to return to Jerusalem and Israel as a free people.

⁸ At the end of a Jewish wedding ceremony, a glass is stepped on and shattered to remember the destruction of the Jewish Temple in Jerusalem in 70 C.E., which marked the end of Jewish self-rule in the land of Judea. This tradition emphasizes that even in moments of intense joy, Jews must not forget the struggles their people have endured.

⁹ See, e.g., Matthew 21:5 and John 12:15, *paraphrasing* Zechariah 9:9.

¹⁰ See, e.g., Surah Bani Isra’il, verses 1-7.

the city on a hill and a promised land, that provided inspiration to the Founding Fathers and later the leaders of the Civil Rights movement. In short, Zionism is the movement for the re-establishment, and now the development and protection, of a sovereign Jewish nation in its ancestral homeland. It is not just a historical political movement; for the vast majority of Jewish people across time and space, Zionism is and always has been an integral part of their Jewish ancestral identities.

B. Anti-Zionism Is Not a Matter of Mere Political Disagreement but an Attack Against Jewish Ancestral Identity.

With this understanding of Zionism, it becomes clear that anti-Zionism does not constitute the expression of legitimate political discourse in opposition to the policies or practices of the current Israeli government. Rather, it operates as an attack against a central component of Jewish ancestral identity. The anti-Zionist narrative seeks not to criticize or improve Israeli governmental conduct but to erase—and replace—thousands of years of Jewish history and connection to the land of Israel. It does this by focusing on the establishment of the modern State of Israel, following World War II and United Nations General Assembly Resolution 181, and presenting a false narrative that the

establishment of this modern state was an act of land theft by Jews.¹¹ It then attempts to re-define “Zionism” as a term comprising political support for the current Israeli government (wholly ignoring the foregoing historical understanding and usage of the term by the majority of the Jewish community), which the narrative falsely accuses of a host of evils, treating the world’s only Jewish state in precisely the same way that more classic forms of antisemitism treat the individual Jew.¹²

Because many people outside the Jewish community are unfamiliar with Jewish and Israeli history, including the term “Zion” and, hence, the history of the term “Zionism,” this dangerous narrative has taken firm

¹¹ Contrary to this false narrative, international legal recognition had already been given to the Jewish people’s historical connection to the land and to the grounds for reconstituting its national home there in the San Remo Resolution in 1920, the League of Nations Mandate for Palestine in 1922, the Anglo-American Convention of 1924, and Article 80 of the UN Charter. *See generally* Mandate for Palestine, Aug. 12, 1922, League of Nations, C. 529. M. 314. (1922); U.S.-Great Britain, Convention Relating to Rights in Palestine, Dec. 3, 1924, 44 Stat. 2184; Charter of the United Nations, June 26, 1945, 59 Stat. 1031.

¹² For a more thorough explanation of how antisemitism has “mutated” over time and today focuses largely on the state of Israel as a Jewish “collective,” see *The Mutating Virus: Understanding Antisemitism*, OFFICE OF RABBI SACKS (Sept. 27, 2016), <https://rabbisacks.org/videos/mutating-virus-understanding-antisemitism/> and *The Mutation of Antisemitism*, OFFICE OF RABBI SACKS (last visited oct. 22, 2025) <https://rabbisacks.org/videos/the-mutation-of-antisemitism/>.

root in academia. And in the wake of the horrific Hamas terrorist attack against Israel and its people on October 7, 2023, those peddling this anti-Zionist narrative have succeeded in persuading droves of students, faculty, and administrators to believe the lie that Jews whose identity includes Zionism, which is to say most Jews, are proud supporters of the actions of which the narrative falsely accuses Israel. This form of manipulative propaganda attempts to erase the reality that a Jewish individual's identification as a Zionist is actually a reflection of the deep ancestral connection of the Jewish people to the land of Israel, an expression of the peoplehood component that serves as a foundational element of Jewish identity. Hence, many forms of harassment and discrimination toward Jewish members of the campus community are justified by perpetrators, as well as those in positions of authority, under the guise of mere expressions of political disagreement. Indeed, that is precisely the view taken by the district court here.¹³ A proper understanding of the term Zionism, however, as set forth in Part I.A. above, reveals this campaign for what it is: an insidious attempt to erase 3,000+ years of Jewish history and a vicious attack against a core

¹³ *Yakoby, supra* note 3, at *13.

component of mainstream Jewish identity—a textbook example of antisemitism, just adapted and repackaged for a contemporary audience.

II. THE CAMPAIGN TO POLITICIZE AND ERASE JEWISH ANCESTRAL IDENTITY RESULTED IN AN EXPLOSION OF UNCHECKED ANTISEMITISM ON U.S. CAMPUSES, NECESSITATING ESSENTIAL TITLE VI GUIDANCE FROM THE DEPARTMENT OF EDUCATION.

Reports of antisemitism on college and university campuses in the United States have been steadily on the rise for at least the past decade.¹⁴ Following October 7, 2023, these numbers skyrocketed in unprecedented fashion, with the Anti-Defamation League reporting 1,200 incidents of campus antisemitism between October 7, 2023, and September 24, 2024,

¹⁴ See, e.g., Leonard Saxe, Theodore Sasson, Graham Wright & Shahar Hecht, *Antisemitism and the College Campus: Perceptions and Realities*, MAURICE AND MARILYN COHEN CENTER FOR MODERN JEWISH STUDIES, BRANDEIS UNIVERSITY (July 2015), <https://scholarworks.brandeis.edu/esploro/outputs/report/Antisemitism-and-the-college-campus-Perceptions/9924143424201921/filesAndLinks?index=0> (studying campus antisemitism in the wake of the 2014 Israel-Hamas war); *Antisemitic Incidents on Campus: Interactive Data*, CAMPUS FOR ALL, <https://campus4all.org/data-interactive/> (last visited Oct. 22, 2025) (tracking the rise in campus antisemitism year-by-year between the 2014-15 school year and the present). See also *Audit of Antisemitic Incidents*, ANTI-DEFAMATION LEAGUE, <https://www.adl.org/audit-antisemitic-incidents> (last visited Oct. 22, 2025) (tracking antisemitism in the U.S., including on campuses, with reports available from 2017 to the present).

a 500% increase compared to the number of incidents reported to it in the same period the previous year.¹⁵ Far from constituting mere disagreements of viewpoint, this onslaught included harassment, threats, and acts of physical destruction and violence—all aimed squarely at demonizing and/or delegitimizing the identity level connection of the Jewish community to their ancestral homeland of Israel.

An accompanying failure of many school and campus administrations to enforce applicable policies or otherwise take action to address the resulting hostile environments based on this type of shared ancestry discrimination led to a flood of activity within the U.S. Department of Education’s Office for Civil Rights (OCR).¹⁶ Between October 7, 2023, and

¹⁵ *Press Release: Over 10,000 Antisemitic Incidents Recorded in the U.S. since Oct. 7, 2023, According to ADL Preliminary Data*, ANTI-DEFAMATION LEAGUE (Oct. 6, 2024), <https://www.adl.org/resources/press-release/over-10000-antisemitic-incidents-recorded-us-oct-7-2023-according-adl>.

¹⁶ *See* U.S. DEP’T OF EDUCATION, OFFICE FOR CIVIL RIGHTS 2021-2025, *Protecting Civil Rights: Highlights of Activities* (2025), <https://www.ed.gov/media/document/protecting-civil-rights-109409.pdf> (“Complaints specifically alleging discrimination based on shared ancestry ... increased significantly during these four years. OCR received 27 such complaints in FY 2021 and 514 in FY 2024, an increase of 1803%.”). *See also* Naaz Modan, *Education Department begins resolving discrimination cases related to Israel-Hamas war*, K-12

February 29, 2024, alone OCR opened 79 investigations into discrimination based on shared ancestry,¹⁷ compared to only 28 such investigations that it opened during the full four years between 2017 and 2021.¹⁸ OCR's website currently lists an astonishing one hundred twenty-nine (129) open investigations regarding shared ancestry discrimination since October 7, 2023 (this figure does not include those investigations OCR has already resolved during that period).¹⁹ Amid this influx of

DIVE (Sep. 30, 2024), <https://www.k12dive.com/news/education-department-ocr-discrimination-title-vi-shared-ancestry-israel-hamas-october-2023-war/728425/#:~:text=The%20first%20handful%20of%20completed,this%20topic%2C%E2%80%9D%20Lhamon%20said> (noting “an influx of [shared ancestry discrimination] complaints in the 2024 fiscal year amid the escalating conflict and quoting OCR director Catherine Lhamon’s acknowledgment that “[i]t’s an enormous increase over the year prior”).

¹⁷ Andrew Lapin, *Search our database of Title VI discrimination investigations at schools and colleges since Oct. 7*, JEWISH TELEGRAPHIC AGENCY (Feb. 29, 2024), <https://www.jta.org/2024/02/29/united-states/search-our-database-of-title-vi-discrimination-investigations-at-schools-and-colleges-since-oct-7#:~:text=Since%20Oct.%207%2C%20the%20department's%20Office%20of,be%20about%20antisemitism%2C%20Islamophobia%20or%20anti%20Arab%20discrimination>.

¹⁸ See Modan, *supra* note 16.

¹⁹ *List of Open Title VI Shared Ancestry Investigations*, U.S. DEP'T OF EDUC., <https://www.ed.gov/laws-and-policy/civil-rights-laws/race-color-and-national-origin-discrimination/race-color-and-national-origin-discrimination-key-issues/list-of-open-title-vi-shared-ancestry> (last visited Oct. 22, 2025).

complaints, OCR deemed it necessary—on multiple occasions—to issue updated guidance to administrators regarding proper application of Title VI of the Civil Rights Act (“Title VI”) to allegations of shared ancestry discrimination.

On November 7, 2023, OCR issued a “Dear Colleague Letter” based in part on “a nationwide rise in reports of hate crimes and harassment, including an alarming rise in disturbing antisemitic incidents and threats”²⁰ The express purpose of the letter was “to remind colleges, universities, and schools that receive federal financial assistance of their legal responsibility under Title VI of the Civil Rights Act of 1964 and its implementing regulations (Title VI) to provide all students a school environment free from discrimination based on race, color, or national origin, including shared ancestry or ethnic characteristics.”²¹ OCR reminded these institutions that “Title VI’s protection from . . . discrimination extends to students who experience discrimination, including harassment, based on their actual or perceived . . . shared

²⁰ Off. for Civ. Rights, U.S. Dep’t of Educ., *Dear Colleague Letter on Shared Ancestry* (Nov. 7, 2023), <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/letters/colleague-202311-discrimination-harassment-shared-ancestry.pdf>.

²¹ *Id.* (citing 42 U.S.C. § 2000d and 34 C.F.R. § 100.3).

ancestry or ethnic characteristics”²² Specifically, OCR explained, such discrimination may be “based on where a student came from or is perceived to have come from.”²³ Importantly, OCR reminded, “Harassing conduct can be verbal or physical and need not be directed at a particular individual.”²⁴

In May 2024, with reports of campus antisemitism continuing to rise, OCR again issued a “Dear Colleague” letter²⁵ regarding the Title VI obligations of schools receiving federal financial assistance. This time, OCR was even more direct in its purpose, stating, “To be clear, Title VI’s protections against discrimination based on race, color, and national

²² *Id.*

²³ *Id.*

²⁴ *Id.*; see also White House, *The U.S. National Strategy to Counter Antisemitism* (May 2023), at 9, <https://bidenwhitehouse.archives.gov/wp-content/uploads/2023/05/U.S.-National-Strategy-to-Counter-Antisemitism.pdf> (recognizing that “Jewish students and educators are targeted for derision and exclusion on college campuses, often because of their real or perceived views about the State of Israel. When Jews are targeted because of their beliefs or their identity, when Israel is singled out because of anti-Jewish hatred, that is antisemitism. And that is unacceptable.”).

²⁵ Off. for Civ. Rights, U.S. Dep’t of Educ., *Dear Colleague Letter: Protecting Students from Discrimination, such as Harassment, Based on Race, Color, or National Origin, Including Shared Ancestry or Ethnic Characteristics* (May 7, 2024), <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/letters/colleague-202405-shared-ancestry.pdf>.

origin encompass *antisemitism* and other forms of discrimination when based on shared ancestry or ethnic characteristics.”²⁶ In other words, OCR left no room for doubt that discriminatory attacks against Jewish identity (i.e., antisemitism), and which may form the basis for a valid Title VI complaint, include those directed at Jewish ancestral identity (i.e., the connection of members of the Jewish community to their ancestral homeland of Israel, or Zionism). Title VI does not provide explicit protection for religion—it is this very ancestral identity of the Jewish people that forms the basis of recognizing Jewish individuals as a protected class under Title VI.

Because many institutions appeared to be under the misconception that they were legally prohibited from taking *any* action regarding the hostile and harassing conduct taking place if protected speech was involved, the May 2024 Dear Colleague letter included crucial guidance regarding Title VI obligations in the context of First Amendment considerations. After acknowledging that Title VI neither requires nor authorizes a school to restrict First Amendment rights, OCR explained that schools’ First Amendment and Title VI obligations do not apply in

²⁶ *Id.* (emphasis added).

an either/or fashion, and the latter remain operative *even if* discriminatory harassment includes speech elements:

The fact that harassment may involve conduct that includes speech in a public setting or speech that is also motivated by political or religious beliefs, however, does not relieve a school of its obligation to respond under Title VI . . . if the harassment creates a hostile environment in school for a student or students.²⁷

As OCR explained, while an institution may “be constrained or limited in *how* it responds”²⁸ when protected speech is involved in creating a hostile environment based on protected status, Title VI dictates that it must, nonetheless, respond with appropriate measures. “Schools have a number of tools for responding to a hostile environment—including tools that do not restrict any rights protected by the First Amendment.”²⁹

Also relevant here, the May 2024 letter included a specific section addressing “Expression of Views About a Particular Country,” in which OCR explained that “if harassing conduct that otherwise appears to be based on views about a country’s policies or practices is targeted at or infused with discriminatory comments about persons from or associated with a particular country, then it may implicate Title VI and should be

²⁷ *Id.*

²⁸ *Id.* (emphasis added).

²⁹ *Id.*

analyzed on a fact-dependent basis.”³⁰ Importantly, the May OCR letter reiterated that “[h]arassing conduct need not always be targeted at a particular person in order to create a hostile environment for a student or group of students, or for other protected individuals.”³¹

Applying these principles, OCR has resolved a number of shared ancestry discrimination complaints under Title VI, including those alleging a hostile environment for Jewish students. Among the allegations investigated by OCR in these matters were the following:

- students calling a Jewish peer wearing a Star of David a “Zionist pig Jew”;
- rally chants such as, “death to Israel,” “[t]here is no peace until they’re dead,” “intifada now,” and “there is only one solution”;
- reports of checkpoints at a spring 2024 encampment that allegedly denied entry to Jewish students who refused to “denounce their Zionism”;
- faculty offering extra credit or canceling classes to encourage students to attend anti-Israel rallies and protests, which OCR

³⁰ *Id.*

³¹ *Id.* (citing related and “well established” case law under Title VII, “on which courts often rely for interpreting Title VI”).

acknowledged “may have denied Jewish students – but not other students – equal access to academic credit opportunities and the educational class programming”; and

- signs posted at a university center and briefly on the center’s website explicitly stating that Zionists were not welcomed and that Jewish students should “stay away”.³²

OCR noted Title VI compliance concerns in these matters not only because such incidents are clear demonstrations of hostility toward Jewish ancestral identity but also because “the universities’ responses to notice of possible hostile environments appeared not to have been effective at stopping the harassment, preventing its recurrence, and remedying its effects.”³³

III. THE AMENDED COMPLAINT’S ALLEGATIONS ARE MORE THAN SUFFICIENT TO STATE A TITLE VI CLAIM FOR DELIBERATE INDIFFERENCE TO A HOSTILE ENVIRONMENT.

The allegations in the Amended Complaint make clear that the Penn administration was not among those to heed OCR’s counsel regarding the proper handling of shared ancestry-based harassment and

³² *Protecting Civil Rights*, *supra* note 16, at 15-18.

³³ *Id.* at 18.

discrimination targeting Jews. Rather, as the Amended Complaint details, the Penn environment was one of open harassment and hostility toward Jewish ancestral identity (not to mention Israeli national origin). The hostility was severe and pervasive to the point that it significantly interfered with Jewish students' education; there was clear notice of such hostility provided to the administration; yet it failed to take steps reasonably sufficient to remedy the known hostile environment, at times through application of clear double standards. No more is needed to adequately plead deliberate indifference under Title VI.

The Amended Complaint³⁴ expressly includes allegations of antisemitic vandalism (§§ 2, 8, 124, 188, 214), some of which, based on its location, was unquestionably directed squarely at segments of the Penn Jewish community (§§ 124, 188), and all of which contributed to a campus environment of hostility and intimidation for members of that community. It notes that such vandalism was reported to administrators, but the administration treated these incidents distinctly differently from other similar incidents targeting non-Jews, including, on at least two

³⁴ “Amended Complaint” and paragraph citations thereto refer to the Appendix – Volume 2, filed with Appellants’ Brief (Doc. 24), beginning at Appx 29.

occasions, failing to discipline those responsible for antisemitic vandalism depicting a swastika (¶¶ 106, 121) and expressly glorifying terrorism and violence against Jews and Israelis through calls for “intifada”. (¶¶ 8, 124, 216).³⁵

Importantly, despite claims by some that the term “intifada” merely refers to peaceful and justified protest, it is undeniably the name given to two waves of terrorist attacks against Israeli civilians in the late 1980s and early 1990s and again in the early 2000s, as the Amended Complaint explains (¶¶ 8, 35). As such, when Jewish and Israeli students hear their peers (and professors) chanting “Intifada!” in various places across campus, or see campus buildings vandalized with this term—especially in the overall context of the other examples of pervasive antisemitism detailed in the Amended Complaint, and alongside the other rhetoric that accompanied it (*e.g.*, ¶¶ 33, 189, 214: “the Jews deserve everything that is happening to them”; “smash the settler Zionist state”; and “from water to water, Palestine will be Arab”)—they reasonably understand this term to be a call expressly supporting and glorifying violence against Israelis

³⁵ The Amended Complaint includes multiple additional examples of Penn’s double standards in responding to complaints of campus antisemitism. *See, e.g.*, Am. Compl., ¶¶ 253-64.

and Jews (like Plaintiffs) whose identity includes a connection to Israel as their ancestral home. It can hardly be surprising that this would create a climate of hostility for such students, yet, according to the Amended Complaint, the administration took no reasonable action to remedy this blatant identity-based hostility.

Additionally, there are multiple instances of unambiguous direct harassment of Jewish and Israeli students—by both peers and faculty members—detailed in the Amended Complaint. (¶¶ 2, 78, 89, 91, 95, 152, 168, 170, 171, 175, 176, *et al.*). As with the antisemitic vandalism, these incidents were either witnessed by or reported to administrators, who, the Amended Complaint alleges, took no action to address the pervasive hostility to which these students were being subjected, at times outright dismissing the concerns expressed by the students. (¶¶ 90, 91, 152, 162, 178, 180, 181, 182, *et al.*).

The district court rightly explained that “a Title VI violation may be established through the deliberate indifference standard by showing that an educational institution had knowledge that a federally protected right is substantially likely to be violated, but nevertheless failed to act despite

that knowledge.”³⁶ Inexplicably, however, the court failed to recognize the clear pattern of such failures by the Penn administration spelled out in the Amended Complaint. This deliberate indifference is perhaps best illustrated and encapsulated in the Amended Complaint’s allegations concerning the Palestine Writes Literature Festival hosted at Penn in September 2023. (¶¶ 4-6; 98-128).

The Amended Complaint clearly alleges that students, alumni, outside organizations, and even Penn trustees notified administrators, in detail, of their concerns about the hostile antisemitic environment that this event would likely create on Penn’s campus. It then describes how, these concerns fell on deaf ears, and the event was indeed an antisemitic hate fest that included speakers peddling anti-Zionist narratives, including that “Israel’s Jews” are “‘European colonizers’ who ‘stole an entire country’ and had no right to self-determination on their land” (¶ 122); speakers who “decried ‘Jewish supremacism’ and the ‘messianic mindset’ of ‘religious Jews’ who are willing to ‘put up with anything to take over more land’” (¶ 123); and still others who “advocated a single, Palestinian

³⁶ *Canaan v. Carnegie Mellon Univ.*, Civ. No. 23- 2107, 2024 U.S. Dist. LEXIS 227575 at *21 (W.D. Pa. Dec. 17, 2024) (citing *S.H. v. Lower Merion Sch. Dist.*, 729 F.3d 248, 265 (3d Cir. 2013)).

state, limiting Israel's Jews in number or concentrating them in 'cantons'" (*Id.*). It alleges that the administration's endorsement of the event, its dismissal of the concerns expressed beforehand, and its failure to distance itself from the event all directly exacerbated the wave of antisemitism that hit Penn's campus immediately following the October 7, 2023, Hamas terrorist attack in Israel (§ 128). Finally, it includes allegations of former Penn President Magill's tacit admission of the administration's failure to properly handle the matter, as well as the harm occasioned to Penn's Jewish community by its failure to act (§ 166).

The conduct of the Penn administration regarding the Palestine Writes festival typifies its treatment of the overall antisemitic climate on its campus, as the Amended Complaint amply sets forth throughout. And though the Amended Complaint identifies a few meagre steps taken by the administration with the stated purpose of addressing the problem, it also clearly alleges why those steps were wholly inadequate, including details demonstrating the steps' ineffectiveness and the administration's failure, despite its knowledge of their ineffectiveness, to reassess the situation and develop additional remedial measures based on the known circumstances. (Am. Comp. §§ 181, 182, 185, 196-210, 212, 219).

Contrary to the district court’s position, that the administration satisfied its Title VI obligations merely because it “made efforts to redress the problems,” these allegations are precisely the stuff of a deliberate indifference claim under Title VI. Indeed, the mindset of the Penn administrators could hardly have been any more indifferent toward the hostile antisemitic environment on its campus, as even then-President Magill testified before a congressional committee in December 2023 “that advocating for the genocide of Jews does not necessarily constitute bullying or harassment at Penn.” (Am. Comp. ¶¶ 8, 220).

To quote the decision of the Court in *Kestenbaum v. President & Fellows of Harvard College*, involving allegations of a hostile antisemitic campus climate similar to those alleged here, to establish deliberate indifference, a plaintiff must show that the institution’s response to known acts of harassment was “clearly unreasonable in light of the known circumstances.”³⁷ In finding Harvard in violation of Title VI for acting with deliberate indifference towards harassment of Jewish and

³⁷ *Kestenbaum v. President & Fellows of Harvard College*, No. 1:24-cv-10092 (D. Mass. Aug. 6, 2024), *13 (quoting *Davis v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, 648 (1999)).

Israeli students,³⁸ the federal government quoted this very language, adding, as did the *Kestenbaum* court, that this standard is satisfied “when the institution ‘either did nothing or failed to take additional reasonable measures *after it learned that its initial remedies were ineffective.*’”³⁹

The *Kestenbaum* decision noted that even though some remedial steps were apparently taken by the institution, the complaint had alleged that those were ineffective or not meaningfully implemented. The court held that an investigation alone may not suffice and warned against prioritizing form over function. To paraphrase and apply that standard here, “[A]s pled, [Penn’s] reaction was, at best, indecisive, vacillating, and at times internally contradictory. . . . To conclude that the [Amended Complaint] has not plausibly alleged deliberate indifference would reward [Penn] for virtuous public declarations that ... proved hollow

³⁸ U.S. Dep’t of Health & Human Services, OCR, *Notice of Violation: Harvard University (OCR Trans. No. DO-25-607541-RV-CRRRac)* (June 2025), at 22 (quoting *Davis*, 526 U.S. at 648), available online at <https://www.hhs.gov/sites/default/files/harvard-title-vi-notice-violation.pdf>.

³⁹ *Id.* (quoting *Porto v. Town of Tewksbury*, 488 F.3d 67, 74 (1st Cir. 2007) (emphasis added)).

when it came to taking disciplinary measures...[T]he facts as pled show that [Penn] failed its Jewish students.”⁴⁰

CONCLUSION

This court should reverse the district court’s order dismissing the Amended Complaint.

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Respectfully submitted,

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⁴⁰ *Kestenbaum*, No. 1:24-cv-10092, at *17-18.

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/s/ Jerome Marcus