



TITLE VI HOSTILE-ENVIRONMENT LAW
IN THE SHADOW OF ANTISEMITIC VIOLENCE

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INTRODUCTION

Since Hamas's October 7, 2023 attack on southern Israel, the start of the subsequent war in Gaza, and an outbreak of campus protests expressing vehement hostility to Israel, dozens of universities across the United States have faced lawsuits, administrative complaints, and federal investigations alleging dereliction of their Title VI¹ duty to protect Jewish students from discrimination. These Title VI claims typically include allegations that universities have been deliberately indifferent to the way actions by anti-Israel protesters have created a severe and pervasive hostile environment for Jewish and Israeli students.²

Public attention has focused on perceived hateful speech by anti-Israel protesters. This includes slogans seen as calling for the destruction of Israel (e.g., Arabic chants of "From River to the Sea, Palestine is Arab"); speech that is often interpreted as calls for violence against Israel, Jews, and their supporters (e.g., "Globalize the Intifada" and, in Arabic, "Khaybar Khaybar oh Jews, the army of Muhammad will return"); expressions of support for Hamas in general (e.g., "Glory to the Martyrs") and its October 7 crimes in particular (e.g., flyers that feature paragliders, glorifying the Hamas terrorists who massacred Israelis after flying into Israel on paragliders); and pro-Hamas events on October 7, 2024, the anniversary of the massacre.³

¹ Civil Rights Act of 1964, tit. VI, 42 U.S.C. §§ 2000d to 2000d-7.

² "A recipient [educational institution] has subjected an individual to different treatment on the basis of race if it has effectively caused, encouraged, accepted, tolerated or failed to correct a racially hostile environment of which it has actual or constructive notice." Racial Incidents and Harassment Against Students at Educational Institutions: Investigative Guidance, 59 Fed. Reg. 11448, 11449 (Mar. 10, 1994).

The Article assumes, in accord with the position of every presidential administration since George W. Bush's, that anti-Jewish discrimination based on ethnicity rather than religion is covered by Title VI's ban on racial discrimination.

Also, while the Article focuses on anti-Jewish discrimination, its analysis applies as well to students of Israeli origin alleging national-origin discrimination. Indeed, even if one is skeptical of the notion that, e.g., protests calling for the murder of Israelis can contribute to a hostile environment for Jewish students, surely it can contribute to a hostile environment for Israelis!

³ See, e.g., Solcyré Burga, *Pro-Palestinian Protests Speak on College Campuses Around the Globe*, TIME (May 3, 2024), <https://perma.cc/A3PU-3EXR>; Jerusalem Post Staff, 'From the River to the Sea'—Students Chant but Don't Know Which River or Sea, JERUSALEM POST (Dec. 7, 2023), <https://>

Judicial decisions and scholarly commentary have tended to frame the Title VI claims primarily as conflicts over political expression of this sort by anti-Israel protesters.⁴ In late 2023, the federal Department of Education advised university officials that in the context of anti-Israel protests, constitutionally protected speech alone can create a hostile environment that universities are obligated to address, albeit without suppressing speech.⁵

Much of the subsequent debate, in courts and otherwise, has been over whether rhetoric widely perceived as antisemitic or as endorsing violence in the abstract can ordinarily support hostile-environment liability without violating the First Amendment. Jewish students' claims should be rejected, some argue, as objections to rhetoric the students find deeply offensive but that is constitutionally protected.⁶ A recent attention-getting article asserted that Jewish students' claims may not ordinarily rely—even merely as evidence of an overall hostile campus climate—on campus protesters engaging in such incendiary rhetoric.⁷

This Article argues that prevailing analyses of post-October 7 Title VI claims are incomplete and are often legally mistaken because they ignore or misinterpret a central element of hostile-environment doctrine: context. Hostile-environment law asks whether conduct is so severe, pervasive, and objectively offensive that it effectively denies students access to educational opportunities. This inquiry is contextual and depends on the “constellation of surrounding circumstances.”⁸

perma.cc/JCB8-ULTV; Michael Starr, ‘Globalize the Intifada:’ Rutgers President, Jewish Students Flee Meeting, JERUSALEM POST (Apr. 8, 2024), <https://perma.cc/Z4AA-8QGS>.

⁴ E.g., *Stand with Us Ctr. for Just. v. Mass. Inst. of Tech.*, 158 F.4th 1, 19 (1st Cir. 2025); Benjamin Eidelson & Deborah Hellman, *Antisemitism, Anti-Zionism, and Title VI: A Guide for the Perplexed*, 139 HARV. L. REV. F. 1 (2025).

⁵ Erwin Chemerinsky & Howard Gillman, *Federal Attempt to Combat Anti-Semitism Puts Universities in an Untenable Position*, YAHOO NEWS (Dec. 12, 2023), <https://perma.cc/AX9A-GW2A>.

⁶ *Stand with Us*, 158 F.4th 1.

⁷ See Eidelson & Hellman, *supra* note 4.

⁸ *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 650 (1999). Eidelson and Hellman, *supra* note 4, however, suggest that hostile-environment liability under Title VI may require discriminatory intent. Zachary Fasman and Samuel Estreicher explain that it does not. See Zachary D. Fasman & Samuel Estreicher, *Antisemitism, Anti-Zionism and Title VI: College and University Responsibility for Campus Harassment of Jewish Students* (N.Y.U. Sch. of L. Pub. L. & Legal Theory Rsch. Paper Series, Working Paper No. 25-30, 2025), <https://perma.cc/878B-SGHZ>.

The context, or surrounding circumstances, neglected by many analysts is the surge of antisemitic assaults, threats, vandalism, and intimidation on and around American campuses. When rhetoric endorsing or glorifying violence occurs against a backdrop of credible threats and actual violence, it may reasonably be experienced as threatening even if the same words would otherwise be understood in a different context as merely abstract or ideological rhetorical excess or overkill. Treating Jewish students' fear of violence as irrelevant or irrational improperly strips the contextual analysis from the "reasonable person" standard used in hostile environment law.

Yet recent judicial decisions, to the extent they have recognized it at all, have treated Jewish students' fear of violence as either irrelevant or irrational, even where that fear is grounded in recent incidents of assault, intimidation, and lawless conduct directed at Jewish students and at Jewish institutions.⁹ In doing so, courts have effectively assumed away the very conditions that may make certain speech threatening rather than merely offensive.

This does not mean that chants, slogans, flyers and other speech perceived as endorsing violence automatically created or even contributed to a hostile environment. Moreover, even if speech does create or contribute to a hostile environment for Jewish students, such speech is constitutionally protected, so long as it does not rise to the level of incitement or a "true threat."¹⁰ Universities therefore do not and cannot have a Title VI obligation to suppress protected political speech.

The question, however, is whether Jewish students may have a valid Title VI action for university malfeasance or inaction when it comes to policing *behavior* by

⁹ *E.g.*, *Stand with Us*, 158 F.4th at 19. The court noted in passing that MIT's Hillel felt obliged to relocate a Passover Seder originally scheduled to be held in its building because of a nearby anti-Israel encampment. The court suggested that Hillel's leaders "did not feel comfortable" holding the Seder near the encampment, without noting that a major reason for this discomfort was fear of violence, threats, and intimidation.

¹⁰ *Gartenberg v. Cooper Union for the Advancement of Sci. & Art*, 765 F. Supp. 3d 245, 260–64 (S.D.N.Y. 2025) (holding, in a Title VI antisemitism case brought against Cooper Union, that Title VI must be enforced in a way that does not suppress protected speech); *College Republicans at S.F. State Univ. v. Reed*, 523 F. Supp. 2d 1005, 1024 (N.D. Cal. 2007) (holding that a university could not penalize students for engaging in a protest that included stomping on flags containing the word "Allah," even though this caused offense to Muslim students).

protesters that *is not constitutionally protected*. The violence-endorsing speech, rather than being the basis of a Title VI claim, serves as relevant context for why the universities had a Title VI obligation to enforce their own rules and the law.

As described later in this Article, since October 7, Jewish students have faced a surge of physical assaults, credible threats, vandalism, and coordinated intimidation against them on campuses nationwide, alongside a broader national wave of antisemitic violence. Against that backdrop, Jewish students' fear of violence is not speculative or subjective, but empirically grounded. When such fear undermines students' access to education, universities have a Title VI obligation to address the overall hostile climate. They can do so, without suppressing protected expression, by enforcing neutral rules against trespass, vandalism, threats, and other illicit conduct not protected by the First Amendment.

Failure to account for students' fear of violence has concrete doctrinal consequences. Courts have dismissed Jewish students' hostile-environment claims at the pleading stage by characterizing allegations as mere discomfort with opposing viewpoints, even where plaintiffs allege assaults, threats, encampments that block access to parts of campus, and administrative indifference to lawless conduct. By excluding fear of violence from their contextual analysis, these decisions collapse the distinction between ideological offense and intimidation, and they risk turning Title VI's "reasonable person" standard into an abstract exercise divorced from reality. Worse yet, some courts and commentators have treated illicit actions by anti-Israel protesters as if they are constitutionally protected speech.¹¹

¹¹ *Stand with Us*, 158 F.4th 1 (apparently treating an illicit encampment as protected speech); Evelyn Douek & Genevieve Lakier, *Title VI as a Jawbone*, KNIGHT FIRST AMEND. INST. (Sep. 26, 2024), <https://perma.cc/28UK-5JAG> (suggesting that, when Columbia University ordered an illicit encampment dismantled, it constituted repressing "student speech").

For the more common perspective that illegal acts are not part of the "freedom of speech" protected by the First Amendment, see *Gartenberg*, 765 F. Supp. 3d at 272–73 (finding "physically threatening or humiliating conduct that the Complaint alleges Jewish students in the library experienced is entirely outside the ambit of the free speech clause"); *Kestenbaum v. President & Fellows of Harvard Coll.*, 743 F. Supp. 3d 297, 304 (D. Mass. 2024) (finding plaintiffs established a plausible factual basis for a hostile-environment claim when "[d]uring one of the protest rallies, demonstrators blockaded Jewish students in a study room, and during another, protestors 'surrounded and intimidated' Jewish students" (citation omitted)); David Bernstein, *Is "Impeding Travel for Many Students" as Part of a Protest First Amendment-Protected Speech?*, REASON: VOLOKH CONSPIRACY (Oct. 31, 2025), <https://perma.cc/WZ2Q-VNK5>.

This Article proceeds in five parts. Part I documents the surge of physical violence, threats, and intimidation targeting Jewish students on American campuses since October 7, 2023, demonstrating that rhetoric endorsing violence operates within an atmosphere of tangible danger. Part II situates campus developments within a broader national context of antisemitic violence against Jewish individuals and institutions, reinforcing the reasonableness of Jewish students' fears that they will be the targets of violence. Part III examines the organizational and ideological ties between leading sponsors of anti-Israel campus protests and groups that openly endorse violent "resistance," explaining why certain chants and slogans may reasonably be perceived as menacing in context. Part IV draws out the implications for Title VI doctrine and university compliance, arguing that courts can and should require universities to address illicit conduct and threatening environments without infringing on First Amendment protections. Part V addresses First Amendment objections to using protected speech as evidentiary context in hostile-environment cases by explaining why universities' failure to suppress related illicit, unprotected actions has violated Title VI. This Part rejects the notion that universities warrant distinct judicial solicitude in their regulation of unlawful conduct connected to student protest, and also concludes that the chilling effects doctrine does not apply to rulings that allow complainants to rely on hateful, violence-endorsing speech as contextual background in a hostile-environment case.

This Article concludes by emphasizing that courts and administrators must interpret Title VI's "reasonable person" standard in light of the contemporary reality of antisemitic violence, on and off campus. Courts can demand that universities prohibit illicit *behavior* by anti-Israel campus constituents, such as trespass, vandalism, and threats, while still protecting the rights of protesters to express their opinions.

I. WIDESPREAD CAMPUS VIOLENCE AGAINST JEWS SINCE OCTOBER 7

Violent incidents against Jewish students on a particular campus are surely relevant to hostile-environment claims on that campus, even if the Jewish complainants were not the direct targets of the violent incident.¹² Guidance from the Department of Education's Office of Civil Rights suggests that even a single incident in-

¹² Cf. Racial Incidents and Harassment, *supra* note 2, at 11449 ("[R]acial acts need not be targeted at the complainant in order to create a racially hostile environment.").

volving a threat of injury to persons or property can create a general hostile environment.¹³ Moreover, an overall violent climate for Jewish students around the country shapes the social meaning of an antisemitic incident at any university, and in particular whether such incidents can reasonably be said to instill fear among Jewish students of becoming victims of violence.

Unfortunately, across American university campuses from October 2023 through the end of 2025, Jewish students and visibly Jewish individuals faced a surge in physical assaults, intimidation, and harassment. Some episodes stand out for their severity—such as arson and severe beatings—while many others, though less dramatic, reveal a persistent climate of targeted hostility against Jewish people. Part A of this section describes actual physical violence on university campuses against Jewish targets, while Part B discusses threats and intimidation against those targets. Readers should note that the incidents described below only include those that have been publicly reported and that the author was able to find. There are surely many more incidents not included below; for example, the author knows of two physical assaults on Jewish students that have not been publicly reported.

A. *Physical Violence*

One of the most chilling incidents of related violence occurred at Drexel University in Philadelphia, when just after October 7 someone intentionally set fire to the door of a Jewish student's dorm suite. The act was investigated by both local and federal authorities as arson with an antisemitic motive.¹⁴

At UCLA during the April–May 2024 “Palestine Solidarity Encampment,” Jewish students were physically blocked from campus access and subjected to assaults. One student lawfully filming the encampment was slapped by a teaching assistant; another was pepper-sprayed by a protester; a third, an Israeli student, was attacked. Jewish student Elinor Hess was shoved, kicked, and dragged by the hair

¹³ *Id.* (“In some cases, a racially hostile environment requiring appropriate responsive action may result from a single incident that is sufficiently severe. Such incidents may include, for example, injury to persons or property or conduct threatening injury to persons or property.”).

¹⁴ Dan Stamm, *Drexel Investigating Arson at Jewish Student's Door Amid Israel-Hamas War*, NBC PHILA. (Oct. 12, 2023), <https://perma.cc/TGS5-YEYU>; Associated Press, *Drexel to Bolster Handling of Bias Complaints After Probe of Antisemitic Incidents*, CBS NEWS (Aug. 2, 2024), <https://perma.cc/FEF3-JYUG>.

while trying to retrieve a fallen flag, sustaining a concussion and requiring medical care.¹⁵

At UC Berkeley, about 200 protesters rioted outside the Zellerbach Playhouse during an event organized by Jewish student groups featuring an Israeli speaker. Chanting “Intifada” and “You can’t run! You can’t hide! We charge you with genocide!” The protesters banged on windows and doors; one attendee was grabbed by the neck and another was spat upon. Windows were smashed and doors forced open, requiring police evacuation of the audience. University leaders later acknowledged instances of “overtly antisemitic expression” and “physical battery” as hate crimes.¹⁶

At Princeton, Jewish student David Piegario was filming encampment arrests when a man, later identified as a Princeton administrator, grabbed him and threw him down marble stairs, causing a concussion and rib injuries. The university charged Piegario, claiming he had initiated contact, but a judge acquitted him; Piegario has since filed suit against Princeton.¹⁷

At Reed College, a Jewish student was struck in the head with a rock in her dorm room, the attack captured on surveillance video.¹⁸ Two Jewish students at the University of Pittsburgh wearing kippot were assaulted in Schenley Plaza; one suffered a concussion.¹⁹ At the University of Michigan, a Jewish student was attacked

¹⁵ FOX 11 LOS ANGELES, *Jewish Demonstrator Pepper Sprayed at UCLA Protest* (YouTube, Apr. 29, 2024), <https://www.youtube.com/watch?v=Qezhyo1sq1g>; *Pro-Israel Protester in L.A. Says She Was Shoved to Ground, Hit Her Head and Was Kicked*, TIMES OF ISRAEL (May 1, 2024), <https://perma.cc/GC2Z-J6YX>; Joseph Ax, *UCLA Must Protect Jewish Students’ Access to Campus, Judge Rules*, REUTERS (Aug. 14, 2024), <https://perma.cc/3NAX-L38H>; Jaweed Kaleem & Daniel Miller, *UCLA Violated Jewish Students’ Civil Rights with ‘Deliberate Indifference,’ Feds Say*, L.A. TIMES (July 29, 2025). Additionally, a medical school professor was attacked and knocked to the ground by a protestor. Afshine Emrani, FACEBOOK (May 4, 2024), <https://perma.cc/7DKP-ASP9>.

¹⁶ Salvador Hernandez, *Pro-Palestinian Protesters Shut Down Event Organized by Pro-Israel Student Groups at UC Berkeley*, L.A. TIMES (Feb. 27, 2024); STAFF OF H. COMM. ON EDUC. & THE WORKFORCE, 118TH CONG., ANTISEMITISM ON COLLEGE CAMPUSES EXPOSED 79 (Comm. Print 2024), <https://perma.cc/VQ3L-JJLL> [hereinafter HOUSE COMMITTEE REPORT].

¹⁷ HOUSE COMMITTEE REPORT, *supra* note 16, at 8.

¹⁸ Lillian Karabaic, *Reed College Is Investigating an Antisemitic Attack*, ORE. PUB. BROAD. (May 17, 2024), <https://perma.cc/MNF6-T24A>.

¹⁹ *Man Charged with Assault on 2 Jewish Students on University of Pittsburgh Campus*, WPXI (Aug. 31, 2024), <https://perma.cc/6EQU-A6V7>.

outside a dorm. Police classified it as aggravated assault and ethnic intimidation.²⁰ The same week, two Jewish students at Michigan were assaulted outside a Jewish fraternity house.²¹

At George Mason University, two anti-Israel protesters assaulted a Jewish student who was counter-protesting. The assailants were arrested and charged.²² Also at George Mason, a university alumnus attacked a Jewish student and ripped off his Star of David necklace at an off-campus fraternity party.²³ At Harvard University, a Jewish student recording a protest “die-in” was assaulted by demonstrators. Two of the protestors were charged with assault and battery. Hate-crime charges were later dropped, and the defendants were referred to a first-offender program.²⁴ Also at Harvard, demonstrators allegedly blockaded Jewish students in a study room, and in another incident there, protesters surrounded and intimidated Jewish students.²⁵

At Columbia University, an Israeli student was assaulted with a stick by a non-affiliated former student.²⁶ During a student walkout at Columbia “for Palestine,” a Jewish student was shoved by a classmate wearing a keffiyeh and later swarmed by protesters.²⁷ Columbia student Jonathan Lederer had the misfortune of being

²⁰ *Security Bulletin 09/15/24: Ethnic Intimidation and Aggravated Assault [Updated]*, UNIV. OF MICH. DIV. OF PUB. SAFETY & SEC. (Sep. 16, 2024), <https://perma.cc/6TJK-AR4X>.

²¹ *On Anniversary of Oct. 7 Attacks: Cassidy Demands Action to Protect Jewish Students Amid Continued Antisemitism on College Campuses*, U.S. SENATE COMM. ON HEALTH, EDUC., LAB. & PENSIONS (Oct. 7, 2024), <https://perma.cc/XV9Y-VU3N>.

²² Letter from Dan Greenspahn, Off. for Civ. Rts., Dep’t of Educ., to Gregory Washington, President, George Mason Univ. (Dec. 22, 2023), <https://perma.cc/QM3Z-9Q9B>.

²³ Letter from Roz Rothstein, CEO & Co-Founder, Stand with Us, to Gregory Washington, President, George Mason Univ. (Nov. 2, 2023), <https://perma.cc/BQM8-D84M>.

²⁴ Dion J. Pierre, *Boston Judge Dismisses Hate Crime Charges Against Harvard Students for Assault of Jewish Peer*, ALGEMEINER (Feb. 13, 2025), <https://perma.cc/L5TC-DYGG>.

²⁵ *Kestenbaum v. President & Fellows of Harvard Coll.*, 743 F. Supp. 3d 297, 304 (D. Mass. 2024).

²⁶ Rebecca Massel, Isabella Ramirez & Esha Karam, *General Studies Student Allegedly Assaulted in Front of Butler Library, Suspect Arrested and Charged, NYPD Says*, COLUMBIA SPECTATOR (Oct. 14, 2023), <https://perma.cc/AM59-P2XW>.

²⁷ Complaint at 61–62, *Students Against Antisemitism, Inc. v. Trs. of Columbia Univ.*, 1:24-CV-01306 (S.D.N.Y. Feb. 21, 2024), <https://perma.cc/P8EH-LXQA>.

assaulted twice while holding Israeli flags, once on April 20, 2024,²⁸ and again on December 11.²⁹ Also at Columbia, a Jewish student wearing a kippah was spat on and told “I hope you guys suffer.”³⁰

Near Tulane University, a protester swinging a pole struck a Tulane Jewish student in the face, causing visible injuries; police confirmed that the assailant was arrested.³¹

At UMass Amherst, a Jewish student carrying an Israeli flag was punched and the flag spat upon; the assailant was arrested and barred from campus.³² Two Jewish students were attacked near the Ohio State University campus after the attacker asked both individuals “if they were Jewish”; the case was investigated as a hate crime.³³ At Tufts University, during a debate on anti-Israel resolutions, a Jewish student was spat on and told “Shut up b*tch.”³⁴

At Northwestern University, a Jewish student photojournalist was identified and surrounded by protesters shouting “Shame!” and another Jewish student filming was assaulted; others were spat at and told to “go back to Germany and get gassed.”³⁵ Yale student journalist Sahar Tartak was jabbed in the eye with a flagpole during a protest and hospitalized.³⁶ A Jewish student at Emory University was

²⁸ Campus Reform Correspondent, *Suspect Arrested for Allegedly Throwing Rock at Jewish Columbia Student*, CAMPUS REFORM (June 21, 2024), <https://perma.cc/4DZU-JP7U>.

²⁹ Steven Vago, Amanda Woods & Joe Marino, *Anti-Israel Protester Punches Jewish Student, Calls Him ‘Nazi’ in Deranged Attack Outside Columbia University*, N.Y. POST (Dec. 12, 2024).

³⁰ HOUSE COMMITTEE REPORT, *supra* note 16, at 66.

³¹ Hannah Levitan, Lindsay Ruhl & Lillian Foster, *Pro-Palestine, Pro-Israel Protesters Clash at Tulane*, TULANE HULLABALOO (Oct. 26, 2023), <https://perma.cc/9F9M-PWLR>; David Swindle, *Anti-Israel Rally at Tulane Turns Ugly with Brawl, Injuries*, S. JEWISH LIFE (Oct. 29, 2023), <https://perma.cc/K7NU-HZ78>.

³² WBZ-News Staff, *UMass Amherst Student Allegedly Punched Jewish Student, Spit on Israeli Flag*, CBS NEWS (Nov. 6, 2023), <https://perma.cc/M7RB-ULPZ>.

³³ Bethany Bruner, *Man Admits to Federal Hate Crime for Attacking Ohio State Students Over Jewish Faith*, COLUMBUS DISPATCH (Aug. 15, 2025), <https://perma.cc/3VCN-MQ6N>.

³⁴ Micaiah Bilger, *Jewish Students Spat On, Told to ‘Go Back’ at Tufts: Report*, COLLEGE FIX (Mar. 4, 2024), <https://perma.cc/AJ3V-FS2D>.

³⁵ HOUSE COMMITTEE REPORT, *supra* note 16, at 77.

³⁶ Ronny Reyes, *Jewish Yale Student Journalist Stabbed in the Eye with Palestinian Flag During Protest*, N.Y. POST (Apr. 21, 2024).

shoved and verbally abused outside Chabad.³⁷ A similar incident occurred at the University of Georgia, where a Jewish student was pushed to the ground and verbally harassed.³⁸

At Johns Hopkins University, an Israeli doctoral student was assaulted by a participant in an anti-Israel encampment.³⁹ Two DePaul University students supporting Israel were assaulted by masked attackers yelling antisemitic remarks; one suspect was charged with hate crime and aggravated battery.⁴⁰ At UC Davis, an anti-Israel encampment blocked a Jewish student with disabilities from the disability-accessible pathway on the Quad. When he tried to access the path, protesters struck him in the face with the sharp end of an umbrella and told him he “was not welcome” because he was a “Zionist.”⁴¹ In another incident, after an expletive-filled tirade a female graduate student at Florida State University shoved a male student wearing an Israel Defense Forces T-shirt. She was arrested and expelled.⁴²

B. Threats and Intimidation on Campus

Beneath the tide of overt physical assaults lies a broader pattern of threats, intimidation, and harassment targeting Jewish students and institutions on American campuses. These incidents range from explicit death threats to campaigns of sustained bullying that created what many students and faculty describe as a pervasive atmosphere of fear.

1. Direct Threats of Violence to Individuals

In October 2023 at Cornell University, a student posted violent online threats to shoot, rape, and murder Jewish students and attack a kosher dining hall.

³⁷ Jack Rutherford & Clement Lee, *Student ‘Assaulted’ at Protest Outside Chabad*, EMORY WHEEL (Apr. 3, 2024), <https://perma.cc/4SGK-BH62>.

³⁸ *Because of You, Jewish College Students Find Solace at Hillel*, JEWISH FED’N OF GREATER ATLANTA, <https://perma.cc/H96H-27ZA>.

³⁹ *Israeli Student at John Hopkins Assaulted after Speaking About Hostages*, I24 NEWS (May 2, 2024), <https://perma.cc/DNE2-YPYN>.

⁴⁰ Kanishka Singh, *Suspect Charged with Hate Crime in Attack on Two Jewish Students in Chicago*, REUTERS (Apr. 17, 2025), <https://perma.cc/GU2V-DKK8>.

⁴¹ Complaint, *Groveman v. Regents of Univ. of Cal.*, No. 2:24-CV-01421, 2025 WL 391312 (E.D. Cal. Feb. 4, 2025), <https://perma.cc/4Z4W-2M7U>.

⁴² FLA. STATE UNIV. POLICE DEP’T, Case No. 2025-07310040 (July 31, 2025), <https://perma.cc/RG9X-HQEV>.

He was arrested and later pled guilty in federal court to interstate threats.⁴³ At Columbia University that same month, an assailant yelling “Free Palestine” and “Fuck the Jews” verbally assaulted a Jewish student outside Butler Library, declaring he targeted him “because you are a Jew.”⁴⁴

Also in October 2023, Jewish students at Cooper Union sheltered in a library as protesters pounded on the doors shouting slogans; students feared for their safety. In February 2025, a federal court allowed their Title VI hostile-environment claims to proceed.⁴⁵ At Rutgers University, a student posted on YikYak: “Palestinian protesters, there is an Israeli at AEPI—go kill him.” He received a one-semester suspension.⁴⁶

A University of Virginia Jewish student reported that a housemate threatened him with a gun while making antisemitic remarks; police filed charges.⁴⁷ At the University of Pennsylvania, a student stole and burned an Israeli flag from a Jewish student’s residence, proclaiming that the October 7 massacre made her feel “empowered and happy.” The victim reported feeling terrified and isolated.⁴⁸ Also at Penn, a man was arrested for assaulting a Jewish student on campus who was wearing a yarmulke. The same individual had previously harassed a Jewish student who was posting hostage signs and told Jewish students that they can “either leave us in peace or go back to Moscow and Brooklyn.”⁴⁹

⁴³ Rachel Treisman, *A Former Cornell Student Is Sentenced to 21 Months for Threatening to Kill Jews*, KPBS (Aug. 13, 2024), <https://perma.cc/APQ8-4XLB>.

⁴⁴ Students Against Antisemitism Complaint, *supra* note 27, at 35.

⁴⁵ Katherine Donlevy & Steven Vago, *Cooper Union Barricades Jewish Students Inside Library as Pro-Palestinian Protesters Bang on Doors*, N.Y. POST (Oct. 25, 2023); Jonathan Stempel, *Cooper Union Must Face Jewish Students’ Lawsuit over Pro-Palestinian Rally*, REUTERS (Feb. 5, 2025), <https://perma.cc/W53R-7FJ7>.

⁴⁶ U.S. Dep’t of Educ., Office for Civ. Rts., Resolution Letter, No. 02-14-2265-A (2024); HOUSE COMMITTEE REPORT, *supra* note 16, at 73.

⁴⁷ Beth Bailey, *Antisemitic Incident at UVA Is a Warning Amid Escalating Campus Antisemitism*, WASHINGTON EXAMINER (Nov. 26, 2024), <https://perma.cc/E248-7HJ4>.

⁴⁸ HOUSE COMMITTEE REPORT, *supra* note 16, at 64–65.

⁴⁹ Amended Complaint at 60, *Yakoby v. Trs. of Univ. of Pa.*, No. 2:23-CV-04789, 2025 WL 1558522 (E.D. Pa. June 2, 2025), <https://perma.cc/M25S-WQTA>.

During the 2023–2024 academic year at UCLA, more than 100 of 428 Jewish and Israeli respondents to a university antisemitism task-force survey reported having been physically attacked or threatened; one wrote, “I would spend much more time at home than at the UCLA dorms in fear of my safety.”⁵⁰ At Northwestern University, a student posted on social media that he would “start punching Zionists in the head”; he was found responsible for endangering others.⁵¹ A plaintiff in a civil-rights suit against the Massachusetts Institute of Technology alleged that masked individuals cornered a Jewish graduate student in a parking lot while shouting for “death to Zionists.”⁵²

In another incident at MIT, a Jewish student recording an illicit anti-Israel protest on her phone was shoved by a protestor.⁵³ The protest was sufficiently menacing that MIT Hillel sent out a warning to its email list, cautioning students to avoid the area of the protest.⁵⁴ MIT students later had to move their Passover seder from the Hillel House to another location because of the menacing nature of an anti-Israel “encampment” that was set up next to it. Among other things, masked protesters held up signs “Zionism is apartheid, it’s a genocide, it’s murder, it’s a racist ideology rooted in settler expansion and racial domination and we must root it out of the world. Zionism is a death cult.”⁵⁵

2. Escalating Campus Intimidation

At Columbia University, demonstrators shouted “Fuck the Jews,” “Death to Jews,” and “Fuck Israel,” attempted to instigate fights, and screamed at a rabbi praying with students. One organizer, Mohsen Mahdawi, instructed others through a megaphone to push a small group of pro-Israel students back. University officials

⁵⁰ Joseph Pisani, *Jewish Students at UCLA Were Harassed, Threatened and Assaulted on Campus, Report Finds*, WALL ST. J. (Oct. 22, 2024).

⁵¹ HOUSE COMMITTEE REPORT, *supra* note 16, at 79 & n.417.

⁵² Haley Cohen, *Brandeis Center Files Suit Against MIT for Antisemitic Discrimination and Harassment Against Jewish Students*, JEWISH INSIDER (June 25, 2025), <https://perma.cc/CN2D-7EB8>.

⁵³ *Stand with Us Ctr. for Just. v. Mass. Inst. of Tech.*, 158 F.4th 1, 9 (1st Cir. 2025).

⁵⁴ *Id.*

⁵⁵ *Id.* MIT’s president’s official response to complaints from a Jewish student was that “MIT ‘underst[oo]d the student’s concern’ and was ‘working to move in a constructive dialogue with those who are protesting.’” She requested “‘patience and understanding as [MIT did] this hard work’” and “urge[d the student and the student’s peers] not to counterprotest.” *Id.* (alterations in original).

later acknowledged “threatening rhetoric and intimidation.”⁵⁶ Columbia protesters also handed out flyers at a class on Israel with slogans like “The enemy will not see tomorrow” and “Burn Zionism to the Ground,” which Jewish groups described as incitement.⁵⁷

In yet another Columbia incident, Columbia University student Khymani James publicly stated that “Zionists don’t deserve to live” and that others should be “grateful that I’m not just going out and murdering Zionists,” remarks that led to his suspension and were condemned by the White House.⁵⁸ Columbia University Apartheid Divest, the umbrella anti-Israel campus group, initially issued an apology on his behalf, but later rescinded that apology and explicitly endorsed “armed resistance.” James himself disavowed any expression of regret.⁵⁹

At UC San Diego, protesters carrying an Al-Qaeda flag shouted pro-terror slogans outside a student-government meeting.⁶⁰ In November–December 2023, San Francisco State University saw campus graffiti reading “Kill all Zionists” and “Kill the Jews.”⁶¹ At New York University, Jewish students reported repeated chants of “Gas the Jews” and “Hitler was right.” A civil-rights lawsuit against NYU later settled without admission of wrongdoing.⁶²

A Justice Department investigation of antisemitism at George Washington University “found numerous incidents of Jewish students being harassed, abused,

⁵⁶ HOUSE COMMITTEE REPORT, *supra* note 16, at 66.

⁵⁷ Letter from Tim Walberg, Chairman, House Comm. on Educ. & Workforce, to Dr. Katrina Armstrong, Interim President, Columbia Univ. (Feb. 13, 2025), <https://perma.cc/R5MC-64LR>.

⁵⁸ Eli Stokols, *White House Condemns Columbia Student Protest Leader Who Called for Zionists to Die*, POLITICO (Apr. 26, 2024), <https://perma.cc/2JCJ-NY29>.

⁵⁹ *Columbia Student Group Retracts Apology for Member Who Said “Zionists Deserve to Die,”* TIMES OF ISRAEL (Oct. 9, 2024), <https://perma.cc/8QSP-L77U>.

⁶⁰ *Updated Statement on Social Media Video*, UC SAN DIEGO TODAY (Nov. 18, 2023), <https://perma.cc/AQ5M-FCLL>; Karen Parry, *An Update on Our Campuses*, HILLEL OF SAN DIEGO (Nov. 8, 2023), <https://perma.cc/FTK4-NXMP>; Chris Jennewein, *Video of Jewish Students Leaving Amid Protest Said to Be Real Despite Earlier UCSD Denial*, TIMES OF SAN DIEGO (Nov. 19, 2023), <https://perma.cc/L2VW-LV94>.

⁶¹ ANTI-DEFAMATION LEAGUE, *AUDIT OF ANTISEMITIC INCIDENTS 2023* (2023), <https://perma.cc/TRH6-2CFD>.

⁶² Sharon Otterman, *N.Y.U. Settles Lawsuit by Students Who Claimed Antisemitic Harassment*, N.Y. TIMES (July 9, 2024).

intimidated and assaulted by protesters. To be clear, Jewish students were afraid to attend class, to be observed, or, worse, to be ‘caught’ and perhaps physically beaten on GWU’s campus.”⁶³

3. Threatening Hillel and Chabad

In August 2024, banners at Baruch College and Hunter College read “It’s right to rebel, Hillel go to hell,” with the “i” in “Hillel” dotted by a target triangle like those Hamas used on October 7.⁶⁴ At Temple University, masked demonstrators outside the Hillel building shouted at Jewish students and waved flags of the Popular Front for the Liberation of Palestine terrorist organization.⁶⁵ A Students for Justice in Palestine Instagram post at the University of Wisconsin-Milwaukee labeled Jewish organizations “extremist criminals” and warned that students tied to Israel “were not welcome,” leading to suspensions of those responsible.⁶⁶ That same day at Ohio State University, intruders entered the Hillel Wexner Jewish Student Center, photographed Israeli flags, vandalized property, and shouted anti-Israel threats.⁶⁷

At the University of Pennsylvania, graffiti near the Chabad sukkah erected for the holiday of Sukkot read “KILL YOUR LOCAL ZIO NAZI.”⁶⁸ Also at Penn, the university received threats of violence against the Hillel house.⁶⁹ At San Francisco State University, vandals broke into the university’s Hillel building and defaced it

⁶³ Letter from Harmeet K. Dhillon, Assistant Att’y Gen., Civ. Rts. Div., to Ellen M. Granberg, President, George Washington Univ. (Aug. 12, 2025), <https://perma.cc/TLH4-6J9D>.

⁶⁴ Eyal Yakoby (@EYakoby), X (Aug. 27, 2024), <https://perma.cc/MHN2-Y3GN>; Mark Treyger (@MarkTreyger718), X (Aug. 29, 2024), <https://perma.cc/5PGX-SYUY>.

⁶⁵ Navya Nair & Bayleh Alexander, “We Want Our Freedom”: Palestine Protesters March at Hillel Center, Charles Library, TEMPLE NEWS (Aug. 29, 2024), <https://perma.cc/SC2R-GA6N>.

⁶⁶ Kelly Meyerhofer & Sophie Carson, *UW-Milwaukee Temporarily Suspends Pro-Palestinian Groups for ‘Intimidating’ Post*, MILWAUKEE J. SENTINEL (Aug. 1, 2024), <https://perma.cc/4RMU-Y3D8>.

⁶⁷ OSU Hillel, FACEBOOK (Nov. 9, 2023), <https://perma.cc/CT52-4GRA>.

⁶⁸ Ben Binday, *Several Locations on and Around Penn’s Campus Vandalized with Derogatory, Anti-Zionist ‘Death Threat’*, DAILY PENNSYLVANIAN (Oct. 24, 2024), <https://perma.cc/5AEJ-7FRY>.

⁶⁹ Yakoby Amended Complaint, *supra* note 49, at 71.

with antisemitic graffiti.⁷⁰ Hooded and masked vandals vandalized Drexel University's Raymond G. Perelman Center for Jewish Life by removing the metal letters spelling Perelman's name from the center's front entrance.⁷¹ The Hillel Building at Boston University was defaced with graffiti reading "Free Palestine."⁷² At University of Michigan, an individual was caught on a security camera kicking the Jewish Resource Center's door and then screaming, "F*ck You, F*ck Jews, F*ck Israel, F*ck the Jewish People!"⁷³

Making Jewish students feel even less secure from violence, local progressive prosecutors often dismissed or reduced charges against students who violated the law during the protests.⁷⁴ Moreover, several universities, including Columbia, George Washington, Johns Hopkins, and the University of Pennsylvania found that when they requested the local police to assist them in cracking down on illicit actions by protesters, local political authorities ordered the police not to cooperate.

II. OFF-CAMPUS VIOLENCE AGAINST JEWISH AMERICANS SINCE OCTOBER 7

Fortunately, most violent campus incidents have been relatively minor, and most threats have not ended in violence. But the trepidations of Jewish university students must also be put in the context of much more serious violence against Jews off campus. Since October 7, 2023, Jews in American public spaces far removed from university quads have faced a pattern of violent incidents that together form a menacing backdrop. These episodes are not isolated "one-offs"; they span spontaneous protest clashes, targeted attacks on Jewish communal events or sites, and

⁷⁰ Asaf Elia-Shalev, *SF Hillel Graffitied with Slogan About Battle that Ended in Muslim Slaughter of Jews*, TIMES OF ISRAEL (Dec. 11, 2024), <https://perma.cc/NZ98-TZBP>; Tim Fang, *San Francisco Hillel House Near SFSU Campus Vandalized with Antisemitic Graffiti*, CBS NEWS (Dec. 10, 2024), <https://perma.cc/W7AL-MCR8>.

⁷¹ Joe Brandt, *Vandals Remove Benefactor's Name from Drexel University Jewish Life Building*, CBS NEWS (Apr. 3, 2024), <https://perma.cc/P5EF-858W>.

⁷² Sarah Rumpf-Whitten, *Jewish Organization's Building at Boston University Vandalized with Antisemitic Graffiti*, FOX NEWS (Nov. 9, 2023), <https://perma.cc/9CA7-8CFN>.

⁷³ Dave Kinchen, *Ann Arbor Antisemitic Act Caught on Camera at the University of Michigan*, FOX 2 DETROIT (Oct. 27, 2025), <https://perma.cc/7K8Z-7YM2>.

⁷⁴ E.g., City News Service, *LA City Attorney Declines to File Charges Against Most UCLA And USC Protesters*, ABC7 L.A. (Apr. 26, 2025), <https://perma.cc/6HE5-6735>; Mark Morales & Samantha Beech, *Judge Dismisses 30 Cases of Criminal Trespass Against Pro-Palestinian Protesters Arrested Inside Columbia University Building*, CNN (June 20, 2024), <https://perma.cc/VYE2-GVMX>.

serial street assaults charged as hate crimes. The cumulative effect is to make violent rhetoric plausibly predictive of violent action, and thus reasonably perceived as threatening by Jewish students who must traverse similar crowds and slogans on campus.

A. *Protest-Adjacent Lethal Violence*

The most visible protest-adjacent fatality in the post-October 7 period is the death of Paul Kessler in Thousand Oaks, California. During dueling Gaza-related demonstrations on November 5, 2023, Kessler, an identifiably Jewish counter-protester, was struck and fell, suffering fatal blunt-force head trauma. Prosecutors charged the alleged assailant, Loay Abdel Fattah Alnaji, with involuntary manslaughter; a judge later ordered him to stand trial.⁷⁵

Kessler's death is especially relevant to fears of campus violence because it arose from the same protest environment—face-to-face ideological confrontation punctuated by violent slogans and physical intimidation—in which many campus demonstrations occur. If lethal violence can erupt during a sidewalk protest over Gaza policy, Jewish students can reasonably infer that the same chants, masks, and tactics on campus may foretell similar danger.

B. *Targeted Attacks on Jewish Communal Sites and Events*

A second strand of anti-Jewish violence since October 7 involves purposeful targeting of Jewish communal life—violence aimed at gatherings, institutions, or personnel, rather than a scuffle that escalates. For example, in June 2024, violent confrontations erupted outside Los Angeles' Adas Torah synagogue during an event; President Biden publicly condemned the intimidation of congregants as “antisemitic and un-American,” and LAPD reported assaults and arrests.⁷⁶

On May 21, 2025, two employees of Israel's embassy, Yaron Lischinsky and Sarah Milgrim, were murdered by a gunman motivated by hatred for Israel as they

⁷⁵ See Richard Winton et al., *Moorpark Professor Arrested in Death of Jewish Protestor Paul Kessler in Thousand Oaks*, L.A. TIMES (Nov. 16, 2023); Marilyn Heck & Meredith Deliso, *Demonstrator to Stand Trial in the Death of Jewish Man at November Israel-Hamas War-Related Protest*, ABC NEWS (May 16, 2024), <https://perma.cc/NRR6-LZX4>.

⁷⁶ See Tyler Katzenberger, ‘*Antisemitic, and Un-American*’: Biden Condemns Violence Outside LA Synagogue, POLITICO (June 24, 2024), <https://perma.cc/39M6-MALD>; Lois Beckett, *Efforts to Sell ‘Anglo Neighborhoods in Israel’ at LA Synagogue Erupt in Protests*, GUARDIAN (June 26, 2024), <https://perma.cc/8JH7-R8SU>.

departed a young-diplomats reception at the Capital Jewish Museum in Washington, D.C. sponsored by the American Jewish Committee.⁷⁷

Weeks later, in Boulder, Colorado, an attacker hurled incendiary devices into a weekly hostage-solidarity gathering, injuring multiple attendees; one victim, Karen Diamond, age 82, later died, converting the case to a homicide. Federal prosecutors charged Mohamed Sabry Soliman with a federal hate crime, and Colorado authorities added first-degree murder and a broad slate of felony counts.⁷⁸

These incidents differ from spontaneous street altercations: They aim premeditated violence or intimidation at Jewish gatherings. For a Jewish student watching such events unfold in their city or newsfeeds, the leap from masked demonstrators chanting “by any means necessary” to an actual attack on a Jewish venue does not seem far-fetched.

C. *Street Assaults on American Jews*

A third strand involves serial assaults on visibly Jewish individuals in ordinary public settings, often charged as hate crimes. In New York City, federal prosecutors charged Tarek Bazrouk with three federal hate-crime counts for assaults on Jewish victims at demonstrations in April 2024 (near the NYSE), December 2024 (near Columbia), and January 2025 (near Gramercy Park). Prosecutors cited text messages in which Bazrouk called himself a “Jew hater” and expressed support for Hamas.⁷⁹ Also in New York, Crown Heights authorities charged an assailant with a hate crime after he allegedly shouted “Free Palestine” and stabbed a Jewish man near a synagogue in August 2024.⁸⁰

On the West Coast, Los Angeles has seen both assaults and pattern crimes against Jews post-October 7. In December 2023, Beverly Hills police arrested and

⁷⁷ See *Federal Hate Crime and First-Degree Murder Charges Filed Against Alleged Killer of Israeli Embassy Staff Members*, DEP’T OF JUST. (Aug. 7, 2025), <https://perma.cc/4JCF-Y5SN>.

⁷⁸ See *Alleged Perpetrator of Terror Attack in Colorado Charged with Hate Crimes*, DEP’T OF JUST. (June 25, 2025), <https://perma.cc/EAY3-GRDQ>; Jack Morphet, *Suspect in Colorado Fire Attack Charged with Murder After Victim Dies from Injuries*, WALL ST. J. (June 30, 2025).

⁷⁹ See *New York Man Charged with Federal Hate Crimes After Repeatedly Assaulting Jewish Victims*, DEP’T OF JUST. (May 7, 2025), <https://perma.cc/3Y6A-BPSK>; Luke Tress, *Man Who Attacked Jews in NYC Becomes Cause Célèbre for Anti-Israel Activists*, TIMES OF ISRAEL (Sep. 17, 2025), <https://perma.cc/N75X-B3YF>.

⁸⁰ See *NYC Man Charged with Hate Crime After Police Say He Yelled ‘Free Palestine’ and Stabbed a Jewish Man*, AP NEWS (Aug. 12, 2024), <https://perma.cc/U766-AVH2>.

prosecutors charged a suspect for striking a 75-year-old Jewish man while making antisemitic remarks; the case was charged with hate-crime enhancements.⁸¹ While vandalism does not by itself constitute a violent offense, it is relevant context: LAPD investigated coordinated attacks on Jewish-owned businesses in the Pico-Robertson neighborhood in November 2024 as possible hate crimes, illustrating the ambient threat to Jewish commerce and gathering spaces.⁸²

These off-campus violent incidents help explain why Jewish students reasonably fear violence when they encounter chants like “globalize the intifada” on campus. First, the modalities of violence—street brawls, firearms at Jewish venues, knives near synagogues, and firebombs at hostage-solidarity walks—mirror the imagery and language featured at many anti-Israel demonstrations. When masked groups shout “by any means necessary” and “intifada,” students reasonably connect those words to recent means actually used against Jews in American cities.

Second, the targets overlap with campus-adjacent Jewish life. The Washington, D.C. shooting occurred as guests exited a Jewish-community event; the Boulder attack struck a hostage vigil; Los Angeles confrontations focused on a synagogue event and Sabbath-bound worshippers. These are the same kinds of Jewish spaces—Jewish social events, religious services, rallies—that students frequent, reinforcing the perception that “what is threatened there can be threatened here.”

Third, serial assaults prosecuted as hate crimes demonstrate antisemitic persistence rather than aberration. The Bazrouk case alleges three separate attacks over nine months, each with explicit antisemitic animus and pro-Hamas sympathies—again, the very ideology voiced in campus chants.

Fourth, the reaction to these cases has heightened the sense of danger. Many anti-Israel social media accounts applauded the murder of the two embassy staffers. Bazrouk was eventually sentenced to seventeen months in jail, over the protests of thousands of supporters who demanded leniency.⁸³

⁸¹ Gabriel San Román, ‘*Despicable Act of Hate*’: *Suspect Arrested After Antisemitic Assault in Beverly Hills*, L.A. TIMES (Dec. 10, 2023); Jolie Lash & Meredith Deliso, *Suspect Charged in Alleged Hate Crime Attack Against 75-Year-Old Jewish Man*, ABC NEWS (Dec. 12, 2023), <https://perma.cc/G86Q-YTTY>.

⁸² See Libor Jany, *Jewish-Owned Businesses in Pico-Robertson Targeted in Possible Election Day Hate Crime*, L.A. TIMES (Nov. 6, 2024).

⁸³ Luke Tress, *Man Who Repeatedly Assaulted Jews in NYC Sentenced to 17 Months in Prison*, TIMES OF ISRAEL (Oct. 28, 2025), <https://perma.cc/3EUC-LBR4> (“He became a cause célèbre for the

None of this converts protected political speech into punishable conduct. But when officials and courts assess whether campus conduct has created a hostile educational environment, the “constellation of surrounding circumstances” includes off-campus violence against Jews that has followed the same rhetorical and symbolic cues as the demonstrations Jewish students face on campus. In that broader climate, Jewish students’ apprehension is not hypersensitivity to ideas; it is a reasonable inference about risk grounded in recent, real-world violence.

III. STUDENTS FOR JUSTICE IN PALESTINE SUPPORTS HAMAS

By far the most significant student organizations responsible for campus anti-Israel rallies and related activities are campus chapters of Students for Justice in Palestine (SJP).⁸⁴ Critics have made credible allegations that the national SJP organization and at least some of their local affiliates knowingly function as Hamas’s propaganda arm in the United States.⁸⁵

Regardless of any formal connection to Hamas, National SJP and its student affiliates serve as Hamas’s primary cheerleader in the US. National SJP’s leadership publicly celebrated Hamas’s October 7 assault and distributed materials glorifying it. On the day of the massacre itself, as atrocities were still ongoing, NSJP released a

pro-Palestinian movement in the US. More than 10,000 people signed a petition seeking leniency in the sentencing. Around 200 supporters turn out for his sentencing in New York’s federal Southern District court.”).

⁸⁴ See *What Is Students for Justice in Palestine, the Hamas-Supporting Anti-Israel Group Being Banned on College Campuses?*, AM. JEWISH COMM. (Feb. 23, 2024), <https://perma.cc/X5ES-L9YE>.

⁸⁵ *Parizer v. AJP Educ. Found.*, 1:24-CV-00724, 2025 WL 2382933, at *3 (E.D. Va. Aug. 15, 2025) (alleging that National SJP knowingly serves as Hamas’s propaganda apparatus in the United States, systematically recruiting and organizing student chapters of SJP on U.S. campuses in coordination with Hamas); Letter from James Comer, Chairman, House Comm. on Oversight & Accountability, to Nat’l Students for Just. in Palestine (May 29, 2024), <https://perma.cc/A6HC-S4HJ>; *Haggai v. Kiswani*, No. 1:25-CV-02400, 2025 WL 1136417, at *1 (S.D.N.Y. Apr. 17, 2025) (plaintiffs alleging that Students for Justice in Palestine, along with the coalition group Columbia University Apartheid Divest, and Within Our Lifetime, served as Hamas’s “propaganda arm in New York City and on the Columbia University campus”).

“Day of Resistance” toolkit describing the assault as a “historic win for the Palestinian resistance” and instructing campus chapters to organize rallies echoing that framing.⁸⁶

Local SJP chapters, in turn, are loosely affiliated with and take guidance from National headquarters. SJP chapters nationwide, including at Columbia, UNC, Michigan, Rutgers, UCLA, and throughout the CUNY system, quickly followed suit, holding demonstrations that praised the attack and reiterated NSJP’s talking points,⁸⁷ suggesting support for terrorist violence against Israelis, and, given Hamas’s openly antisemitic platform,⁸⁸ Jews more generally.

When students affiliated with or organized by SJP chant slogans such as “Globalize the Intifada” or “Liberate Palestine by Any Means Necessary,” Jewish students’ reasonable perception of those words is informed by the support both NSJP and local chapters have shown for Hamas generally and for its terrorist assault on Israeli civilians on October 7, 2023, in particular.⁸⁹

Not surprisingly, many Jewish students interpret SJP’s rhetoric as a threat to their physical safety. For example, Boston University student wrote, “I do not feel safe at Boston University. I no longer feel safe wearing my Magen David necklace with the same confidence I previously had. Instead, I find myself tucking it into my sweater in attempts to hide my Judaism.”⁹⁰

Another element making these demonstrations more menacing is that many SJP-affiliated protesters conceal their faces. On campuses from Columbia to UCLA, SJP demonstrators have worn masks, keffiyehs, or other coverings while chanting

⁸⁶ NAT’L STUDENTS FOR JUST. IN PALESTINE, DAY OF RESISTANCE TOOLKIT (2023). The toolkit has since been deleted from its original Internet location, but has been reprinted elsewhere, including <https://perma.cc/EZ3M-9RHV>.

⁸⁷ *Anti-Israel Activists Celebrate Hamas Attacks that Have Killed Hundreds of Israelis*, ANTI-DEFAMATION LEAGUE (Oct. 14, 2023), <https://perma.cc/HV9R-FTZS>; Andrew Hay, U.S. Colleges Become Flashpoints for Protests on Both Sides of Israel-Hamas War, REUTERS (Oct. 14, 2023), <https://perma.cc/2YFF-NTPH>.

⁸⁸ COVENANT OF THE ISLAMIC RESISTANCE MOVEMENT (Aug. 18, 1988), <https://perma.cc/RSC6-ALSS>.

⁸⁹ See Laura Meckler & Susan Svrluga, *Pro-Hamas Messages Intensify on College Campuses*, WASH. POST (Nov. 10, 2024).

⁹⁰ Amanda Koppelman, *POV: The Price of Silence: How BU Is Failing Its Jewish Students*, BU TODAY (Dec. 13, 2023), <https://perma.cc/U9XM-EVBN>.

slogans such as “Globalize the intifada.” Masking not only heightens the intimidation—suggesting protesters may be poised to engage in illegal acts, including possible violence, and therefore wish to conceal their identities from law enforcement—but also makes it harder for targeted students to know whether those endorsing violence are classmates, peers in their dorms, or strangers. The combination of anonymity and violent rhetoric understandably intensifies Jewish students’ fear that such protests are meant to encourage or tolerate violence against Jews on campus.⁹¹

This context does not mean that all or even any SJP protest by itself crosses the legal threshold for harassment. But in assessing the full context of hostile-environment claims, it matters that the speech that is alleged to help create the hostile environment comes not from a random collection of students but from chapters of an organization that has been credibly alleged as acting in ideological and even organizational alignment with Hamas. For Jewish students navigating campus life after October 7, that context makes threatening slogans, shouted in unison by masked demonstrators under the banner of SJP, feel less like hyperbole and more like a direct call for violence, including on campus.

Making matters even more potentially perilous, within months after October 7, Hamas agents in Europe were arrested on suspicion of planning attacks on Jewish targets throughout Europe.⁹² Also, many of the anti-Israel demonstrations have featured support for Hezbollah, which has attacked Jewish targets all over the world.⁹³

⁹¹ See, e.g., Sierra Pfeifer, *UNC Asks Pro-Palestine Protesters to Stop Wearing Masks, Citing 1953 Anti-KKK Law*, CHAPELORO.COM (Apr. 19, 2024), <https://perma.cc/KL4U-4D76>; Joseph Ax & Gabriella Borter, *US Colleges Become Flashpoints for Protests Over Israel-Hamas War*, REUTERS (Oct. 14, 2023), <https://perma.cc/8XCQ-LUKG>.

⁹² *Seven Arrested in Germany, Denmark, the Netherlands Over Suspected Terrorism Plots*, REUTERS (Dec. 14, 2023), <https://perma.cc/36S9-BVPL>.

⁹³ Anti-Defamation League, *On 2nd Oct. 7 Anniversary, U.S. Anti-Israel Activists Reaffirm Support for Hamas Attack Amid Ceasefire Talks* (Oct. 10, 2025), <https://perma.cc/BLK6-DJVP> (documenting that protesters in multiple U.S. cities displayed “Hezbollah . . . flags and headbands” at demonstrations.); Anti-Defamation League, *One Year Later: Antisemitic Trends Post-10/7* (Oct. 2, 2024), <https://perma.cc/ZSN6-UKVZ> (noting the appearance of symbols associated with designated terrorist organizations, including Hezbollah, at U.S. demonstrations); Anti-Defamation League, *Anti-Israel Protesters Celebrate One-Year Anniversary of Hamas’s October 7 Attacks* (Oct. 6, 2024), (reporting that protesters in dozens of U.S. cities praised “Hamas and other U.S.-designated terror-

Finally, the U.S. government has concluded that other dangerous actors have surreptitiously promoted campus protests, including the Iranian government⁹⁴ and the terrorist group Popular Front for the Liberation of Palestine, through a proxy group known as Samidoun.⁹⁵

IV. IMPLICATIONS FOR HOSTILE-ENVIRONMENT LAW

The fundamental problem with how some courts and commentators are approaching the question of context is that they fail to account for the reasonable perception that chants such as “globalize the intifada” or “liberate Palestine by any means necessary” advocate for or at least empathize with physical violence against Jews, Israelis, or supporters of Israel, including those on campus. This, in turn, can *contribute* to a threatening environment—which is not to say that any time these words are chanted on campus, a threatening environment for Jewish students results. Context matters.⁹⁶

Generally, mere abstract endorsement of violence without additional threatening context does not make a severe and pervasive hostile environment. But fear of violence directed at Jewish students, if reasonable in context because of additional factors, including egregious lawless behavior by campus activists, directly under-

ist groups like Hezbollah”); Anti-Defamation League, *Pro-Hamas Chant at Queens Synagogue Protest Signals Further Normalization of Terror Support* (Jan. 16, 2026), <https://perma.cc/79KP-WMH2> (reporting that demonstrators at a Queens protest “waved a Hezbollah flag”); Matthew Levitt, *Introducing the Hezbollah Worldwide Map and Timeline*, WASH. INST. FOR NEAR E. POL’Y (Apr. 2021), <https://perma.cc/ZXC3-E4TS> (comprehensive open-source repository cataloging Hezbollah operations worldwide, including plots and attacks against Jewish targets outside Israel, e.g., the 1994 AMIA bombing in Buenos Aires).

⁹⁴ Press Release, Off. of the Dir. of Nat’l Intel., Statement from Director of National Intelligence Avril Haines on Recent Iranian Influence Efforts (July 9, 2024), <https://perma.cc/6BNT-J3B3>.

⁹⁵ Tom Winter, Simone Weichselbaum & Chloe Atkins, *Pro-Hamas Group that Helped Organize College Protests Is a ‘Sham Charity,’ Treasury Says*, NBC NEWS (Oct. 15, 2024), <https://perma.cc/C8KJ-CUMR>.

⁹⁶ See *Virginia v. Black*, 538 U.S. 343, 363 (2003). For an excellent general discussion of the importance of context in assessing alleged threats in the context of the First Amendment, see Kenneth Karst, *Threats and Meanings: How the Facts Govern First Amendment Doctrine*, 58 STAN. L. REV. 1337 (2006).

mines access to educational opportunities such that universities have a Title VI obligation to mitigate the overall hostile climate to Jews and to those of Israeli national origin.⁹⁷

And yet, some scholars and judges have chosen to entirely ignore Jewish students' fear of violence. Professor Benjamin Eidelson and Deborah Hellman's recent *Harvard Law Review Forum* article on Title VI antisemitism claims fails to discuss campus violence against Jewish students except in a single footnote, and then only as a hypothetical, neglecting dozens of actual instances of such violence enumerated in this Article.⁹⁸ Similarly, an article by Professors Suzanne B. Goldberg and Olatunde C.A. Johnson on Title VI and campus protest in the *Columbia Law Review Forum* fails to acknowledge the violent environment that Jewish students face.⁹⁹

⁹⁷ For simplicity's sake, my references to Jewish students include the subset of Jewish students who are Israeli and might be subject to national-origin discrimination; whatever valid claims Jewish students have for hostile environment, Israeli students' claims will be even stronger.

⁹⁸ The relevant text states: "Unlike offensive speech, acts of exclusion based on a person's beliefs are neither a routine feature of the campus environment nor clearly shielded by the ideal of open expression that we appealed to above." Eidelson & Hellman, *supra* note 4, at 19. The accompanying footnote adds: "Of course, the same is even more clearly true of acts of violence, vandalism, or the like. Our analysis thus also leaves open the possibility that acts of those kinds that are motivated purely by hostility to Zionism (just like acts of exclusion that are motivated in the same way) could contribute to a racially hostile environment." *Id.* at 19 n.113. That's the entirety of the authors' discussion of violence.

⁹⁹ Suzanne B. Goldberg & Olatunde C.A. Johnson, *Campus Crisis and the Limits of Title VI*, 126 COLUM. L. REV. F. 1 (2026). The authors note that students have complained about subjection to physical violence, but then cite an article about rising hate against Arab and Muslim (but not Jewish) students, and go on to minimize campus violence by relating that the vast majority "of demonstrations had no reports of physically violent or destructive activity." *Id.* at 10. The latter statement neglects several salient points. First, it dubiously deems demonstrations in which students "occupy" part of campus and physically exclude others as non-violent. Second, it ignores the question of whether violent rhetoric at demonstrations helps create a permission structure for violent incidents outside of the demonstrations. And finally, as described above in this Article, much of the hostile environment on campus can be attributed to violence outside of, but plausibly inspired by, the demonstrations, or is a result of threats and intimidation rather than physical violence.

One additional caution: The study cited by the authors relies on public reports of encampment protesters engaging in physical violence or destructive activity. Undoubtedly, not every incident of assault or other physical violence or property destruction was publicly reported, and especially not when the study in question was issued in May 2024 very soon after a wave of encampments in Spring

Some judges have been similarly myopic. The First Circuit recently addressed whether MIT had a Title VI obligation to end anti-Israel “protesters’ disruptive physical presence” across from the campus’s Hillel building.¹⁰⁰ The court explained that the protesters set up an “encampment” that “rendered travel more difficult for all students and prevented all students from using Kresge Lawn” in the center of campus.¹⁰¹

The Title VI question, the court rightly stated, is not whether the encampment was illicit and interfered with student rights in general, but whether it specifically created a hostile environment for Jewish students. The court concluded it did not, because though the “impact on Jewish students was plausibly heightened” given the location, there was no evidence that the encampment was placed near the Hillel building to harass Jewish students, rather than because it was a central location.¹⁰²

The court noted in passing that Hillel felt obliged because of the encampment to relocate a Passover Seder originally scheduled to be held in its building, as its leaders “did not feel comfortable” holding the Seder near the encampment.¹⁰³ And that is where the court, by not addressing an atmosphere in which Jewish students felt threatened by potential violence, missed the obvious: Given the protesters’ violent rhetoric, combined with previous acts of intimidation, lawlessness, and violence at MIT and at nearby campuses such as Harvard, the Seder was moved because Hillel leaders believed that holding it there risked at least harassment of the attendees, and quite possibly violence against them.” The MIT decision and other

2024; some incidents have come to light only because of subsequent Congressional investigations, lawsuits, administrative complaints, and internal university investigations.

¹⁰⁰ *Stand with Us Ctr. for Just. v. Mass. Inst. of Tech.*, 158 F.4th 1, 19 (1st Cir. 2025).

¹⁰¹ *Id.*

¹⁰² *Id.* at 36.

¹⁰³ *Id.* at 19.

judicial rulings¹⁰⁴ raise the question of whether Jewish students' fear of violence underlying their hostile-environment claims is reasonable.¹⁰⁵ Their fear cannot be dismissed as paranoia when it is grounded in identifiable sources of menace beyond the speech itself.

Surely the fact that at MIT, the protesters occupying the encampment were shouting slogans reasonably interpreted as endorsing violence against (at least) Israeli or pro-Israel Jewish members of the MIT community is relevant to why Hillel feared harassment and violence, whether that fear was reasonable, and whether MIT therefore had an obligation to take measures to end an encampment that was illicitly interfering with all students' freedom of locomotion around campus.¹⁰⁶ The

¹⁰⁴ For example, a district court, dismissing a hostile-environment case against the University of Pennsylvania, remarkably stated: "At worst, Plaintiffs accuse Penn of tolerating and permitting the expression of viewpoints which differ from their own." *Yakoby v. Trs. of Univ. of Pa.*, No. 2:23-CV-04789, 2025 WL 1558522, at *7 (E.D. Pa. June 2, 2025).

I say "remarkably" because the complaint alleged, inter alia, that: (1) Penn received antisemitic emails threatening violence naming Penn Hillel specifically, and failed to warn students about the threats; (2) a student broke into Hillel yelling antisemitic slurs; (3) Penn Chabad house was defaced with antisemitic graffiti, with no public response from the university; (4) a mob that had previously vandalized a Jewish-owned restaurant marched across campus chanting violent "intifada" slogans and defaced campus buildings with no resistance from the Penn administration; (5) Penn allowed faculty to punish students for refusing to attend anti-Israel ideological events and to intimidate students who disagreed with extreme anti-Israel positions propounded by faculty; (6) Penn threatened Jewish students who complained about discrimination or a hostile environment with retaliation if they pursued their complaints; and (7) Penn enforced its disciplinary rules in a discriminatory manner. *Yakoby Amended Complaint*, *supra* note 49.

¹⁰⁵ See Eidelson & Hellman, *supra* note 4, at 11–15 (suggesting that claims of hostile environment from speech are often unreasonable). It's worth noting in this context that a survey found that a supermajority of Jewish college students experienced or witnessed antisemitism after October 7. *83% of Jewish College Students Have Experienced or Witnessed Antisemitism Firsthand Since Oct. 7 Attack, Survey Finds*, HILLEL INT'L (Jan. 30, 2025), <https://perma.cc/K6C8-XDF6>.

¹⁰⁶ Oddly enough, the court specifically held that the existence of the encampment did not give MIT the obligation to suppress protected speech, but the court did not address whether the protected speech, along with other forms of menace alleged by the plaintiffs, gave MIT the obligation to shut down an illicit encampment. One problem is that the court apparently, and quite wrongly, believed the encampment to be protected speech: "We are also unpersuaded by plaintiffs' position that the pro-Palestinian students surrendered some of their First Amendment rights by gathering together, chanting, and holding signs." *Stand with Us*, 158 F.4th at 20. Holding signs and so on does not make related speech unprotected, but it's also true that gathering on private property without

court, for reasons known only to the panel, seems to have deemed documented, contemporaneous instances of anti-Jewish violence and intimidation at MIT¹⁰⁷ to be irrelevant to the plaintiffs hostile environment claim, even though the conclusion that the speech itself did not create a legally cognizable hostile environment leaves unscathed the argument that violent rhetoric could make associated illicit protest activity appear threatening enough to require university intervention.

As at MIT, violent anti-Israel rhetoric on many campuses has been accompanied by illicit conduct beyond protected speech, such as unlawful building takeovers, threats, vandalism, harassment, and demonstrations in violation of time-, place-, and manner restrictions. These actions make violent-sounding rhetoric salient to hostile-environment claims. When groups that appear to advocate violence also flout campus rules and state law, their rhetoric takes on a more menacing character; while most people who flout other legal norms will not engage in violence, people who engage in violence are also very likely to be people who flout other legal norms. In a lawless environment, concerns that violent rhetoric presages actual violence are hardly frivolous.

It is also a mistake to consider disparate-treatment allegations that universities themselves directly discriminated against Jewish students as entirely separate from hostile-environment claims. If universities tolerate encampments that block or assault Jewish students while cracking down on comparable or less-serious behavior directed at members of other groups, that double standard reinforces Jewish students' perception that not only are they in danger, but that the university is indifferent to that danger. Such indifference, in turn, heightens a reasonable Jewish student's perception that physical danger will not be prevented or remedied.

To illustrate: Imagine Jonathan Cohen, a sophomore at UCLA in the spring of 2024. He walks past masked mobs manning an illicit encampment that breaks both UCLA rules and the law, who are chanting "globalize the intifada" and "violence is

the permission of the landowner and "render[ing] travel more difficult for all students and prevent[ing] all students from using Kresge Lawn" is not protected speech. *Id.* at 19.

¹⁰⁷ See *supra* notes 52–55 and accompanying text; see also *Update on the Events of November 9*, MIT OFF. OF THE PRESIDENT (Nov. 14, 2023), <https://perma.cc/H7NC-KXWU> (elaborating on a twelve-hour hallway blockade plus "other disruptive actions initiated by some students, including unauthorized entry into offices, chanting at staff using a bullhorn, calling for disruptive walkouts in the middle of classes, and holding events in unauthorized campus locations without engaging with Institute officials").

justified when people are occupied”—chants that intensify when visibly Jewish students pass. Cohen knows that in Los Angeles, a Jewish man holding an Israeli flag was recently struck and killed by an anti-Israel protestor. On campus, a Chabad rabbi has been assaulted and told to “go back to Poland.” Cohen has watched viral videos of Jewish students being physically barred from accessing parts of campus and has seen peers shoved, kicked, and bloodied when they try to traverse the Palestine Solidarity Encampment.

A letter from the Department of Justice in July of 2025 summarized the relevant events at UCLA: Jewish students were physically blocked, assaulted, and taunted with statements such as “Hitler missed one.” The Department concluded that UCLA had refused to request law-enforcement support even as Jewish students were excluded from parts of campus and left “in a state of anxiety and fear.”¹⁰⁸

Jewish students in positions like Cohen’s do not claim that rhetoric endorsing violence merely made them feel emotionally “unsafe.” They claim that this rhetoric, combined with actual assaults, barriers to access, administrative inaction, and double standards, gave them legitimate reason to fear for their physical safety. That is a qualitatively different claim.

Jewish students reported profound fears for their safety following October 7 and during encampment protests—not merely discomfort, but real threats sufficiently intimidating that some withdrew from their college programs entirely. A Hillel International poll in May 2025 found that the majority of Jewish college students felt less safe due to campus encampments, with over half reporting disruptions to their ability to learn or attend class.¹⁰⁹ At UCLA, one Jewish senior said she was “terrified” to walk across campus and broke down in tears when classmates implied Jewish students did not belong at the school. Another student said she encountered people yelling to “kill Zionists.”¹¹⁰ At Columbia, an official task force found that Jewish students reported not only experiencing verbal harassment and

¹⁰⁸ Letter from Harmeet K. Dhillon, Assistant Att’y Gen., Civ. Rts. Div., to Michael V. Drake, President, Univ. of Cal. 4 (July 29, 2025), <https://perma.cc/P7H5-6226>.

¹⁰⁹ *Majority of Jewish College Students Say They Feel Less Safe Due to Encampments; 61% Report Antisemitism During Campus Protests*, HILLEL INT’L (May 13, 2024), <https://perma.cc/UT65-FD98>.

¹¹⁰ Teresa Watanabe, *‘I’ve Been Terrified.’ Student Fears Triggered by Israeli-Palestinian Conflict Skyrocket*, L.A. TIMES (May 2, 2024).

ostracism but also being physically targeted and feeling unsafe in the dorms.¹¹¹ One Columbia campus rabbi advised Jewish students to leave campus for their safety.¹¹²

A climate of fear for one's physical safety makes the relevant hostile-environment claims much stronger than if the underlying claims involved mere exposure to hostile and offensive speech. Hostile-environment doctrine under Title VI, like its Title VII analogue, turns on the totality of the circumstances and requires conduct that is "so severe, pervasive, and objectively offensive that it effectively bars the victim's access to an educational opportunity or benefit."¹¹³ Courts do not evaluate isolated utterances in abstraction; they assess whether an environment of intimidation, exclusion, and fear has taken hold.

In short, the proper way to understand many of the post-October 7 civil-rights cases brought by Jewish student complainants is not, as is sometimes portrayed, that they involve "snowflakes"¹¹⁴ seeking protection from ideas they find offensive; rather, they are alleging an overall climate of intimidation and violence that makes education inaccessible for them. So long as the students provide a reasonable basis for their fears, granting a university's motion to dismiss without allowing for a factual record to be developed, as the First Circuit did in the MIT case, seems at best presumptuous and premature.

¹¹¹ TASK FORCE ON ANTISEMITISM, COLUMBIA UNIV., REPORT #2: COLUMBIA UNIVERSITY STUDENT EXPERIENCES OF ANTISEMITISM AND RECOMMENDATIONS FOR PROMOTING SHARED VALUES AND INCLUSION (2024), <https://perma.cc/3TKR-BKJ9>.

¹¹² Rebecca Masell, *Rabbi Advises Jewish Students to 'Return Home as Soon as Possible' Following Reports of 'Extreme Antisemitism' on and Around Campus*, COLUMBIA SPECTATOR (Apr. 21, 2024), <https://perma.cc/N2EK-Z6WB>.

¹¹³ *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 633, 650–53 (1999) (establishing that student-on-student harassment is actionable when, in light of the totality of the circumstances, it is severe, pervasive, and objectively offensive so as to deprive the victim of equal educational access).

¹¹⁴ *E.g.*, Natasha Lennard, *Pro-Israel Advocates Are Weaponizing "Safety" on College Campuses*, INTERCEPT (Mar. 28, 2024), <https://perma.cc/5FDV-LUKM>; Chris McGreal, *How Pervasive Is Anti-Semitism on US Campuses? A Look at the Language of the Protests*, GUARDIAN (May 3, 2024), <https://perma.cc/2GHU-HSLX> (quoting an anti-Israel student as follows: "It's very notable to see the discourse around this issue because the right in this country that's been talking about woke culture, and how young people are snowflakes, are suddenly adopting this narrative around safety, which is really a narrative around comfort.").

V. IMPLICATIONS FOR FIRST AMENDMENT LAW

Let's assume that Jewish students or their advocates can show that a university was complicit in creating or tolerating a hostile environment that went beyond constitutionally protected expression. Some would argue that a university nevertheless should be given wide discretion in how to handle illicit protest without being subject to liability, either because universities are an especially valuable forum for protest or because allowing plaintiffs to point toward violent rhetoric as part of the background of their hostile-environment claims risks an undue chilling effect on campus speech. This section of the Article argues that universities should be treated like other public spaces for First Amendment purposes, and that the chilling effects doctrine does not apply to hostile-environment law that does not require the regulation of constitutionally protected speech.

A. *Universities Should Not Get Special First Amendment Treatment When It Comes to Dealing with Illicit Protest*

This Article has focused on the context of the violence, threats, intimidation, and so on that Jewish students have faced since Hamas's October 7 assaults on Israel. But some argue that the main and perhaps only relevant context is that the actions in question are taking place at a university, and speech and related acts at universities deserve special constitutional protection.¹¹⁵

Ideally, universities should foster the robust exchange of ideas, even when some of those ideas will inevitably be expressed in a manner that offends some, or even many, students.¹¹⁶ But the university setting should not meaningfully heighten the expectation that our legal system will tolerate, e.g., a mob of protesters chanting genocidal slogans while blocking off campus spaces. Such a mob is not engaging in an "exchange of ideas," and university campuses are not uniquely suited to host that form of expression. Indeed, one might argue that mass protest is incompatible with scholarly reflection and is therefore especially unsuitable for universities.

Moreover, one might argue that raucous political protests on university campuses should get less constitutional protection than speech elsewhere. Students attending universities are often there 24/7, eating, sleeping, attending classes, and

¹¹⁵ Eidelson & Hellman, *supra* note 4, at 13–15.

¹¹⁶ ERWIN CHEMERINSKY & HOWARD GILLMAN, FREE SPEECH ON CAMPUS xx (2017) ("Freedom of expression and academic freedom are at the very core of the mission of colleges and universities.").

studying. This means that the risk of a hostile environment depriving individuals of their civil rights is much greater on campus than off, because students cannot easily escape hostility that is brought into what amounts to both their home and workplace.

The Department of Education's Title VI guidance suggests that educational institutions have a particular legal duty to serve as moral exemplars of nondiscrimination, especially at institutions serving younger children:

[W]hen OCR evaluates the severity of racial harassment, the unique setting and mission of an educational institution must be taken into account. An educational institution has a duty to provide a nondiscriminatory environment that is conducive to learning. In addition to the curriculum, students learn about many different aspects of human life and interaction from school. The type of environment that is tolerated or encouraged by or at a school can therefore send a particularly strong signal to, and serve as an influential lesson for, its students.¹¹⁷

Nevertheless, I do not think that such considerations should lead to increased liability for campus speech relative to speech in the public square. The underlying basis for First Amendment protections for speech is our collective lack of trust in the government to make distinctions about proper and improper speech, and that applies on campus as well as off.¹¹⁸

Also, the 24/7 nature of campus life goes both ways; where else are students going to protest if their lives are largely confined to campus? I therefore generally concur that the First Amendment bars university students from basing hostile-environment claims on the ideological content of political speech they might also encounter on a street corner off-campus,¹¹⁹ though I reject the notion that mass political rallies should get *extra* constitutional protection simply because they occur on a university campus.

¹¹⁷ Racial Incidents and Harassment, *supra* note 2, at 11449.

¹¹⁸ See DAVID E. BERNSTEIN, *YOU CAN'T SAY THAT! THE GROWING THREAT TO CIVIL LIBERTIES FROM ANTIDISCRIMINATION LAWS* (2003); CHEMERINSKY & GILLMAN, *supra* note 116, at 108 ("We come back to a central point: protecting hate speech is necessary because the alternative—granting governments the power to punish speakers they don't like—creates even more harm.").

¹¹⁹ For a more detailed explanation of my position, see David E. Bernstein & David L. Bernstein, *Supporting Free Speech and Countering Antisemitism on American College Campuses*, 2025 HARV. J.L. & PUB. POL'Y PER CURIAM 11. See also generally *Gartenberg v. Cooper Union for the Advancement of Sci. & Art.*, 765 F. Supp. 3d 245 (S.D.N.Y. 2025) (holding, in a Title VI antisemitism case

B. *The Chilling Effects Doctrine Does Not Apply*

There remains the question of whether allowing plaintiffs to provide examples of violent anti-Israel rhetoric as background context for their hostile-environment claims risks an undue and unconstitutional chilling effect on speech; even if a judge rules that the speech itself is protected and that the university's obligation is only to enforce rules of conduct, some universities—especially private universities not bound by the First Amendment—may conclude that the path of least resistance is to crack down on rhetoric rather than to enforce conduct rules.

While that danger does exist, the chilling effect legal doctrine only limits the government's power to punish or suppress protected speech by, for example, passing vague or overbroad legislation that leaves a potential speaker without a means to determine if his speech will be deemed illegal; it does not require courts to blind themselves to reality when adjudicating civil-rights claims.¹²⁰ Courts may consider protected speech as contextual evidence of motive, intimidation, or threat without converting that consideration into viewpoint-based suppression.¹²¹ The First Amendment forbids punishment of ideas; it does not mandate judicial blindness to the way violent rhetoric can contribute to a threatening environment.¹²² Allowing violent rhetoric to serve as background evidence in hostile-environment claims

brought against Cooper Union, that Title VI must be enforced in a way that does not suppress protected speech); *College Republicans at S.F. State Univ. v. Reed*, 523 F. Supp. 2d 1005 (N.D. Cal. 2007) (holding that a university could not penalize students for engaging in a protest that included stomping on flags containing the word "Allah," even though this caused offense to Muslim students).

¹²⁰ *Laird v. Tatum*, 408 U.S. 1, 11–14 (1972) (holding that a "subjective chill," absent a credible threat of enforcement or concrete injury, is insufficient to establish a First Amendment violation, thereby distinguishing between psychological inhibition and unconstitutional suppression).

¹²¹ *Wisconsin v. Mitchell*, 508 U.S. 476, 489 (1993) (unanimously agreeing that the First Amendment permits the evidentiary use of speech to establish motive or intent accompanying unlawful conduct); *Price Waterhouse v. Hopkins*, 490 U.S. 228, 251–52 (1989) (plurality opinion) (allowing evidentiary use of defendant's speech in evaluating Title VII discrimination claim).

The Supreme Court's recent decision in *Murthy v. Missouri*, 144 S. Ct. 1972 (2024), suggests that the current Court would be extremely unsympathetic to a claim that a private university that clamped down on anti-Israel speech was forced to do so in response to a hypothetical threat of government sanction, especially when the university could have taken other measures to combat a hostile environment.

¹²² Indeed, speech itself may be punished as a "true threat" when, in context, it communicates a serious intent to commit violence and places a reasonable person in fear of bodily harm. See *Virginia v. Black*, 538 U.S. 343, 359–63 (2003).

therefore does not regulate speech; it recognizes how speech operates in real-world settings where unlawful conduct and selective enforcement combine with the speech to create a threatening environment.

Moreover, the backdrop of violent and potentially violent antisemitism provides an answer to campus SJP activists who claim stopping them from breaking campus rules and the law constitutes discriminatory treatment. They argue that many university administrators have long looked the other way when activists for causes such as environmentalism have created encampments, held sit-ins, disrupted university events, and have otherwise violated university rules and the law.

The activists are wrong in believing that if universities have previously been derelict in their obligations to enforce campus rules, it justifies campus administrators continuing to shirk their obligations. It's quite clear to this (and I think to any reasonable) observer that universities that have allowed sit-ins, encampments, and other rule-breaking on behalf of left-wing causes would have been very unlikely to permit similar student rule-breaking to protest abortion, illegal immigration, or other right-wing causes.

Many universities have been intolerant even of conservative speech that does not break any rules and is constitutionally protected at public universities, such as satirical affirmative-action bake sales.¹²³ Universities that condemn microaggressions against other groups are silent in the face of much more overt aggression against Jewish students.¹²⁴ The right solution to such viewpoint discrimination is to end it.

¹²³ For an incomplete list of incidents, see *College of William and Mary: Suppression of Affirmative Action Bake Sale*, FOUND. FOR INDIVIDUAL RTS. & EXPRESSION, <https://perma.cc/6M7B-S9LF>; see also *Universities Shut Down Affirmative Action Bake Sales*, STUDENT PRESS L. CTR. (Oct. 1, 2003), <https://perma.cc/VP2L-A797>.

¹²⁴ An egregious example of such a double standard involves Northwestern University. Administrators there failed to react to vitriolic anti-Israel protestors who, among other expressions of hostility to Jews at the university, called for the campus Hillel Jewish student organization to be shut down. David Bernstein, *Disagreeing with Eugene About the Anti-Hillel Incidents at Northwestern University Last Week*, REASON: VOLOKH CONSPIRACY (Apr. 24, 2024), <https://perma.cc/BUE9-U6YV>. By contrast, when several notes were found around campus stating "It's Okay to Be White," Northwestern issued four separate official statements denouncing the notes. *Id.*; see also *Elagha v. Nw. Univ.*, 2025 WL 1384291, at *4 (N.D. Ill. May 13, 2025) ("While Elagha does not allege any blatant discriminatory behavior by Defendants, the allegations that Elagha made multiple complaints regarding the harassment and Defendants failed to respond to any of those complaints—or

That aside, the post-October 7 protests are distinguishable from, say, the typical anti-global warming protests that may have similarly broken the rules. Anti-global warming protests did not take place in a climate of violence nor threaten violence against any identifiable group on campus, and thus their rule-breaking did not contribute to a hostile environment for any protected class.

By contrast, lawless “antizionist” protests, as discussed above, contribute to a reasonable fear of violence against Jewish students. For example, the pro-Hamas students at Columbia who broke into a building, held two custodians against their will, and engaged in vandalism¹²⁵ created reasonable concern that they would next engage in violence against those perceived to be Jews, or at least Jewish supporters of Israel. The targeting of, or the reasonable apprehension of the targeting of, a specific group of students protected by Title VI gives universities not only the legal right to crack down on illicit SJP protests even if they have tolerated previous illicit protests for other causes, it gives them the Title VI duty to do so if the illicit actions create a hostile environment.

In the MIT case, the First Circuit suggested that the presence of unlawful protest activity does not allow the government to punish constitutionally protected speech. The court failed, however, to consider the converse: that the presence of violent but protected rhetoric may contribute to a coercive or intimidating environment that requires a university to address conduct not protected by the Constitution.

Courts confronting protests that combine ideological advocacy with coercive or unlawful conduct have long rejected the notion that the presence of protected speech disables the state from recognizing or responding to an objectively threatening environment. Two doctrinal areas—labor picketing and abortion-clinic buffer-zone cases—offer especially instructive parallels.

Labor picketing has always occupied an uneasy position at the intersection of speech and conduct. Although peaceful picketing is protected, the Supreme Court

at least responded differently to her complaints than it had to similar claims by students outside of Elagha’s protected class—at this stage, permit an inference of intentional discrimination.”); Bethan Sexton, *UPenn Faces Free Speech Hypocrisy Storm for Refusing to Discipline Pro-Hamas Protesters—Despite Probing into Law Professor Who Said ‘America Would Be Better with Fewer Asians’*, DAILY MAIL (Oct. 25, 2023), <https://perma.cc/C6EV3L3X>.

¹²⁵ Meredith Deliso, *Columbia Students Who Occupied Hamilton Hall in Pro-Palestinian Protest Expelled, Suspended*, ABC NEWS (Mar. 13, 2025), <https://perma.cc/JJH6-7C9J>.

has consistently held that when picketing is accompanied by threats, obstruction, or intimidation, it may be regulated notwithstanding its expressive character. In *Milk Wagon Drivers Union of Chicago v. Meadowmoor Dairies, Inc.*, the Court upheld an injunction against labor picketing where violence had accompanied the union's campaign, emphasizing that "utterance in a context of violence can lose its significance as an appeal to reason and become part of an instrument of force."¹²⁶ The Court explained that even if particular picketers were peaceful at a given moment, the broader climate of violence infected the meaning and effect of the speech.

Similarly, in *International Brotherhood of Teamsters v. Vogt, Inc.*, the Court reaffirmed that peaceful picketing may be limited when it serves as part of a course of coercive conduct aimed at unlawful ends.¹²⁷ The precedents established by these cases do not permit the government to require that a university penalize protected campus speech because it takes place in a threatening or intimidating environment, but the precedents do suggest speech by campus protesters is subject to scrutiny regarding how it contributes to a broader hostile environment.

Perhaps the labor case most salient here is *United Mine Workers v. Gibbs*,¹²⁸ which firmly rejected the notion that the presence of ideological advocacy disables courts from responding to a coercive campaign of intimidation waged by the advocates. In *Gibbs*, the Court held that neither the First Amendment nor federal labor law immunizes violence and threats accompanying protest activity, and that speech and conduct may be assessed together as parts of a single coercive course of action.¹²⁹

Abortion-clinic protest cases provide an even closer analogue to present campus disputes. Protesters in these cases typically engage in ideological advocacy that remains protected in the abstract, yet courts have repeatedly upheld time, place, and manner regulations to ensure that the protests involving protected speech do not interfere with the rights of abortion patients and providers.

¹²⁶ 312 U.S. 287, 293 (1941) (holding that picketing intertwined with violence may be enjoined because its coercive effect transforms its expressive meaning).

¹²⁷ 354 U.S. 284, 293–95 (1957) (holding that states may enjoin picketing when it operates as economic coercion rather than persuasion).

¹²⁸ 383 U.S. 715 (1966).

¹²⁹ *Id.* at 729–30 (holding that violence and intimidation accompanying picketing remove any constitutional or statutory shield and permit full tort and injunctive remedies).

In *Madsen v. Women's Health Center, Inc.*, the Supreme Court upheld injunctions creating buffer zones around clinics where demonstrators had engaged in blocking access to buildings and intimidating patients and staff.¹³⁰ The Court did not treat the protesters' anti-abortion speech as entirely insulated from regulation; rather, it evaluated how that speech functioned within a physically coercive environment.

Likewise, in *Hill v. Colorado*, the Court upheld a statute creating a floating buffer zone around persons entering medical facilities, stressing the government's interest in protecting patients from unwanted approaches "in an especially vulnerable physical and emotional condition."¹³¹ More recently, *McCullen v. Coakley* reaffirmed that states may regulate protest conduct near clinics when necessary to ensure patients' safe passage, even when protesters' underlying speech is protected.¹³²

The relevant laws passed constitutional muster even though they directly regulated those engaging in otherwise-protected speech activities, because in context the protests could be intimidating. *A fortiori*, courts may use violent rhetoric by protesters as evidence of a more general intimidating or threatening environment.

The Supreme Court's decision in *NAACP v. Claiborne Hardware Co.*¹³³ confirms that, when constitutionally protected speech coexists with unprotected violent or illicit conduct, courts must examine how the two interact rather than isolating one from the other, while still ensuring that protected advocacy is not the basis for liability. In *Claiborne Hardware*, the Court protected nonviolent boycott advocacy even where some rhetoric was aggressive, but it drew a firm constitutional line

¹³⁰ 512 U.S. 753, 768–70 (1994) (upholding tailored injunctions regulating protest activity where obstruction and intimidation interfered with clinic access).

¹³¹ 530 U.S. 703, 715–18 (2000) (upholding content-neutral buffer-zone regulation justified by the need to protect access and prevent intimidation).

¹³² 573 U.S. 464, 486–97 (2014) (invalidating one buffer-zone law as insufficiently tailored while reaffirming the legitimacy of regulating obstruction and intimidation).

¹³³ 458 U.S. 886 (1982).

at actual violence and at speech that specifically authorized, ratified, or directed violent acts.¹³⁴ While robust rhetoric—even heated and aggressive rhetoric—remained protected, violent means of enforcing the operative boycott did not.¹³⁵

Indeed, *Claiborne Hardware* is an especially instructive case regarding what to do when constitutionally protected speech interacts with unprotected illegal actions and violence. In that case, boycott advocates published the names of residents who weren't complying with the boycott. The Court held that this speech remained protected even when it was said amidst a backdrop of violence by some people against the noncompliant. Similarly, the violent rhetoric of campus protestors is protected, even when said amidst the backdrop of actual violence by some against Jewish students. However, as in *Claiborne Hardware*, the protection accorded to the speech itself does not extend to illicit actions motivated by the same goal.

To combat a threatening educational environment, universities thus may be required to take measures such as enforcing neutral conduct rules that prohibit vandalism, trespass, threats directed at individuals, illegal masking to conceal identity, and other actions that violate the law or preexisting campus policies. Additionally, universities confronted with a hostile environment could be held liable for not taking other measures to counter a hostile environment. These may include prohibiting retaliation against students who complain of discrimination, providing relevant training to staff, providing security for Hillel and Chabad campus events when warranted by circumstances, and ensuring prompt administrative response to complaints of antisemitic behavior.¹³⁶

¹³⁴ *Id.* at 916–20. The same principle applies in the context of hostile-environment law. See *Zeno v. Pine Plains Cent. Sch. Dist.*, 702 F.3d 655, 666–69 (2d Cir. 2012) (considering racial slurs, threats, and physical intimidation cumulatively); *Vance v. Spencer Cnty. Pub. Sch. Dist.*, 231 F.3d 253, 258–61 (6th Cir. 2000) (same). These cases do not impose liability for offensive ideas as such; they impose liability for institutions' deliberate indifference to environments that have become objectively threatening.

¹³⁵ See generally *Adderley v. Florida*, 385 U.S. 39, 47–48 (1966) (holding that the government may enforce neutral trespass laws against demonstrators notwithstanding their expressive intent).

¹³⁶ The Department of Education's Office of Civil Rights provides the following guidance:

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. To meet its obligation, a university can, among other steps, communicate its opposition to stereotypical, derogatory opinions; provide counseling and support for students affected by harassment; or take steps to establish a welcoming and respectful school campus, which could include making

CONCLUSION

The growing wave of antisemitic intimidation, violence, and administrative indifference on university campuses since October 7 demands a nuanced understanding of how Title VI hostile-environment claims should be adjudicated in such a climate. Violent slogans not directed at particular students nor directly threatening campus violence ordinarily cannot create the sort of severe and pervasive hostile environment that would support a Title VI claim. Even if the slogans do rise to that level, they are protected by the First Amendment and therefore cannot be the underlying basis for university liability under Title VI. Courts, in short, may not order universities to suppress political speech, even if the speech endorses violence, so long as it does not rise to the level of true threat, incitement, or intentional intimidation, which would result in it being unprotected by the First Amendment.

But courts should also acknowledge that incendiary rhetoric reasonably interpreted as endorsing violence can be relevant context for a hostile environment claim and can trigger university obligations to take measures to counteract such an environment. When violent slogans (1) are shouted in concert by masked demonstrators affiliated with organizations credibly tied to groups that glorify or sponsor violence, and when these chants (2) coincide with a measurable surge of physical assaults, arson, and death threats directed at Jewish students and American Jews more generally, and the chants (3) are accompanied by illicit campus behavior by a subgroup of the chanters, against whom preexisting rules are not enforced, they can be used as evidence of a broader environment of intimidation that materially interferes with Jewish students' ability to learn, assemble, and participate fully in university life.

Title VI's "reasonable person" standard must be applied with fidelity to the social reality of background antisemitic violence and intimidation. Courts and the

clear that the school values, and is determined to fully include in the campus community, students of all races, colors, and national origins. OCR does not interpret Title VI to require any recipient to abridge any rights protected under the First Amendment. For instance, if students at a public university engage in offensive speech about members of a particular ethnic group and that speech contributes to a hostile environment within an education program about which the university knows or should know, the university has a legal obligation to address that hostile environment for students in school. The university may, however, be constrained or limited in how it responds if speech is involved.

Open Letter from Catherine E. Lhamon, Assistant Sec'y for Civ. Rts., Dep't of Educ. 3 (May 7, 2024), <https://perma.cc/K5FD-KW47>.

Department of Education should recognize that fear of violence, when grounded in contemporaneous incidents and credible threats, constitutes a legitimate and legally cognizable injury. Universities, meanwhile, may not invoke free-speech principles as a shield for inaction against rule-breaking, harassment, or violence that contributes to a hostile environment.¹³⁷ Rioting, vandalism, building takeovers, and the like are not protected by the First Amendment, and create the sort of disorder from which violent antisemitism naturally springs.¹³⁸ The government may not require universities to suppress protected speech, but universities may be obligated by an emerging hostile environment to devote additional resources to campus safety, including the imposition of prompt discipline at the first sign of targeted harassment.

The challenge ahead is not to dilute constitutional protections for unpopular speech, but to enforce Title VI's promise of equal educational access with clear-eyed attention to context. Jewish students are not seeking to punish universities for failing to suppress the expression of ideas; rather, they seek protection from a pattern of menace that has rendered precarious their ability to pursue an education on

¹³⁷ See *Gartenberg v. Cooper Union for the Advancement of Sci. & Art.*, 765 F. Supp. 3d 245, 272–73 (S.D.N.Y. 2025) (finding physically threatening conduct is not protected by the First Amendment); *Kestenbaum v. President & Fellows of Harvard Coll.*, 743 F. Supp. 3d 297, 304 (D. Mass. 2024) (finding that the “surround[ing] and intimidat[ing]’ [of] Jewish students” during a protest provides grounds for a hostile-environment claim); *G.D.S. ex rel. Slade v. Northport-East Northport Union Free Sch. Dist.*, 915 F. Supp. 2d 268, 279 (E.D.N.Y. 2012) (“Given the severe and shockingly offensive nature of the anti-Semitic slurs allegedly being made to the Plaintiff by other students, it appears to this Court that the supposed lack of action by the Defendants to either educate students about the harms of such religious discrimination or investigate and discipline the harassers was an inadequate response and thus, clearly unreasonable.”).

¹³⁸ See, e.g., GEORGE L. KELLING & CATHERINE M. COLES, *FIXING BROKEN WINDOWS: RESTORING ORDER AND REDUCING CRIME IN OUR COMMUNITIES* (1996) (arguing that visible disorder undermines shared expectations of lawful conduct and weakens informal social control, thereby increasing the likelihood of more serious misconduct); Robert B. Cialdini, Raymond R. Reno & Carl A. Kallgren, *A Focus Theory of Normative Conduct: Recycling the Concept of Norms to Reduce Littering in Public Places*, 58 J. PERSONALITY & SOC. PSYCHOL. 1015 (1990) (explaining that salient norm violations shift descriptive norms and increase further rule-breaking across contexts); Kees Keizer, Siegwart Lindenberg & Linda Steg, *The Spreading of Disorder*, 322 SCI. 1681 (2008) (reporting field experiments demonstrating that visible disorder increases subsequent and different norm violations, supporting the proposition that disorder erodes general norm compliance). This body of research supports the broader proposition that visible breakdowns in rule enforcement within institutional settings can increase the risk of escalating misconduct.

an equal basis with other students. Recognizing that distinction is essential if Title VI is to retain both its constitutional integrity and its moral purpose.