No. 25-___

IN THE

Supreme Court of the United States

STANDWITHUS CENTER FOR LEGAL JUSTICE, ET AL.,
Petitioners,

v.

MASSACHUSETTS INSTITUTE OF TECHNOLOGY,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Title VI prohibits discrimination based on race, color, or national origin. Unlawful discrimination includes "deliberate indifference" to a "hostile environment." *Davis* v. *Monroe Cnty. Bd. of Educ.*, 526 U.S. 629 (1999). This case concerns the legal standards for a "hostile environment," which have long confused and split the lower courts.

That confusion has come to a head with the recent explosion of campus antisemitism. As set out in Petitioners' complaint, Respondent MIT allowed a hostile environment for Jewish students to fester, as roving groups of "protesters" called for violence, physically aggressed Jews, blocked public access, and targeted Jewish spaces. Because MIT failed to take adequate steps to address these realities, its campus devolved into a severely antisemitic environment.

The First Circuit affirmed dismissal on the pleadings. Deepening a 5-3-4 circuit split, it held that Petitioners' allegations of a hostile environment were insufficient because they did not establish that the protesters were motivated by racial "animus." And it created an independent 3-1 circuit split in holding that, because protesters were engaged in "protected speech," no hostile environment could be pleaded. App. 15a.

The questions presented are:

I. Whether the harassers' subjective discriminatory intent is an element of a hostile environment claim under Title VI.

II. Whether the First Amendment bars a plaintiff from pleading a Title VI hostile environment claim based on "protected speech."

PARTIES TO THE PROCEEDINGS

Petitioners StandWithUs Center for Legal Justice, Katerina Boukin, and Marilyn Meyers were the Plaintiffs before the district court and the Plaintiffs-Appellants before the First Circuit.

Respondent the Massachusetts Institute of Technology was the Defendant before the district court and the Defendant-Appellee before the First Circuit.

CORPORATE DISCLOSURE STATEMENT

Petitioner StandWithUs Center for Legal Justice certifies that it is a tax-exempt membership organization with no parent corporation, and that no public company owns any interest in it. Petitioners Katerina Boukin and Marilyn Meyers certify that they are natural persons.

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OPINION BELOW

The opinion of the U.S. Court of Appeals for the First Circuit (No. 24-1800) is available at *StandWithUs Center for Legal Justice* v. *Massachusetts Institute of Technology*, 158 F.4th 1 (1st Cir. 2025). This opinion is reproduced at App. 1a–46a, and the accompanying judgment is reproduced at App. 47a.

The First Circuit's order denying rehearing and/or rehearing en banc is available at *StandWithUs Center for Legal Justice* v. *Massachusetts Institute of Technology*, 165 F.4th 97 (1st Cir. 2026). This order is reproduced at App. 63a–71a.

The memorandum opinion and order of the U.S. District Court for the District of Massachusetts (No. 1:24-cv-10577-RGS) is available at *StandWithUs Center for Legal Justice* v. *Massachusetts Institute of Technology*, 742 F. Supp. 3d 133 (D. Mass. 2024). This memorandum opinion and order is reproduced at App. 48a–61a, and the subsequent order of dismissal is reproduced at App. 62a.

JURISDICTION

The district court entered its final judgment dismissing Petitioners' claims on August 21, 2024. App. 62a. Petitioners timely noticed their appeal to the First Circuit on August 29, 2024.

The First Circuit affirmed the judgment of the district court on October 21, 2025. App. 47a. Petitioners timely filed a petition for rehearing and/or rehearing en banc, which the First Circuit denied on January 21, 2026. App. 63a–64a.

On April 1, 2026, Justice Jackson granted Petitioners' unopposed application for a 58-day extension of time to file this petition. This Court thus properly has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

Under the First Amendment, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. CONST. amend. I.

INTRODUCTION

This Court's intervention is needed to resolve two circuit splits—and the resulting confusion among the lower courts—about the elements and standards for maintaining a "hostile environment" claim under federal anti-discrimination law.

This Court has long held that a hostile environment claim can be stated when the discriminatory hostility is "so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school." *Davis*, 526 U.S. at 650; *see also Meritor Sav. Bank, FSB* v. *Vinson*, 477

U.S. 57, 67 (1986). But the concept of "severe or pervasive" harassment is nebulous—especially with changing political, social, and sexual mores—and this Court has not provided guidance for over thirty years. *See Harris* v. *Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993). Further, as this Court has acknowledged, its "cases have established few definite rules for determining when [liability arises] for a discriminatory environment that is otherwise actionably abusive." *Faragher* v. *City of Boca Raton*, 524 U.S. 775, 788 (1998).

Without clear direction, the Courts of Appeals have divided on key legal issues relating to federal anti-discrimination laws that similarly govern federally funded organizations (Title VI), employers (Title VII), and educational programs receiving federal assistance (Title IX). In turn, covered entities face dramatically different standards depending on where they happen to operate, which is not a framework this Court accepts. *See, e.g.*, *Ames* v. *Ohio Dep't of Youth Servs.*, 605 U.S. 303, 313 (2025) (rejecting heightened evidentiary standard for certain anti-discrimination claims). "[A]textual legal rules and frameworks" tend to "distort the underlying statutory text" and "cause confusion for courts." *Id.* at 313–14 (Thomas, J., concurring). This case presents an ideal vehicle to resolve two discrete questions of significant importance to these anti-discrimination laws.

Immediately after Hamas's terror attacks on October 7, 2023, college campuses became embroiled in riots, weeks-long encampments, and violence, as well as ostracization, discrimination, and targeting of Jewish students and staff. Many universities were

sued under Title VI and (for public universities) the First Amendment for not appropriately addressing this widespread harassment. *See, e.g.*, *Frankel* v. *Regents of the Univ. of Cal.*, 744 F. Supp. 3d 1015, 1020 (C.D. Cal. 2024) (finding harassment of Jewish students reached a point "abhorrent to our constitutional guarantee of religious freedom").

As set out in Petitioners' complaint, student and faculty protesters at MIT called for violence against Jews in a new "[i]ntifada revolution," which they "justified" as a form of "[r]esistance." App. 4a–5a. They praised "the martyr[s]" of Hamas and beckoned for "death to Zionism." App. 11a–12a. They disrupted classes and impeded access to public spaces, and they coalesced around Jewish community and religious locations as they targeted students and faculty because of their Jewish identities. *See* App. 5a–13a, 49a–53a. They shoved a Jewish student to the ground and rattled the door handles of Jewish faculty offices, chanting "you can't hide." App. 5a–6a. These actions, among others, violated MIT's time, place, and manner rules for protests, and made campus life intolerable for Jews. *See* App. 5a–13a, 49a–53a.

Yet, despite MIT vigorously enforcing its policies to protect other minorities, it refused to do so for Jewish victims. *See* App. 50a–53a. Instead, it issued *pro forma* statements and took inadequate remedial measures that not only allowed antisemitism to persist but, because of MIT's delay and antipathy, further exacerbated the hostile environment. Indeed, "when a member of Congress asked President Kornbluth whether 'calling for the genocide of Jews violate[s] MIT's code of conduct,' President Kornbluth gave a hairsplitting legalistic response: 'If targeted at

individuals, not making public statements.'" App. 51a. Meanwhile, when students reported antisemitic incidents to MIT's Institute Discrimination & Harassment Response Office (IDHR), MIT told them that the incidents "'did not seem to violate the policies that IDHR has jurisdiction over' and, moreover, that Jews are not members of a protected class." *Id.*

The First Circuit nonetheless affirmed dismissal of Petitioners' Title VI claims based largely on two erroneous legal holdings. *First*, the court held that Petitioners had not sufficiently alleged that the protesters had the "subjective intent" to harass Jews, and that this defeated any hostile environment claim. This holding deepens an already stark circuit split (5-3, with another 4 circuits having an intra-circuit split) about whether the harassers' subjective intent is an element of a hostile environment claim.

Second, and relatedly, the First Circuit held that the protesters were engaged in "protected speech" under the First Amendment, and that such speech could not create a hostile environment sufficient to sustain a Title VI claim for severe harassment. This holding creates a 3-1 circuit split—and undermines the effectiveness of Title VI's protections against a hostile environment—by inventing a yawning carveout when the environment is created with words or expressive conduct.

Beyond deepening divisions among the Courts of Appeals, these holdings lack grounding in statutory text, conflict with this Court's precedent, and ultimately threaten to undermine federal anti-discrimination protections for all Americans—not just Jews. If allowed to stand, the First Circuit's holdings would render important aspects of the Civil Rights Act

a dead letter. That statute affords employees and students "the right to work [or go to school] in an environment free from discriminatory intimidation, ridicule, and insult." *Meritor Sav. Bank*, 477 U.S. at 65.

Thus, an actionable claim should not turn on what was subjectively in the wrongdoers' minds when they created the hostile environment—or on whether the discriminatory environment was created by speech or expressive conduct. By the First Circuit's logic, a woman subjected to repeated and uncomfortable sexual advances in the workplace would not have a viable Title VII claim if she could not allege, and eventually prove, that the workplace offender subjectively intended to discriminate on the basis of sex. Likewise, a Black student subjected to racial slurs by students wearing white hoods and waving nooses would not be able to state a claim because words-and-symbols-only harassment could *never* lead to a hostile environment, even at a private university that chose to accept federal funds.

This Court should grant the petition to resolve these splits of authority and address these issues of nationwide importance.

STATEMENT OF THE CASE

A. Legal Background

Federal anti-discrimination law protects students, other participants in federally funded programs, and employees from discrimination based on race, national origin, or sex. *See* Title VI of the Civil Rights Act of 1964 § 601, 42 U.S.C. § 2000d; Title IX of the Education Amendments of 1972 § 901, 20 U.S.C.

§ 1681(a); Title VII of the Civil Rights Act of 1964 § 703, 42 U.S.C. § 2000e-2(a)(1).

Institutions are liable under these statutes when they are deliberately indifferent to a hostile environment. *See, e.g.*, *Davis*, 526 U.S. at 650–54; *Gebser* v. *Lago Vista Indep. Sch. Dist.*, 524 U.S. 274 (1998); *Franklin* v. *Gwinnett Cnty. Pub. Schs.*, 503 U.S. 60, 64 (1992); *Meritor Sav. Bank*, 477 U.S. at 67. A "hostile environment" claim arises when discriminatory harassment taking place at the institution is "so severe, pervasive, and objectively offensive" that it effectively denies victims equal access to the institution's benefits—such as educational or workplace opportunities. *Davis*, 526 U.S. at 651–52. That is determined from a "constellation of surrounding circumstances, expectations, and relationships." *Id.* The covered institution's indifference to a "hostile environment" is what is actionable, even if the environment is created by the plaintiff's peers, coworkers, or classmates, and not the institution itself. *Id.*[1]

Courts further recognize that both speech and conduct—alone or in combination—can create an actionable hostile environment. For example, the Fourth Circuit upheld a hostile environment claim based on misogynistic speech and chants for violence

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[1] As this Court has strongly implied and lower courts uniformly hold, there is no meaningful difference—besides the nature of the protected characteristic—between hostile environment claims under Title VI, Title VII, and Title IX because of their materially identical language regarding discrimination. *See, e.g.*, *Sewell* v. *Monroe City Sch. Bd.*, 974 F.3d 577, 584 n.2 (5th Cir. 2020); *see also Students for Fair Admissions, Inc.* v. *President & Fellows of Harv. Coll.*, 600 U.S. 181, 302 (2023) (Gorsuch, J., concurring).

against women. *See Feminist Majority Found.* v. *Hurley*, 911 F.3d 674, 693 (4th Cir. 2018). The Tenth Circuit upheld a hostile environment claim based on racially harassing speech and T-shirts against Black students. *Bryant* v. *Indep. Sch. Dist.*, 334 F.3d 928 (10th Cir. 2003); *see also Fennell* v. *Marion Indep. Sch. Dist.*, 804 F.3d 398 (5th Cir. 2015) (Title VI hostile environment claim based on noose, racial epithets, and slurs); *Zeno* v. *Pine Plains Cent. Sch. Dist.*, 702 F.3d 655 (2d Cir. 2012) (Title VI hostile environment claim based on slurs, bullying, and physical assault).

Discrimination against Jews constitutes racial discrimination. *Shaare Tefila Congregation* v. *Cobb*, 481 U.S. 615, 617 (1987). Federal courts (and executive agencies) have consistently recognized that, because Jews have a shared ancestry, they are also covered under Title VI's national origin protections. *See, e.g.*, *Canel* v. *Art Inst. of Chi.*, No. 23-cv-17064, 2025 WL 564504, at *5 (N.D. Ill. Feb. 20, 2025) (noting antisemitism can be actionable under Title VI regardless of whether it is national origin or racial discrimination); Kenneth L. Marcus, *Title VI and Title IX Religious Discrimination in Schools and Colleges*, U.S. DEP'T OF EDUC. (Sept. 13, 2004), https://perma.cc/WRV3-DHNE (noting the "commingled" nature of antisemitic discrimination).

B. Factual Background

This case arises from well-pleaded allegations of antisemitism on MIT's campus. As has been widely reported after the Hamas terror attacks on October 7, 2023, many college campuses became embroiled in riots, protests, disruptions, and various forms of antisemitic harassment. The events at MIT were particularly egregious. Students there not only yelled

antisemitic chants and called for violence against Jews, but they targeted Jewish students and faculty, assaulted them and impeded their access to public places, defaced and destroyed their property, and violated multiple school rules in the process. *See* App. 2a–13a, 49a–53a. MIT knew of these violations, but failed to take sufficient steps to address and deter the scourge of antisemitism. *See, e.g.*, App. 6a–7a, 10a–11a, 51a.[2]

1. MIT's policies are designed to create "a living, working, and learning environment that is free from discrimination and discriminatory harassment." Am. Complaint ¶ 45, *StandWithUs*, No. 24-cv-10577-RGS (D. Mass. May 17, 2024), ECF 40 (hereinafter "Am. Compl."). To ensure deterrence, those who violate the policies can be put on probation, suspended, expelled, or have their degrees revoked. *Id.* ¶ 48.

MIT's policies prohibit "harassment," which is defined as "unwelcome conduct of a verbal, nonverbal or physical nature that is sufficiently severe or pervasive to create a work or academic environment that a reasonable person would consider intimidating, hostile or abusive and that adversely affects an individual's educational, work, or living environment." *Id.* ¶ 51. Examples of harassment include "[p]ublic and personal tirades; deliberate and repeated humiliation[;] the use of certain racial epithets; [and] deliberate desecration of religious articles or places." *Id.* While students may protest,

[2] As this appeal arises out of the granting of a motion to dismiss, the factual assertions in the amended complaint are presented as established facts. *See Bell Atlantic Corp.* v. *Twombly*, 550 U.S. 544, 555 (2007).

they cannot do so "for purposes of harassment, discrimination, retaliation, invasion of personal privacy, defamation, threats or violence, targeting of groups or individuals." *Id.* ¶ 65.

2. After October 7, students at MIT immediately and aggressively disrupted campus life for Jews. Protesters assaulted Jews and impeded their movement on campus. One Jewish student tried to record an unauthorized protest on open campus property but was shoved by a protester. *Id.* ¶ 176; App. 5a–6a. Other Jewish students were prevented from attending classes and accessing buildings. Am. Compl. ¶ 179.

Protesters stopped classes by shouting, unfurling flags, and using megaphones. *Id.* ¶ 159. Student groups held rallies at unauthorized places and times and hung posters where they were not permitted to do so. *Id.* ¶ 160. Protesters defaced and tore down Israeli posters and flags. *Id.* ¶ 242; *see also* App. 12a.

Many students ostracized and harassed their Jewish classmates. Three days after October 7, students wrote "Free Palestine" and "Occupation on Gaza" in chalk directly outside a vigil organized by Jewish students for victims of Hamas's terror attacks. App. 3a. Jewish students who attempted to push back against false claims were met with online harassment and ostracism, and faculty who conducted Israel-related research were threatened with public shaming. App. 3a–4a; Am. Compl. ¶ 217.

For months, the protesters were permitted to block access and even shut down streets, as they called for violence against Jews, chanting: "There is only one solution! Intifada revolution!" App. 4a, 68a. That phrase invokes both Hitler's "Final Solution" (*i.e.*,

mass extermination of Jews) and the Palestinian terror attacks of the 1990s and 2000s that killed over one thousand Israelis. Am. Compl. ¶ 186. Protesters also chanted several phrases that call for the violent destruction of Israel's Jewish population, including "From the river to the sea"; "Resistance is justified"; and, in Arabic, "The iron gates of Al Aqsa, open for the martyr!" App. 5a, 7a, 12a; Am. Compl. ¶ 236.

Protesters specifically disrupted Jewish life and religious practice, choosing to rally in front of MIT's Hillel—a primary campus location where Jewish students gather to participate in religious and other cultural activities. Am. Compl. ¶¶ 204, 221; App. 6a n.4, 30a–32a, 51a, 69a n.2.

The antisemitic disruptions on MIT's campus reached their height in the spring of 2024, when approximately thirty students established an "encampment" on Kresge Lawn, directly adjacent to Hillel. App. 9a–12a. The encampment displayed several "overtly discriminatory and antisemitic" signs and served as a locus for protesters to organize their harassing chants. Am. Compl. ¶¶ 221–22. As a result, a Passover seder scheduled at Hillel in April 2024 had to be moved because of insufficient protections from harassment and disruption. App. 30a–31a.

3. While MIT vigorously enforces its policies to protect other minorities—often in ways that go far beyond what Petitioners here ever requested—it has not done so to address the antisemitism on its campus. *See* Am. Compl. ¶ 268.

At the outset, MIT knew about the unlawful protests and encampments, acknowledging that protesters violated school rules. President Kornbluth stated, "[f]rom the start, this encampment has been a

clear violation of [MIT's] procedures for registering and reserving space for campus demonstrations," and described the chants as "quite disturbing." Am. Compl. ¶¶ 180, 227.

Yet MIT did not send police or discipline students who participated in unlawful protests. Instead, it issued milquetoast statements reiterating school policies and reminding students that they were not permitted to disrupt living, working, and learning spaces at MIT. These reminders did not work.

Rather than punish and deter rule violations to create a safe environment for everyone, MIT put the onus on Jewish students by urging them not to counterprotest. Am. Compl. ¶ 224; App. 10a. And while MIT allowed protesters to put up posters expressing hostility toward Jews and Israelis in violation of school rules, it required that posters expressing the views of Jewish and pro-Israel voices be removed. Am. Compl. ¶¶ 254–56.

Recognizing there was an antisemitism problem, MIT created an advisory group. Yet Jewish faculty members quickly resigned from the group because it was not taking meaningful action. App. 7a.

Jewish students repeatedly pleaded with MIT to act. *See, e.g.*, App. 10a, 51a. The Anti-Defamation League gave MIT an "F" on its campus report card in January 2024, and members of Congress urged President Kornbluth to take proactive measures. Am. Compl. ¶¶ 38, 111.

MIT failed to do so. In May 2024, as the illegal encampments continued on MIT's campus, President Kornbluth threatened students who refused to disperse with interim suspension from "non-academic

campus activities" and referral to the "Ad Hoc Complaint Response Team." App. 6a. But when the students refused to disperse by her deadline—in some cases, at the urging of their professors—they faced no known discipline. *Id.*; Am. Compl. ¶ 238.

C. Procedural History

On March 7, 2024, Petitioners filed their initial complaint in the District of Massachusetts, alleging antisemitic discrimination in violation of Title VI. Yet antisemitism continued to swell on campus, with protesters setting up encampments that lasted from April 21 to May 10. Petitioners filed an amended complaint on May 17, 2024.

The district court dismissed the amended complaint on the pleadings for failure to state a claim. *See* App. 62a.

The First Circuit affirmed. App. 2a. *First*, it held that the allegations, taken together, did not demonstrate an overall "hostile environment" that was actionable. App. 14a–16a. The First Circuit held that the protesters' speech and conduct were not plausibly "driven by antisemitism" or antisemitic animus, as the protesters did not realize or intend that their strident anti-Zionism manifested in antisemitic behavior. App. 27a. For that reason, the disruption and harassment could not be "racist" under Title VI and therefore was not actionable as a matter of law. App. 21a–23a.

Even while recognizing that, "because the encampment, in particular, took place across from Hillel, its impact on Jewish students was plausibly heightened," the court summarily concluded there was no plausible inference that the protesters chose

that location because of its proximity to Hillel. App. 30a. It further held, despite ample allegations to the contrary, that the disruptive protests "were not, by and large, antisemitic." App. 34a. While there were "incidents that were plausibly antisemitic and targeted," those incidents were not sufficiently severe and pervasive to constitute actionable harassment. *Id.*

Second, the First Circuit held that Petitioners "failed to allege actionable racial harassment" because "most of the conduct about which [they] complain is speech protected by the First Amendment"—in particular, "political speech" entitled to "special protection" in certain circumstances—and such protected speech cannot, by definition, form the basis of a Title VI hostile environment claim. App. 15a–18a.

Petitioners moved for rehearing, which was denied. App. 63a–64a. In a concurrence, Judge Dunlap expressed his "concerns with the panel's approach," particularly how it purported "to avoid determining whether racist speech can be punished under Title VI without violating the First Amendment" by concluding that (1) "Title VI does not require a university to 'quash protected speech,'" and (2) "the protesters' actions 'did not render their speech antisemitic, much less unprotected.'" App. 65a–66a (Dunlap, J., concurring). According to Judge Dunlap, this approach "le[ft] open some important questions" about the scope of Title VI liability. App. 66a.

Petitioners now respectfully ask this Court to grant certiorari and resolve splits in the lower courts on these issues of critical national importance.

REASONS FOR GRANTING THE PETITION

I. This Court Should Grant the Petition to Resolve the Deep Circuit Split Over Whether the Harassers' Subjective Discriminatory Intent Is an Element of a Federal Hostile Environment Claim

This case presents an ideal opportunity to answer a question that has sharply divided the federal Courts of Appeals: whether, to state an actionable "hostile environment" claim, a plaintiff must plausibly allege and prove that her harassers had discriminatory intent or animus, or whether the objectively hostile nature of the environment suffices to support a claim.

1. Five federal Courts of Appeals hold that the discriminatory intent of individuals perpetrating harassment is *not* an element of "hostile environment" claims under Title VI, Title VII, Title IX, and § 1981.

The Tenth Circuit considered the issue in *Lounds* v. *Lincare, Inc*., 812 F.3d 1208 (10th Cir. 2015), where a district court granted summary judgment for an employer despite acknowledging that coworkers' racial jokes and use of the n-word "could be considered racially offensive by a reasonable jury," because "the alleged harassers acted with benign intent." *Id.* at 1220–28. The Tenth Circuit reversed, holding that "whether the alleged harasser's purpose or intent was to do harm . . . is legally immaterial." *Id.* at 1230. Because employers must always provide nondiscriminatory working conditions to their employees, the court explained that it makes no difference if harassers intend to discriminate or do so based on their ignorance; rather, what matters is the "subjective and objective effect of their conduct." *Id.* at 1228.

The Ninth Circuit has also held that plaintiffs "do not need to prove that [their harassers] had a specific intent to discriminate" to succeed in hostile environment cases. *EEOC* v. *Nat'l Educ. Ass'n*, 422 F.3d 840, 844 (9th Cir. 2005). Thus, conduct can constitute "unlawful sexual harassment even when harassers do not realize that their conduct creates a hostile working environment." *Ellison* v. *Brady*, 924 F.2d 872, 880 (9th Cir. 1991). Even "[w]ell-intentioned compliments" by coworkers can create a hostile environment, "if a reasonable victim of the same sex as the plaintiff would consider the comments sufficiently severe or pervasive to alter a condition of employment and create an abusive working environment." *Id.* That is so, according to the Ninth Circuit, because the civil rights statutes are not "fault-based tort scheme[s]"; they impose liability on employers for their actions in creating or failing to respond to such harassment. *Id.* at 880.

Likewise, in *Chapman* v. *Oakland Living Center, Inc.*, 48 F.4th 222 (4th Cir. 2022), the Fourth Circuit held that "harassment based on a protected characteristic may be actionable where it has the purpose *or effect* of unreasonably" creating a hostile environment, which "is judged from the perspective of a reasonable person in the plaintiff's position." *Id.* at 231 (cleaned up). Thus, the Fourth Circuit held that the repeated use of the n-word by the six-year-old son of the plaintiff's supervisor constituted a racially hostile environment, rejecting the employer's argument that there was no actionable hostile environment because the comments were "uttered by a young child." *Id.* at 231–32. The court explained that "it matters not if the boy was too young to understand the force of his words or if he lacked intent to harm

[the plaintiff].” *Id.* Instead, what matters is the effect of the harasser’s conduct. *Id.*; *see also Boyer-Liberto* v. *Fontainebleau Corp.*, 786 F.3d 264, 282 (4th Cir. 2015) (en banc) (“[I]ntent to create a hostile work environment is not an element of a hostile environment claim.”).

The Fifth Circuit has likewise held that it is “improper[] [to] focus[] on the intent of those who created the environment,” and that “it is not necessary to show” such “intent in a case challenging a discriminatory [] environment.” *Vaughn* v. *Pool Offshore Co.*, 683 F.2d 922, 925 n.3 (5th Cir. 1982).

Lastly, the Federal Circuit has similarly concluded that, “where employees can reasonably perceive the conduct in question to be hostile or abusive, the actor’s lack of specific discriminatory intent does not prevent his or her deliberate conduct from being actionable under Title VII.” *Newton* v. *Dep’t of the Air Force*, 85 F.3d 595, 599 (Fed. Cir. 1996) (internal quotation marks omitted); *cf. King* v. *Frazier*, 77 F.3d 1361, 1363 (Fed. Cir. 1995) (holding that arbitrator erred “by introducing intent [of the harasser] as an element” of a hostile environment charge).

2. In a sharp split with these circuits, three circuits hold that discriminatory intent or animus by the harassing actors is an element of a hostile environment claim.

The First Circuit below held that, “[w]ithout . . . an inference” of “antisemitic animus” by individual harassers, the harassers’ conduct “cannot constitute racial harassment for Title VI purposes.” App. 27a–28a. To reach this conclusion, the court for the first time extended its earlier direct discrimination precedent (where subjective animus is an element) to

hostile environment claims. *See Goodman* v. *Bowdoin Coll.*, 380 F.3d 33, 43 (1st Cir. 2004); *Doe* v. *Brown Univ.*, 43 F.4th 195, 208 (1st Cir. 2022).

The Eleventh Circuit has also limited its analysis of whether a plaintiff "experienced a racially hostile work environment" to incidents that were "racially motivated." *Jones* v. *UPS Ground Freight*, 683 F.3d 1283, 1297 (11th Cir. 2012). Accordingly, a hostile environment plaintiff must establish that the harasser "intended" to be discriminatory. *Id.*; *see also Trask* v. *Sec'y, Dep't of Veterans Affs.*, 822 F.3d 1179, 1196 (11th Cir. 2016) (lack of evidence that harasser's "hostility was in any way motivated by a discriminatory animus" was "fatal" to plaintiffs' claim).

Similarly, the D.C. Circuit has held that an actionable hostile environment requires evidence that the harasser's hostility is "motivated by a discriminatory animus." *Stewart* v. *Evans*, 275 F.3d 1126, 1133 (D.C. Cir. 2002); *see also Walston* v. *Foley & Lardner, LLP*, 516 F. App'x 1, 1 (D.C. Cir. 2013) (dismissing hostile work environment claims because plaintiff "offered no evidence to suggest that the alleged harassment was motivated by racial discrimination").

3. Underscoring the confusion, the remaining circuits have published conflicting decisions on the issue. The Eighth Circuit has held that "[t]he actor who engages in the [harassment] need not have the intent to create an abusive [] environment," as hostile environment claims are based on the "effect of the conduct." *Crist* v. *Focus Homes*, 122 F.3d 1107, 1111 (8th Cir. 1997). It further held that even when harassment is not intended to harm women, "a finding

that [the harasser's] conduct disproportionately affected female staff could support a determination that the harassment was based on sex." *Id.*

Nonetheless, the Eighth Circuit recently granted summary judgment to an employer because the plaintiff-employee did not provide evidence about "the offender's motivation." *Bell* v. *Baptist Health*, 60 F.4th 1198, 1205 (8th Cir. 2023); *see also Linville* v. *Sears, Roebuck & Co.*, 335 F.3d 822, 824 (8th Cir. 2003) (per curiam).

Similarly, the Seventh Circuit has held that a hostile environment is actionable even "when the perpetrator" does not "act[] with a purpose to discriminate." *Huff* v. *Sheahan*, 493 F.3d 893, 903 (7th Cir. 2007). "[S]o long as the environment itself is hostile to the plaintiff because of her sex, why the harassment was perpetrated (sexual interest? Misogyny? Personal vendetta? Misguided humor? Boredom?) is beside the point." *Doe* v. *City of Belleville*, 119 F.3d 563, 578 (7th Cir. 1997), *vacated on other grounds*, 523 U.S. 1001 (1998). But in later decisions, the court has required plaintiffs to show the harassers acted with a "discriminatory motive." *Hall* v. *City of Chicago*, 713 F.3d 325, 333 (7th Cir. 2013).

So too in the Sixth Circuit. In *Williams* v. *General Motors Corp.*, 187 F.3d 553 (6th Cir. 1999), the court held that the "intent of the alleged harasser is irrelevant." *Id.* at 566. Yet, in *Arendale* v. *City of Memphis*, 519 F.3d 587 (6th Cir. 2008), a hostile environment claim failed because there was no "evidence of racial animus." *Id.* at 605.

Finally, the Third Circuit held in *Abramson* v. *William Paterson College*, 260 F.3d 265 (3d Cir. 2001), that "[r]egardless of what a harasser's intention is,"

hostile environment liability can attach when a workplace is "permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive." *Id.* at 278–79. Yet in *Caver* v. *City of Trenton*, 420 F.3d 243 (3d Cir. 2005), it held that evidence the harassment was "not racially motivated" was "fatal to the hostile work environment claim." *Id.* at 265.

4. The First Circuit's holding that plaintiffs must show their harassers acted with hostile intent (*i.e.*, "antisemitic animus") not only deepens an entrenched conflict—it is also wrong.

Because Title VI imposes responsibilities on schools, not harassers, *see Davis*, 526 U.S. at 640–41, liability turns not on the perpetrator's mental state, but on the school's own conduct when confronted with knowledge of a hostile environment. As this Court has made clear, an environment is sufficiently hostile if it "would reasonably be perceived, and is perceived, as hostile or abusive." *Harris*, 510 U.S. at 22; *see also Oncale* v. *Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 81 (1998) (explaining the "severity of harassment should be judged from the perspective of a reasonable person in the plaintiff's position"). It therefore makes no difference whether the perpetrator of the harassment intended to create a racially hostile environment or had some other purpose in mind. The *effect* of the harasser's conduct is the same no matter if done with benign intent or outright animus. And that *effect* is what denies students the benefits of educational opportunities, under Title VI or Title IX. *See Davis*, 526 U.S. at 652.

Moreover, harassment can be race-based without any animus from the harasser. All Title VI requires is

that the plaintiff be "subjected to discrimination" "on the ground of race." 42 U.S.C. § 2000d. To discriminate, this Court has explained, means to "treat" an individual "worse" than others who are similarly situated. *Muldrow* v. *City of St. Louis*, 601 U.S. 346, 355 (2024); *see also* Webster's New International Dictionary 745 (2d ed. 1954) ("[t]o make a distinction" or "[t]o make a difference in treatment or favor (of one as compared with others)"). And "on the ground of" simply equates to "because of"—which, in the language of law, means Title VI incorporates "the 'simple' and 'traditional' standard of but-for causation." *Bostock* v. *Clayton Cnty.*, 590 U.S. 644, 656 (2020); *see also Univ. of Tex. Sw. Med. Ctr.* v. *Nassar*, 570 U.S. 338, 346 (2013). So even if the harassers harbored no ill will, an environment is racially hostile "when it can be shown that but for the [plaintiff's] race, she would not have been the object of harassment." *Clay* v. *United Parcel Serv., Inc.*, 501 F.3d 695, 706 (6th Cir. 2007).

Those principles foreclose the view that hostile environment claims are permitted only when the harasser possesses racial animus. If that were true, minorities would have to suffer at universities or workplaces because of ignorant harassers who do not know or intend for their abuse to harm others. That contradicts the statutory text and flies in the face of decades of this Court's civil rights jurisprudence. Indeed, Judge Easterbrook recognized this point over twenty years ago, providing an oft-cited hypothetical that captures the crux of the hostile environment inquiry:

> Suppose a patient [in the defendant Hospital] kept a macaw in his room, that the bird bit and

> scratched women but not men, and that the Hospital did nothing. The Hospital would be responsible for the decision to expose women to the working conditions affected by the macaw, even though the bird (a) was not an employee, and (b) could not be controlled by reasoning or sanctions. It would be the Hospital's responsibility to protect its female employees by excluding the offending bird from its premises.

Dunn v. *Wash. Cnty. Hosp.*, 429 F.3d 689, 691 (7th Cir. 2005). As the example illustrates, the source of harassment simply does not matter. Instead, the right question under Title VI is whether the *school* tolerated those harassing "conditions." *Id.*

To resolve this circuit split about the relevance of harassers' subjective intent, the Court should grant certiorari.

II. This Court Should Grant the Petition to Resolve the Circuit Split Created by the First Circuit's Invention of a Categorical "Protected Speech" Exception to Federal Anti-Discrimination Laws

This Court should grant the petition for the independent reason that the First Circuit invalidated Title VI's protections against racial harassment in educational environments as unconstitutional under the First Amendment whenever the harassment takes the form of otherwise protected speech. The First Circuit nullified the statute in this respect without conducting the required constitutional analysis under any First Amendment strict scrutiny framework or constitutional avoidance doctrine. *See, e.g.*, *Citizens United* v. *FEC*, 558 U.S. 310 (2010) (invalidating

Bipartisan Campaign Reform Act of 2002 to protect "political speech" only after full constitutional analysis); *AID* v. *All. for Open Soc'y Int'l, Inc.*, 570 U.S. 205, 206 (2013) (articulating the framework for reviewing funding conditions that may burden First Amendment rights).

The First Circuit's categorical First Amendment exception has no basis in the statutory text or anti-discrimination precedents, and it departs sharply from the decisions of other circuits. It is also a nebulous and unmanageable exception that threatens to swallow all forms of actionable race-based discrimination by creating a false conflict between the First Amendment and Title VI. And because the court did "not lay out a comprehensive framework for resolving" this purported "tension," App. 66a (Dunlap, J., concurring), the decision below creates confusion—itself a constitutional concern. *Cf. Citizens United*, 558 U.S. at 326–27. This Court's guidance is necessary, as "[i]t is not judicial restraint to accept an unsound, narrow argument just so the Court can avoid another argument with broader implications." *Id.* at 329.

1. A student or employee can be subjected to a hostile environment based on a peer or colleague's speech that would be "protected" outside the workplace or campus setting. Generally, individuals are free under the First Amendment to use racial slurs, make ethnic taunts, and display hateful symbols while being protected from government censorship. *See, e.g.*, *Matal* v. *Tam*, 582 U.S. 218, 223 (2017); *Saxe* v. *State Coll. Area Sch. Dist.*, 240 F.3d 200, 204 (3d Cir. 2001).

Nevertheless, courts properly applying this Court's holding in *Davis* find that spoken words can

create a hostile environment when they are "so severe, pervasive, and objectively offensive, and [] so undermine[] and detract[] from the victims' educational experience, that the victim-students are effectively denied equal access to an institution's resources and opportunities." 526 U.S. at 651; *cf. Meritor Sav. Bank*, 477 U.S. at 67 (describing the Title VII origins of this doctrine).

For example, in *Bryant*, the Tenth Circuit sustained a hostile environment claim based on racial slurs, swastikas, nooses, "KKK" graffiti, and Confederate flag symbols at a school, notwithstanding that such expression could not generally be prohibited by the government under the First Amendment. 334 F.3d at 931–33.

Similarly, in *Zeno*, the Second Circuit affirmed a Title VI verdict based on racial slurs and offensive comments without considering whether those statements were protected speech. 702 F.3d 655. Instead, it applied the *Davis* standard, concluding that their cumulative effect meant a reasonable jury could have found "severe, pervasive, and objectively offensive" harassment. *Id.* at 666.

Similarly, in *Fennell*, the Fifth Circuit applied *Davis* to evaluate a hostile environment claim based on racial slurs, noose incidents, and offensive comments. 804 F.3d at 402–09. As in *Bryant* and *Zeno*, the court did not consider whether such expression was protected speech, but whether it was "so severe, pervasive, and objectively offensive" that it deprived the plaintiffs of educational opportunities. *Id.* at 402–10 (quoting *Davis*, 526 U.S. at 650).

2. These cases rightly recognize that otherwise applicable First Amendment standards are not

imported into the federal anti-discrimination laws, which are exercises of the government's "broad power under the Spending Clause of the Constitution to set the terms on which it disburses federal funds." *Cummings* v. *Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 216 (2022). In this sense, Title VI (and related statutes, like Title IX) are "much in the nature of a contract: in return for federal funds, the [recipients] agree to comply with federally imposed conditions," including to not discriminate on the basis of protected characteristics. *Id.* (quoting *Pennhurst State Sch. & Hosp.* v. *Halderman*, 451 U.S. 1, 17 (1981)).

This Court has recognized that Title VI "rests not on [the government's] sovereign authority to enact binding laws, but on 'whether the [recipient] voluntarily and knowingly accepts the terms'" of the "contract." *Cummings*, 596 U.S. at 219 (quoting *Barnes* v. *Gorman*, 536 U.S. 181, 186 (2002)). And it has further recognized that, under this "contract-law analogy," a recipient of federal funds "may be held liable to third-party beneficiaries"—*i.e.*, students—for statutory violations. *Barnes*, 536 U.S. at 186–87 (citing *Davis*, 526 U.S. at 642). This is because, "[w]hen a federal-funds recipient violates conditions of Spending Clause legislation, the wrong done is the failure to provide what the contractual obligation requires; and that wrong is 'made good' when the recipient *compensates* the Federal Government or a third-party beneficiary . . . for the loss caused by that failure." *Id.* at 189.

Private universities are not required to take federal funds. But when they do, they agree to certain terms, including that they will not permit students or faculty to create a hostile learning environment,

whether through actions or speech. By analogy to other "promise[s] . . . made in the context of a contractual relationship," "[t]he First Amendment does not support [a university's] right to renege" on its "self-imposed" legal obligations. *Belgau* v. *Inslee*, 975 F.3d 940, 950 (9th Cir. 2020) (citing *Cohen* v. *Cowles Media Co.*, 501 U.S. 663, 671 (1991)). Nor do students, faculty members, or campus organizations have a freestanding First Amendment right to force their universities to disregard their obligation to provide a safe and orderly educational environment, free of unlawful discrimination. *Cf. Healy* v. *James*, 408 U.S. 169, 192–93 (1972) (students' First Amendment rights are "in no sense infringed" when a university exercises its "inherent power to promulgate rules and regulations"); *Grove City Coll.* v. *Bell*, 465 U.S. 555, 575–76 (1984) ("Requiring Grove City to comply with Title IX's prohibition of discrimination as a condition for its continued eligibility to participate in [a federal] program infringes no First Amendment rights of the College or its students.").

3. The First Circuit, however, charted a different, and deeply problematic, course in the decision below. In its view, it is unclear "under what circumstances, if any, can racist speech be punished pursuant to Title VI without violating the First Amendment," App. 21a–22a—even though courts repeatedly hold that racist speech creates a hostile environment when it meets the *Davis* standard. So, the First Circuit avoided that question by holding that "the disruptive protests and campsite gatherings" were a "special" form of protected speech—that is, "classically political speech," accomplished through "time-worn methods of grabbing more attention for the broadcast of the protestors' political views"—and that such protected

speech cannot, as a matter of law, "constitute[] antisemitic harassment actionable under Title VI." App. 16a, 30a–31a. The court reasoned that "our Constitution bars the government from forcing a private university to prohibit students from voicing vehement support for, or opposition to, the policies and conduct of the United States and its allies." App. 29a.

The First Circuit's holding has no basis in the text or history of Title VI or federal anti-discrimination law, and it conflicts with this Court's decision in *Davis* and the Tenth, Second, and Fifth Circuit decisions above that properly applied the *Davis* standard. And though the First Circuit purported to reach this conclusion based on a quasi-constitutional-avoidance interpretation of Title VI, there is neither a "protected speech" exception, nor a subcategory for "political speech" that receives "special protection," in anti-discrimination law. *See* App. 16a–17a, 21a, 27a.

To the contrary, the First Circuit grafted its novel protected and political speech exception onto Title VI—an exercise of the government's *spending* power to condition the expenditure of taxpayer funds on nondiscriminatory practices—from traditional, non-Title VI First Amendment cases limiting the government's *sovereign* power to punish individuals for the content of their speech.

For example, the First Circuit relied on *Snyder* v. *Phelps*, 562 U.S. 443 (2011), *Texas* v. *Johnson*, 491 U.S. 397 (1989), and *Cox* v. *Louisiana*, 379 U.S. 536 (1965), for the propositions that political speech receives "special protection under the First Amendment," and that laws punishing political

expression are "subject to 'the most exacting' First Amendment scrutiny." App. 16a, 19a.

But those cases express constitutional principles regarding the limits to the government's *sovereign* power to punish protected speech; they are inapplicable to the legal obligations of *funding* recipients under federal anti-discrimination laws like Title VI. *Compare Snyder*, 562 U.S. at 460 (First Amendment defense against state tort liability), *and Johnson*, 491 U.S. at 399–403 (First Amendment defense against criminal conviction under state flag-desecration statute), *with Davis*, 526 U.S. at 653 (anti-discrimination "liability may arise when a funding recipient remains indifferent to severe, [protected class]-based mistreatment played out on a 'widespread level' among students").

The First Circuit, in other words, replaced the "well settled" Title VI statutory framework, *see Barnes*, 536 U.S. at 189, with an inapplicable protected vs. unprotected speech standard imported from First Amendment sovereign-regulation cases, making only one passing reference to the proper spending-power framework. *See* App. 21a (citing *AID*, 570 U.S. at 205). The result is a holding that undermines federal anti-discrimination statutes and ignores this Court's related jurisprudence.

4. In addition to lacking proper statutory and doctrinal grounding, the First Circuit's novel First Amendment holding creates an unmanageable standard that departs from *Davis*'s functional test, creates a false conflict between the First Amendment and Title VI, and renders decades of hostile environment jurisprudence meaningless. Whether harassment takes the form of "protected" or "political

speech" (including expressive conduct) has no bearing on whether it "denies its victims the equal access to education that Title [VI] is designed to protect." *Davis*, 526 U.S. at 652. And it is not difficult to see how decisions that properly apply this principle would come out differently under the First Circuit's contrary standard.

In *Bryant*, for example, the court would have been unable to find a hostile environment when "Caucasian males were allowed to wear T-shirts adorned with the confederate flag, swastikas, [and] KKK symbols," 334 F.3d at 932–33, as each of those symbols is political in nature and protected from direct government censorship under the First Amendment. *See, e.g.*, *Virginia* v. *Black*, 538 U.S. 343, 365 (2003) (cross-burning, while often intimidating to onlookers, may constitute "core political speech"); *Johnson*, 491 U.S. at 414; *R.A.V.* v. *City of St. Paul*, 505 U.S. 377, 382–83 (1992).

Similarly, in *Fennell*, the series of racially harassing incidents—including comments about "all black people [being] on welfare" and a "text message . . . that showed an animation of KKK members chasing President Obama"—could be said to "relat[e] to any matter" of political commentary, App. 18a n.10, and thus would be immunized under the First Circuit's standard. *See* 804 F.3d at 404–05.

In fact, because almost *all* expressive speech or conduct involving race, color, or national origin "deals with matters of public concern" by virtue of those topics, the First Circuit would immunize this common form of harassment from the scope of Title VI liability unless the comments or acts independently fall under the narrow categories of speech unprotected by the

First Amendment. *See* App. 18a n.10, 20a (quoting *Snyder*, 562 U.S. at 453). The First Circuit's holdings taken together thereby create a catch-22—expression must be "driven by" a subjective intent to give rise to a hostile environment, App. 27a, but any such "intent to convey a particularized message" triggers a First Amendment override of Title VI, *Johnson*, 491 U.S. at 404.

This is not a result that Title VI and *Davis* permit, and it is fundamentally incompatible with the reasoned decisions of the Tenth, Second, and Fifth Circuits described above. Ultimately, the First Amendment does not, as the First Circuit would have it, trump or negate Title VI when protected speech is present. Rather, the two provisions work together: If speech whose content is generally protected is used to harass members of a protected class, it may create a hostile environment triggering the funding recipient's obligation to respond reasonably. The First Amendment does not alleviate that obligation, even if it may limit what actions a public entity may be permitted (or required by a court) to take in crafting a reasonable response. *See Veksler* v. *Regents of the Univ. of Cal.*, No. 25-cv-11745, slip op. at 17 (C.D. Cal. June 12, 2026) ("The Court recognizes that the [public university] was required to take into account its obligations under the First Amendment when responding to alleged discrimination and harassment.").

This Court's review is necessary to resolve this split in the circuits and clarify that there is no categorical First Amendment exception to the hostile environment inquiry under federal anti-discrimination laws.

III. This Case Is an Ideal Vehicle to Address Recurring Issues of National Importance

The First Circuit's errors deepen circuit splits and add to confusion surrounding hostile environment claims. They will also have grave consequences for Americans of all backgrounds seeking redress for unlawful discrimination. This is an issue of profound national importance, and this case is a clean vehicle for this Court to resolve the questions it presents. On this basis, too, the Court should grant certiorari.

First, this case is a clean vehicle. The First Circuit affirmed dismissal at the pleadings stage, deciding as a matter of law both whether subjective animus is a required element of a hostile environment claim, and whether protected speech can form the basis of a hostile environment that triggers Title VI obligations. This Court can address these purely legal issues without considering any disputes of fact.[3]

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[3] Though one judge suggested on rehearing that Petitioners "conceded on appeal" that "only conduct or speech not protected by the First Amendment could give rise to liability under" Title VI, App. 66a (Dunlap, J., concurring), Petitioners made no such concession at any point. *See* Plaintiffs-Appellants' Reply Br. at 21, *StandWithUs*, No. 24-1800 (1st Cir. Mar. 27, 2025) ("There is ample room between the First Amendment and Title VI for institutions to curtail harassing speech."); Pet. for Rehearing at 12, *StandWithUs*, No. 24-1800 (1st Cir. Nov. 25, 2025) ("[T]he discriminatory and harassing course of conduct triggered MIT's Title VI obligations . . . even though the harassment was conducted primarily through speech, and even if the content of such speech may have been protected by the First Amendment."). By contrast, the First Circuit went beyond what Respondent ever argued to fashion a blanket protected speech carveout from federal anti-discrimination laws. *Cf. Margolin* v. *Nat'l Ass'n of Immigr. Judges*, 146 S. Ct. 1285, 1288–89 (2026) (per curiam).

Further, although the First Circuit purported to offer alternative holdings on hostile environment and deliberate indifference, the court's deliberate indifference discussion was premised on its blinkered view of "the nature of the activity that plaintiffs say MIT should have eliminated more quickly." App. 37a. And because the First Circuit already concluded that such "activity" was (1) not subjectively antisemitic, and (2) subject to absolute First Amendment protection because it was merely about "the political divide among [MIT] students," it limited its analysis to whether MIT took reasonable actions to "prevent[] the on-campus conflict from exploding into real violence," as opposed to whether MIT reasonably attempted to remedy the multi-faceted hostile environment that Petitioners alleged. App. 36a, 38a. In other words, the First Circuit's deliberate indifference holding is intertwined with its hostile environment confusion about subjective animus and First Amendment principles.

Thus, the First Circuit failed to grapple with the conditional nature of these inquiries—*i.e.*, that the deliberate indifference inquiry asks whether a school's "response to the harassment or lack thereof is clearly unreasonable *in light of the known circumstances*" of the hostile environment. *Davis*, 526 U.S. at 648 (emphasis added); *see also Grace* v. *Bd. of Trs.*, 85 F.4th 1, 14 (1st Cir. 2023) (asking whether "school officials . . . offer[ed] suitable remedial measures in light of the claimed harassment"). Similarly, other courts have held that whether a response is "reasonable" necessarily turns on the severity of the underlying harassment. *See Menzia* v. *Austin Indep. Sch. Dist.*, 47 F.4th 354, 361 (5th Cir. 2022) (holding the "evaluation of the reasonableness

of a [school's] responses" must be made "in light of the severity of the harassment"). As such, the First Circuit could not reach its purportedly "alternative" deliberate-indifference holding that "MIT's response was not 'clearly unreasonable'" unless it properly applied the hostile environment inquiry first. As explained above, it did not.

Second, the wide-ranging national consequences of the questions presented—and the broad impact of the oft-cited decision below—call for this Court's review. Since the October 7 Hamas terror attacks and the wave of antisemitic incidents that followed on college campuses, federal courts have seen a rise in Title VI claims by Jewish students seeking to vindicate their civil rights.[4] Courts properly applying *Davis*, such as the court in *Kestenbaum* v. *President & Fellows of Harvard College*, 743 F. Supp. 3d 297 (D. Mass. 2024), permitted those claims to move forward, and rejected university defendants' attempts to "hide behind the First Amendment to justify avoidance of [] Title VI obligations." *Id.* at 309.

The decision below, however, changed that landscape—and has repeatedly been relied on by lower courts to reject otherwise cognizable Title VI claims on purported First Amendment grounds. In fact, the same judge who denied a motion to dismiss before the decision below in both *Kestenbaum* and *Louis D. Brandeis Center for Human Rights Under Law* v. *President & Fellows of Harvard College*, No.

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[4] *See generally Special Collection: Title VI Anti-Palestinian/Antisemitism Cases*, C.R. LITIG. CLEARINGHOUSE, https://clearinghouse.net/collections/39089 (last visited June 16, 2026) (collecting cases).

24-cv-11354-RGS, 2024 WL 4681802, at *5 (D. Mass. Nov. 5, 2024), later dismissed an essentially identical claim, relying on the decision below. *See Segev* v. *President & Fellows of Harv. Coll.*, No. 24-cv-12646-RGS (D. Mass. Dec. 4, 2025).[5] Other district courts have followed suit. *See, e.g.*, *Canel* v. *Art Inst. of Chi.*, No. 23-cv-17064, 2026 WL 776580, at *11 (N.D. Ill. Mar. 19, 2026); *Doe* v. *Nw. Univ.*, No. 24-cv-04831, 2026 WL 607423, at *5 (N.D. Ill. Mar. 3, 2026).

The need for review is further underscored by the divergence between the judiciary and the Executive Branch. The Office for Civil Rights (OCR) has issued findings against major universities for inadequate responses to antisemitic harassment, resulting in consent decrees and significant settlements.[6] Notably, OCR has made its position clear that, "if the harassment creates a hostile environment," "[t]he fact that harassment may involve conduct that includes speech in a public setting or speech that is also motivated by political or religious beliefs . . . does not relieve a school of its obligation to respond under Title VI." OCR, *Dear Colleague Letter: Protecting Students from Discrimination, such as Harassment, Based on*

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[5] The plaintiff in *Segev* had been a student-member of the Louis D. Brandeis Center for Human Rights Under Law, and his allegations were featured heavily in that organization's complaint. *See Brandeis Ctr.*, 2024 WL 4681802, at *2. Moreover, the district court in *Kestenbaum* held that Jewish students were subject to pervasive harassment at Harvard in part due to the allegations that would later form the basis of the *Segev* plaintiff's complaint. *See Kestenbaum*, 743 F. Supp. 3d at 304, 308.

[6] *See, e.g.*, *The United States Announces Agreement with Northwestern University*, U.S. DEP'T OF JUST. (Nov. 28, 2025), https://www.justice.gov/opa/pr/united-states-announces-agreement-northwestern-university.

Race, Color, or National Origin, Including Shared Ancestry or Ethnic Characteristics, U.S. DEP'T OF EDUC. (May 7, 2024). Only this Court can resolve this fundamental inconsistency between the Executive Branch and the First Circuit.

Moreover, the implications of the decision below are not confined to Jewish students or to the contemporary landscape surrounding post-October 7 campus antisemitism. The First Circuit's hostile environment holdings would eviscerate the civil rights protections that students of all backgrounds enjoy.

Should the decision below stand, a federally funded school could decline to take meaningful action when students harass their Black classmates by chanting "the South will rise again," waving Confederate flags, and circulating calls to "repeal the Thirteenth Amendment," so long as such harassment is subjectively framed as protected "political speech" about federalism and issues of public concern. The result is a regime in which expressive harassment of the kind that often creates racially hostile environments will be widely immunized.

This Court should grant review to articulate the governing test for Title VI hostile environment claims, resolve the circuit split over whether animus-based intent is an element of the inquiry, and clarify that civil-rights protections against hostile environments at institutions that take federal funds do not vanish simply because the hostile environment is created by words or expressive conduct.

CONCLUSION

This Court should grant the petition for writ of certiorari.

Respectfully submitted,

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JUNE 18, 2026

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APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 24-1800

STAND WITH US CENTER FOR LEGAL JUSTICE;
KATERINA BOUKIN; MARILYN MEYERS,

Plaintiffs, Appellants,

v.

MASSACHUSETTS INSTITUTE OF TECHNOLOGY,

Defendant, Appellee.

APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Richard G. Stearns, *U.S. District Judge*]

Before

Gelpí and Kayatta, *Circuit Judges*,
and Smith, *District Judge*[*]

Glenn A. Danas, with whom Ashley M. Boulton, Clarkson Law Firm, P.C., Melissa S. Weiner, Pearson Warshaw, LLP, Marlene J. Goldenberg, and Nigh Goldenberg Raso & Vaughn, PLLC were on brief, for appellants.

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[*] Of the District of Rhode Island, sitting by designation.

Ishan K. Bhabha, with whom Lauren J. Hartz, Jenner & Block LLP, Daryl J. Lapp, and Troutman Pepper Locke LLP were on brief, for appellee.

October 21, 2025

KAYATTA, *Circuit Judge.* This case emerges from a school year of tension among students, faculty, and administrators at the Massachusetts Institute of Technology (MIT) in response to extraordinary violence in the Middle East. Two plaintiffs are MIT students. The third is StandWithUs Center for Legal Justice, the legal arm of a California-based membership organization "dedicated to combatting antisemitism." Together, plaintiffs allege that MIT failed to take sufficient action to curtail a surge of anti-Israel and pro-Palestinian student protests, thereby allegedly subjecting MIT's Jewish and Israeli students to antisemitic harassment. The district court dismissed the suit for failure to state a claim. For the reasons that follow, we affirm.

I.

We begin by summarizing the facts not as they necessarily are, but as plaintiffs allege them to be, drawing all reasonable factual inferences in plaintiffs' favor. *See Douglas* v. *Hirshon,* 63 F.4th 49, 55 (1st Cir. 2023); *Watterson* v. *Page,* 987 F.2d 1, 3 (1st Cir. 1993).

On October 7, 2023, the Palestinian group Hamas launched a grotesque attack on Israel, intentionally killing hundreds of unarmed civilians and taking many others hostage. That same day, the MIT Coalition Against Apartheid, a student group recognized at the time by the university, reposted tweets from other accounts stating: "Palestinians cannot invade

Palestine"; "What is happening in occupied Palestine is a response to weeks and months and years of daily Israeli military invasions into Palestinian towns, killing of Palestinians, and the very fact that millions of Palestinians in the Gaza Strip are besieged under Israeli blockade"; and "Progressive commentators saying Palestinians have entered 'Israeli territory' . . . baby, check yourselves. You're part of the problem."

The following day, the MIT Coalition Against Apartheid and another student group, Palestine@MIT, sent an email to all undergraduate students with a "Joint Statement on the Current Situation in Palestine." The statement said, among other things, that the student groups "h[e]ld the Israeli regime responsible for all unfolding violence"; "unequivocally denounce[d] the Israeli occupation, its racist apartheid system, and its military rule"; and "affirm[ed] the right of all occupied people to resist oppression and colonization." It was signed "[u]ntil liberation." An Instagram post by Palestine@MIT indicated that the MIT Black Graduate Student Association and a group named MIT Reading for Revolution also supported the joint statement.

On October 10, 2023, pro-Palestinian students wrote "Free Palestine" and "Occupation on Gaza" in chalk outside a vigil organized by Jewish students. Seven days later, a student from the MIT Coalition Against Apartheid sent an email to all student group members at MIT stating that "Israel dropped bombs on the al-Ahli Arab Hospital" and killed "[o]ver 500 people and counting" – an allegation plaintiffs say was later "discredited by a variety of governmental and independent sources." Jewish students "responded by sharing information which discredited this rumor" but "were attacked online by their peers," and one

unidentified student "felt they could no longer participate" in a study group because of this criticism.

On October 19, 2023, pro-Palestinian students led by the MIT Coalition Against Apartheid held a rally outside the MIT Student Center, at which attendees chanted "Palestine will be free, from the river to the sea!" and "There is only one solution! Intifada revolution!"[1] Plaintiff Meyers and another Jewish student were approached by one rally attendee who "raised the front wheels of his bike at them" and said, in reference to Holocaust victims, "Your ancestors didn't die to kill more people." This rally caused plaintiffs and other Jewish and Israeli students to feel unsafe or unwelcome on campus. MIT knew about the rally through reports, security monitoring of events, and "other means."

Four days later, the MIT Coalition Against Apartheid staged a walkout in which an unspecified number of protestors left classes, disrupted some other classes by shouting and unfurling Palestinian flags, and gathered in the vicinity of Lobby 7, a major thoroughfare through which Plaintiffs Boukin and Meyers often traveled to attend classes and on-campus events. Lobby 7 was not a permitted protest area. The following week, the MIT Coalition Against Apartheid organized a "Die In" in Lobby 7 and taped posters of

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[1] Plaintiffs' complaint states that "From the River to the Sea" is "a call for a Palestinian state extending from the Jordan River to the Mediterranean Sea . . . which would mean the dismantling of the Jewish state." The complaint also states that "intifada" means "uprising" or "shaking off" and is "used to describe periods of intense Palestinian protest against Israel," which have historically included "violence" and "mass suicide bombings."

Gazans on lecture halls and campus buildings.[2] MIT did not halt the "Die In."

On November 2, 2023, the MIT Coalition Against Apartheid staged a fourth event, this time outside the offices of Jewish professors and MIT's Israel internship program, MISTI.[3] Protestors rattled the door handles of offices, chanted "From the river to the sea" and "MISTI, MISTI, you can't hide," and verbally charged "MISTI with genocide." Staff members "reported feeling alarmed, intimidated, and even afraid." Plaintiffs do not allege that they or any Jewish or Israeli students were present during this activity.

MIT did not send police or discipline students who participated in any of those four protest events. Rather, six days after the fourth alleged protest, MIT issued a communication outlining more restrictive policies around campus protests, postering, and free expression. The policies indicated, among other things, that students were not permitted to disrupt living, working, and learning spaces at MIT, and that large banners and flags could not be displayed.

The next day, November 9, 2023, the MIT Coalition Against Apartheid, Coalition for Palestine, and other student groups led another protest in Lobby 7. The protestors included MIT faculty and staff and members of the general public. Protest chants included "[F]rom the river to the sea," "Resistance is justified," and calls for "intifada." A Jewish student recording the protest on her phone was shoved by an unidentified

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[2] Plaintiffs offer no further information as to what this "Die In" entailed.

[3] MISTI stands for MIT International Science and Technology Initiatives.

protestor. MIT Hillel[4] cautioned Jewish students not to "directly engage the protestors for your physical safety and wellbeing" and suggested that they "choose paths around campus that avoid Lobby 7."

At 12:00 p.m., four hours after the protest began, MIT officials warned protestors that they could be disciplined if they did not leave Lobby 7 in the next fifteen minutes. While a group of Jewish counter-protestors departed as ordered, the pro-Palestinian protestors did not comply. Afterward, MIT President Sally Kornbluth sent a letter to the MIT community regarding the protest, stating that it was "disruptive, loud, and sustained through the morning hours," that it violated "MIT guidelines and policies," that "the administration had serious concerns that it could lead to violence," and thus that "the administration felt it was essential to take action." The letter announced that the protestors who had remained past the 12:15 p.m. deadline would be "suspended from non-academic campus activities" as an interim action, and that the disciplinary cases would be referred to the Ad Hoc Complaint Response Team for "final adjudication." MIT did not publicize whether any "actual disciplinary measures . . . were taken" against the student protestors. The head of the MIT Department of Urban Studies and Planning sent an email to students in the department indicating that he would protect students involved in the protest.

Sometime before February 26, 2024, the MIT Coalition Against Apartheid held a protest outside of MIT's Institute Discrimination and Harassment Response

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[4] MIT Hillel is an organization that "serves as a hub for Jewish life on campus." *About Us,* MIT Hillel, https://hillel.mit.edu/aboutus [https://perma.cc/XW8Z-39H7] (last visited Oct. 2, 2025).

(IDHR) office. After that protest, IDHR issued orders forbidding contact between the MIT Coalition Against Apartheid members and IDHR staff. In mid-February, the MIT Coalition Against Apartheid held another protest in Lobby 7, in which students "unfurled large flags" and "chanted 'From the River to the Sea, Palestine will be free!'" The next day, MIT suspended the MIT Coalition Against Apartheid as a student group.

The campus turmoil extended beyond protest alone. On November 14, 2023, MIT announced a new "Standing Together Against Hate" initiative to combat antisemitism on campus. Sometime later, however, Jewish and Israeli faculty members resigned from the committee because they did not think it was doing enough to address antisemitism on campus. In the November/December 2023 issue of the Faculty Newsletter, MIT professor Michel DeGraff published an opinion expressing support for pro-Palestinian student protestors, denouncing "ongoing bombing (that is, war crimes) against hospitals in Gaza" and "genocide" of Palestinians by the Israeli army, and arguing that "racism" might be fueling the MIT administration's alleged decision to denounce antisemitism but not islamophobia with regard to the campus protests; the letter closed with the slogan "from the river to the sea, from Gaza to MIT."

In December 2023, the MIT Women's and Gender Studies Department and the MIT Coalition for Palestine co-hosted an event and invited students to join a book club discussing a book by Ahed Tamimi, a Palestinian activist who on one occasion allegedly posted online, "Come on settlers, we will slaughter you. . . . What Hitler did to you was a joke."

On December 6, 2023, Israeli-American author Miko Peled gave a talk organized by the MIT Coalition

Against Apartheid and MIT Coalition for Palestine, in which Peled "encouraged his audience to go to MIT Hillel and confront MIT's Jewish students there about Gaza"; Peled joked about not being able to say "From the river to the sea," and students in the audience began chanting the phrase.

On December 13, 2023, lecturer Mauricio Karchmer publicly resigned from MIT, stating that he could no longer "teach those who condemn [his] Jewish identity or [his] support for Israel's right to exist in peace with its neighbors." The following month, a non-Jewish student emailed MIT to complain about an interfaith event in which MIT's Interfaith Chaplain and Spiritual Advisor to the Indigenous Community stated that Palestinians were being "wrongly subjugated and oppressed by white European colonizers." A few days later, MIT Israel Alliance, "of which at least one [p]laintiff is a member," emailed MIT's administration to complain about MIT's failure to deter "discriminatory and harassing behavior toward Jewish and Israeli students," informing the university that some Jewish students had "relocated or chosen to stay in Israel" as a result.

On March 7, 2024, plaintiffs filed their initial complaint in the District of Massachusetts, alleging antisemitic and anti-Israeli discrimination in violation of Title VI of the Civil Rights Act of 1964. That same month, pro-Palestinian student activists began a new campaign in which they emailed faculty whose research related to Israel and accused them of being "complicit in . . . [Israel's] crimes against humanity." The activists asked these faculty to "immediately cease these [Israel-related] projects and reject all

future contracts" with the Israeli military and similar entities, and they contacted students of the targeted faculty asking them to "reflect" on their professors' receipt of Israeli funding. Two student groups, the MIT Coalition Against Apartheid and Graduates for Palestine, made posts on Instagram that "shamed by name" faculty whose research was funded by the Israeli government and noted that the information came from an "internal [MIT] grant management tool" that, per plaintiffs, is meant only for MIT faculty and staff use.

Additionally, according to plaintiffs, "[t]hroughout the spring" MIT allowed what plaintiffs call "antisemitic posters" to "be displayed on campus." As an example, plaintiffs point to a poster that "remain[ed] hanging for approximately one month" depicting two fists in handcuffs and proclaiming, "No to Zionism and Racism."

Matters came to a head on April 21, 2024, when pro-Palestinian protestors erected an encampment on Kresge Lawn, toward the center of MIT's campus and adjacent to Hillel. The encampment included approximately 30 students[5] and 15 tents. Protestors displayed signs stating, "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," and "Boys in Blue, KKK, IOF[,] They are all the SAME."

Through social media, the MIT Coalition Against Apartheid further called for action from others, stating: "We stand in solidarity with our steadfast

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[5] MIT reports having over 11,000 students as of October 2024. *Enrollment Statistics,* MIT, https://facts.mit.edu/enrollment-statistics [https://perma.cc/6D55-7MSD] (last visited Aug. 7, 2025).

siblings in Palestine. We rebuke the complicity of our institution, and today, we take the next step together in fighting for what we believe in. Everyone, come support the encampment on Kresge Lawn." They posted further calls to "vote yes" on a referendum calling for a "permanent ceasefire" and the cutting of ties "between MIT and the Israeli military." In another social media post, the MIT Coalition Against Apartheid stated, "We will continue to be loud and be heard and not be deterred away from our fight for Palestine and our fight against MIT's complicity with the occupation."

Disturbed by the student encampment and protests, some Jewish students at MIT moved their Passover seder from Hillel to "an off-campus location" and asked MIT to permit them to attend class remotely. An unnamed graduate student emailed President Kornbluth, MIT Chancellor Melissa Nobles, and other university administrators demanding that they "assure" Jewish and Israeli students that MIT would not "'both sides' the encampment" and accusing the protestors of "ma[king] campus such a hostile environment that it is nearly impossible for [Jewish and Israeli students] to work, study, or keep up with [their] research commitments." Nobles replied by email that MIT "underst[oo]d" the student's concern and was "working to move in a constructive dialogue with those who are protesting," and she asked the student for "patience and understanding as [MIT did] this hard work." She further "urge[d the student and the student's peers] not to counterprotest."

The encampment remained in place from April 21, 2024, to May 10, 2024. One week in, Kornbluth released a video and statement about the protests and

MIT's response.[6] Kornbluth explained that while the encampment was "a clear violation of [MIT's] procedures for registering and reserving space for campus demonstrations," the situation had "so far been peaceful." She noted that the students who had broken MIT's rules would "face disciplinary action," described an agreement reached with protestors "not to make noise after 7:30 pm," and stated that to "avoid any further escalation," she had directed campus police to monitor the encampment "24 hours a day." She rejected calls to "compromise the academic freedom of our faculty" whose research involved Israel or who received Israeli funding. Finally, she stated that while she "believe[d] the protestors' chants were] protected speech, under [MIT's] principles of free expression," the encampment "need[ed] to end soon."

Nonetheless, the encampment continued, and on May 3, 2024, MIT installed high fencing around the encampment to contain it. The following day, journalists recorded protestors at the encampment chanting slogans in Arabic, which – according to plaintiffs – could be translated as "From water to water, Palestine is Arab!"; "Palestine is free, Israel out"; "We want to talk about the obvious, we don't want to see Zionists";

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[6] Plaintiffs excerpt portions of Kornbluth's remarks in their complaint, and the complaint includes a hyperlink to the statement in its entirety. *See Video transcript: MIT Community Message from President Kornbluth,* MIT Office of the President, https://president.mit.edu/writing-speeches/video-transcript-mit-community-message-president-kornbluth [https://perma.cc/E25Q-DX9E] (last visited Oct. 16, 2025). We therefore treat the full statement as incorporated in the complaint by reference. *See Watterson,* 987 F.2d at 3. We treat other statements contained in documents relied upon and linked to by the complaint similarly.

"The iron gates of Al Aqsa, open for the martyr!"; and "From water to water, death to Zionism!"[7]

By May 6, 2024, the encampment still had not ended, and MIT attempted to draw a harder line: It informed protestors that if they did not depart by 2:30 p.m., they would face discipline. But this strategy appears to have backfired. The protest organizers posted on social media calling for others to join the encampment. As tensions mounted, an individual jumped over the fence surrounding the encampment, sparking a "surge" in which a new wave of protestors breached the fence. By the evening of May 6, approximately 150 protestors had gathered at the encampment.

The next day – May 7 – Hillel had planned to use Kresge Lawn to celebrate the state of Israel. But because the lawn was occupied by the protest encampment, Hillel moved the event. On May 8, protest activities intensified. Protestors blocked the entrance and exit to Stata Center garage, a campus building a short distance from Kresge Lawn, and defaced and discarded Israeli and American flags. Protestors repeated the tactic the following day, again blocking the entrance to the garage and preventing MIT "community members" from entering and exiting, as well as shutting down nearby Vassar Street. This time, nine students were arrested.

On May 10, 2024, MIT successfully cleared the encampment, and the ten students who remained were arrested. MIT issued a statement indicating that "freedom of expression . . . does not protect the

[7] Plaintiffs do not allege that they or others informed MIT of the English translations of these chants, nor that MIT was otherwise on notice of their meaning.

continued use of a shared Institute resource in violation of long-established rules" and providing a timeline of events justifying the decision to clear the encampment and arrest the remaining student protestors.

On May 17, 2024, plaintiffs filed their amended complaint, which included new causes of action under the Ku Klux Klan Act and state common law. MIT moved to dismiss the suit, and the district court granted the motion. This appeal followed.

II.

We review de novo a district court's decision to dismiss a lawsuit for failure to state a claim. *Douglas,* 63 F.4th at 54–55. Our task is to determine whether plaintiffs' complaint "contain[s] sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Id.* at 55 (quoting *Ashcroft* v. *Iqbal,* 556 U.S. 662, 678 (2009)). A plausible claim, in turn, is one in which plaintiffs "plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal,* 556 U.S. at 678. In assessing whether plaintiffs have stated a facially plausible claim to relief, we accept as true the complaint's well-pleaded factual allegations and draw all reasonable factual inferences in plaintiffs' favor. *McKee* v. *Cosby,* 874 F.3d 54, 58 (1st Cir. 2017). However, we do not credit "conclusory legal allegations," nor "factual allegations that are 'too meager, vague, or conclusory to remove the possibility of relief from the realm of mere conjecture.'" *Douglas,* 63 F.4th at 55 (quoting *Legal Sea Foods, LLC* v. *Strathmore Ins. Co.,* 36 F.4th 29, 33 (1st Cir. 2022)).

With this framework in place, we advance to the merits of plaintiffs' arguments: Did the district court err by dismissing their claims under Title VI, the Ku Klux Klan Act, and Massachusetts common law? We consider each claim in turn.

III.

Title VI of the Civil Rights Act mandates that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving [f]ederal financial assistance." 42 U.S.C. § 2000d.[8] To hold MIT liable for violating this mandate, plaintiffs pursue a hostile environment, or "harassment," theory analogous to a theory of liability developed under Title IX. *See Porto* v. *Town of Tewksbury,* 488 F.3d 67, 72–73 (1st Cir. 2007) (citing *Davis ex rel. Lashonda D.* v. *Monroe Cnty. Bd. of Educ.,* 526 U.S. 629, 650 (1999)). Under this theory, a school can be held liable if it was "deliberately indifferent" to "severe, pervasive and objectively offensive" harassment that "caused the [plaintiff] to be deprived of educational opportunities or benefits." *D.L. ex rel. M.L.* v. *Concord Sch. Dist.,* 86 F.4th 501, 511 (1st Cir. 2023) (citations omitted). Though these cases involved a sexual harassment claim under Title IX, the standards for sexual harassment under Title IX and racial harassment under Title VI are often treated as harmonious. *See Adams* v. *Demopolis City Sch.,* 80 F.4th 1259, 1273 (11th Cir. 2023) (collecting cases applying Title IX's deliberate indifference standard to claims of student-on-student racial harassment under

[8] The parties do not dispute that MIT is subject to Title VI as a "program . . . receiving [f]ederal financial assistance."

Title VI); *see also Fitzgerald* v. *Barnstable Sch.* Comm., 555 U.S. 246, 258 (2009) (noting, in a case alleging a violation of Title IX, that "Congress modeled Title IX after Title VI of the Civil Rights Act of 1964"); *Faragher* v. *City of Boca Raton,* 524 U.S. 775, 787 n.1 (1998) (explaining, in the context of a Title VII sexual harassment claim, that "[a]lthough racial and sexual harassment will often take different forms, and standards may not be entirely interchangeable, we think there is good sense in seeking generally to harmonize the standards of what amounts to actionable harassment"). No party suggests that we should proceed otherwise in evaluating plaintiffs' complaint.

As we will explain, plaintiffs' proposed use of this theory fails for two independent reasons. First, Plaintiffs' allegations do not plausibly rise to the level of actionable harassment required by Title VI. Second, even if the protestors' conduct as a whole was actionable harassment under Title VI, MIT is not liable because it was not deliberately indifferent to the effects of the protests on Jewish and Israeli students. Our reasoning follows.

A.

Our conclusion that plaintiffs have failed to allege actionable racial harassment consists of three parts. To begin, most of the conduct about which plaintiffs complain is speech protected by the First Amendment, and we do not construe Title VI as requiring a university to quash protected speech. Furthermore, by gathering together in groups on campus, disrupting campus tranquility, and impeding travel for many students, the protestors did not render their speech antisemitic, much less unprotected. Finally, to the extent that plaintiffs allege isolated incidents that are plausibly antisemitic, the complaint's allegations are

not sufficiently severe, pervasive, and offensive to constitute actionable harassment under Title VI. We address each part in turn.

1.

Because plaintiffs base their claim so heavily on what the protestors said and wrote, we consider first whether plaintiffs' proposed application of a harassment claim under Title VI comports with First Amendment principles.

The Supreme Court has long recognized "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." *N.Y. Times Co.* v. *Sullivan,* 376 U.S. 254, 270 (1964). By removing "governmental restraints from the arena of public discussion," the First Amendment places "the decision as to what views shall be voiced largely into the hands of each of us, . . . in the belief that no other approach would comport with the premise of individual dignity and choice upon which our political system rests." *McCutcheon* v. *Fed. Election Comm'n,* 572 U.S. 185, 203 (2014) (alteration in original) (quotation marks omitted) (quoting *Cohen* v. *California,* 403 U.S. 15, 24 (1971)).

In light of this overriding interest in open debate, speech made in public that is related to matters of public concern has been given "special protection under the First Amendment" and thus "cannot be restricted simply because it is upsetting or arouses contempt." *Snyder* v. *Phelps,* 562 U.S. 443, 458 (2011) (internal quotations omitted) (protecting speech of Westboro Baptist Church protestors chanting "God Hates You," "Thank God for Dead Soldiers," and "Priests Rape Boys" at a funeral for a deceased soldier); *see also Boos* v. *Barry,* 485 U.S. 312, 322 (1988)

(reasoning that "in public debate . . . citizens must tolerate insulting, and even outrageous, speech in order to provide adequate 'breathing space' to the freedoms protected by the First Amendment" (quotation marks omitted) (quoting *Hustler Mag., Inc.* v. *Falwell,* 485 U.S. 46, 56 (1988))); *Street* v. *New York,* 394 U.S. 576, 592 (1969) (reaffirming that "the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers"); *Rodriguez* v. *Maricopa Cnty. Cmty. Coll. Dist.,* 605 F.3d 703, 706–708 (9th Cir. 2010) (finding a community college was not required to restrict a professor's emails related to immigration, race, and the "preservation of [a] White majority" because "[t]he Constitution embraces . . . a heated exchange of views, even (perhaps especially) when they concern sensitive topics like race").

Similarly, the Supreme Court has long upheld "[t]he essentiality of freedom in the community of American universities," warning that "[t]o impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation." *Sweezy* v. *New Hampshire,* 354 U.S. 234, 250 (1957) (plurality opinion). A university's "[a]cademic freedom, though not a specifically enumerated constitutional right, long has been viewed as a special concern of the First Amendment." *Regents of Univ. of Cal.* v. *Bakke,* 438 U.S. 265, 312 (1978) (opinion of Powell, J.); *see also Students for Fair Admissions, Inc.* v. *President & Fellows of Harvard Coll.,* 600 U.S. 181, 217 (2023) (recognizing a "tradition of giving a degree of deference to a university's academic decisions . . . within constitutionally prescribed limits" (quotation marks omitted) (quoting *Grutter* v. *Bollinger,* 539 U.S. 306, 328 (2003))). And "private schools," in particular, "have a First Amendment right to academic freedom." *Asociación de*

Educación Privada de P.R., Inc. v. *García-Padilla,* 490 F.3d 1, 11 (1st Cir. 2007).[9]

Here, the student protestors engaged in speech on a matter of public concern[10] – the conflict in Gaza – while on the campus of a private university in which they were enrolled. MIT chose to restrict that speech in part and allow it to continue in part. Now, plaintiffs seek to hold MIT liable, under a federal statute, for its failure to curtail that speech even further.

As a private institution, MIT could choose to curtail political speech by its students without First Amendment scrutiny. *See, e.g.*, *United Bhd. of Carpenters, Local 610* v. *Scott,* 463 U.S. 825, 831–33 (1983) (explaining that the First Amendment protects against state interference, not purely private conduct). But MIT's authority to decide for itself whether to prohibit certain political speech is not the issue here. Rather, the question is whether Title VI required MIT to try to put an end to the protestors' speech. And requiring MIT to restrict students' expression merely because those students opposed Israel and favored the

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[9] *García-Padilla* focused on private primary and secondary schools. However, given our reasoning in that case, its pertinent conclusion applies with at least equal force to universities. *See García-Padilla,* 490 F.3d at 8–9 (finding that the Supreme Court has "invoked academic freedom to protect universities, as academic institutions, against government control").

[10] "Speech deals with matters of public concern when it can 'be fairly considered as relating to any matter of political, social, or other concern to the community.'" *Snyder,* 562 U.S. at 453 (quoting *Connick* v. *Myers,* 461 U.S. 138, 146 (1983)). Speech also qualifies as a matter of public concern "when it 'is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public.'" *Id.* (quoting *City of San Diego* v. *Roe,* 543 U.S. 77, 83–84 (2004)). The student protestors' expression on a highly publicized conflict in the Middle East meets this standard.

Palestinian cause would infringe upon MIT's freedom to encourage, rather than suppress, a vigorous exchange of ideas. *See Rosenberger* v. *Rector & Visitors of Univ. of Va.,* 515 U.S. 819, 836 (1995) ("For the University . . . to cast disapproval on particular viewpoints of its students risks the suppression of free speech and creative inquiry in one of the vital centers for the Nation's intellectual life, its college and university campuses.").

Using Title VI to compel adherence to a preferred political viewpoint would also implicate students' First Amendment freedoms. A law punishing private citizens for expressing political opinions disfavored by Congress would be subject to "the most exacting" First Amendment scrutiny. *Texas* v. *Johnson,* 491 U.S. 397, 412 (1989); *see also Cox* v. *Louisiana,* 379 U.S. 536, 545–51 (1965) (holding that a state violated the First Amendment when it prosecuted and convicted a student protestor for "disturbing the peace" based merely on "hostility" to the views the protestor expressed). "When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant." *Rosenberger,* 515 U.S. at 829 (citing *R.A.V.* v. *St. Paul,* 505 U.S. 377, 391 (1992)). As such, "[t]he government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction." *Id.* (citing *Perry Ed. Assn.* v. *Perry Local Educators' Assn.,* 460 U.S. 37, 46 (1983)). Viewpoint restrictions are all the more perturbing in the context of speech the government deems offensive. *Cf. Matal* v. *Tam,* 582 U.S. 218, 223 (2017) (finding trademark restriction prohibiting an Asian American rock band from registering their band under a derogatory racial term "offend[ed] a bedrock First

Amendment principle" that "speech may not be banned on the ground that it expresses ideas that offend"). Nor can the reactions of an offended audience serve as grounds for the government to suppress such speech. *See id.* at 250 (Kennedy, J., concurring in part and concurring in the judgment) ("[A] speech burden based on audience reactions is simply government hostility and intervention in a different guise."). It makes no difference that, in this case, restriction of speech comes by way of a civil suit brought by private parties. Congress cannot skirt First Amendment concerns by passing a law requiring someone else to punish protected speech. *See Nat'l Rifle Ass'n of Am.* v. *Vullo,* 602 U.S. 175, 187, 190 (2024) (explaining that "viewpoint discrimination is uniquely harmful to a free and democratic society" and holding that "[a] government official cannot coerce a private party to punish or suppress disfavored speech on her behalf"). Likewise, the government cannot empower a private party to punish speech on a matter of public concern absent unusual circumstances not present here. *See Sullivan,* 376 U.S. at 283 (limiting "a [s]tate's power to award damages for libel in actions brought by public officials against critics of their official conduct"); *Phila. Newspapers, Inc.* v. *Hepps,* 475 U.S. 767, 775 (1986) (explaining that the protections of *Sullivan* extend – albeit to a lesser extent – to speech on issues of "public concern," even where the plaintiff is not a public official or public figure). The government may not permit juries to "punish" private speech merely because it expresses an "unpopular opinion," either. *Gertz* v. *Robert Welch, Inc.,* 418 U.S. 323, 348–49 (1974) (limiting the remedies available to private defamation plaintiffs on First Amendment grounds); *see also Sullivan,* 376 U.S. at 277 ("What a [s]tate may not constitutionally bring about by means of a criminal

statute is likewise beyond the reach of its civil law of libel.").

Nor has MIT forfeited its right to make or allow speech disfavored by the government by receiving federal funds for programs or activities unrelated to the speech at issue here. *See Agency for Int'l Dev.* v. *All. for Open Soc'y Int'l, Inc.,* 570 U.S. 205, 218 (2013) (finding that the First Amendment prohibited a statutory provision that "demand[ed] that [federal] funding recipients adopt – as their own – the Government's view on an issue of public concern," and thus "by its very nature affect[ed] 'protected conduct outside the scope of the federally funded program'" (quoting *Rust* v. *Sullivan,* 500 U.S. 173, 197 (1991))).

In sum, the First Amendment erects safeguards that limit the ability of the government or private plaintiffs to punish MIT for not restricting more severely the student protestors' protected speech.

2.

In view of that anodyne conclusion, we find no surprise in plaintiffs' agreement that "courts should interpret Title VI to comport with First Amendment principles." In keeping with that agreement, plaintiffs do not expressly argue that Title VI can be used to punish a school for not stifling student speech that the government itself could not punish. Instead, plaintiffs argue that much of the protestors' speech fell outside the protection of the First Amendment – and thus within the reach of a government censor – because the speech was racist (i.e., antisemitic).

This argument poses two nettlesome issues. First, under what circumstances, if any, can racist speech be punished pursuant to Title VI without violating the

First Amendment?[11] *See Davis,* 526 U.S. at 667–68 (Kennedy, J., dissenting) (reviewing the "difficult [First Amendment] problems raised by university speech codes designed to deal with peer . . . harassment"); *Rodriguez,* 605 F.3d at 708 ("There is no categorical 'harassment exception' to the First Amendment's free speech clause." (quoting *Saxe* v. *State Coll. Area Sch. Dist.,* 240 F.3d 200, 204 (3d Cir. 2001))); *see also* Todd E. Pettys, *Hostile Learning Environments, the First Amendment and Public Higher Education,* 54 Conn. L. Rev. 1, 37–55 (2022) (analyzing hypothetical scenarios under which a university may or may not be able to constitutionally restrict speech for creating a hostile learning environment). Second, even assuming that some racist speech can constitutionally be punished pursuant to Title VI, have plaintiffs adequately alleged that the protestors' expression was racist (i.e., antisemitic)?[12] Because we can decide this appeal without

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[11] Amicus curiae National Jewish Advocacy Center (but not plaintiffs) also suggests that calls for "intifada" or chants of "from the river to the sea" were "true threats" unprotected by the First Amendment. True threats are "statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." *Virginia* v. *Black,* 538 U.S. 343, 359 (2003) (plurality opinion). Plaintiffs themselves make no such argument, never claiming that any alleged expression of intent to commit unlawful violence can plausibly be inferred from the complaint's description of the roughly seven months of peaceful protest.

[12] For purposes of reviewing plaintiffs' complaint, we assume that antisemitic harassment constitutes actionable racial harassment under Title VI. *Cf. Sinai* v. *New England Tel. & Tel. Co.,* 3 F.3d 471, 474 (1st Cir. 1993) (noting in construing 42 U.S.C. § 1982 that the "Jewish/Hebrew" identity has been "defined as a protected race by the Supreme Court") (first citing *Saint Francis Coll.* v. *Al–Khazraji,* 481 U.S. 604 (1987); and then citing *Shaare Tefila Congregation* v. *Cobb,* 481 U.S. 615 (1987)).

addressing the first issue, we proceed directly to the second.

To suggest that the protestors as a group were guilty of antisemitism, plaintiffs point to two categories of expression by protestors: the chants, emails, and signs that formed the general thrust of the protestors' message; and the gatherings that impeded movement on MIT's campus. We consider each category, beginning with the verbal and written messages that focused and spread the protestors' views.

a.

The sordid history of antisemitism provides a litany of epithets and tropes widely understood as expressions of religious or racial animus. As described by plaintiffs, the scores of protestors holding handmade signs and voicing various chants eschewed those epithets and tropes, directing their ire instead at the Israeli state and its treatment of Palestinians.

To support their claim of antisemitism, plaintiffs point to the protestors' opposition to Zionism, which they argue is inherently antisemitic. "Zionism," plaintiffs explain, "is the belief that Jews have the right to self-determination in their ancestral homeland of Israel." Plaintiffs argue that because "most Jews" see Zionism as "a key component of their Jewish ethnic and ancestral identity," "'anti-Zionism' is . . . antisemitism." In plaintiffs' view, speech is anti-Zionist, and therefore antisemitic, if it "oppose[s] Jewish self-determination in the State of Israel"; if it "claim[s] that the existence of a State of Israel is a racist endeavor"; if it "requir[es] of [Israel] a behavior not expected or demanded of any other democratic nation"; and if it "draw[s] comparisons of contemporary Israeli policy to that of the Nazis." Under this

framework, plaintiffs also treat as antisemitic any criticism of Israel's conduct in Gaza, any suggestion that violence by Palestinians can be understood as resistance to colonial rule and Israeli expansion, and any implication that Palestinians should govern – or even simply be "free" – in all of Palestine (i.e., "from the river to the sea").

Plaintiffs are entitled to their own interpretive lens equating anti-Zionism (as they define it) and antisemitism. But it is another matter altogether to insist that others must be bound by plaintiffs' view. Plaintiffs' equation finds no consensus support in dictionary definitions.[13] Nor does a review of the academic literature point to any consensus that criticism of Zionism is antisemitic.[14] And we do not find

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[13] *Compare Anti-Semitism,* Merriam-Webster, https://www.merriam-webster.com/dictionary/antisemitism [https://perma.cc/Q32E-YSN7] (last visited Oct. 14, 2025) (defining antisemitism as "hostility toward or discrimination against Jews as a religious, ethnic, or racial group"), *with Anti-Zionism,* Merriam-Webster, https://www.merriam-webster.com/dictionary/anti-Zionism [https://perma.cc/KF59-N2VC] (last visited Oct. 14, 2025) (defining anti-Zionism as "opposition to the establishment or support of the state of Israel: opposition to Zionism"), *and Zionism,* Merriam-Webster, https://www.merriam-webster.com/dictionary/Zionism [https://perma.cc/9BQQ-RTWD] (last visited Oct. 14, 2025) (defining Zionism as "an international movement originally for the establishment of a Jewish national or religious community in Palestine and later for the support of modern Israel").

[14] *See, e.g.*, Itamar Mann & Lihi Yona, *Defending Jews from the Definition of Antisemitism,* 71 UCLA L. Rev. 1150, 1150, 1155 (2024) (arguing that the conflation of "sharp criticism of Israel" with antisemitism produces "a narrowing of Jewish identity and a delegitimization of anti-Zionist and non-Zionist Jewish communities"); Frederick P. Schaffer, *Title VI, Anti-Semitism, and the Problem of Compliance,* 46 J. Coll. & U.L. 71, 77 (2021) (observing that "arguments about Zionism and Israel are political arguments that are not logically connected to anti-Semitism," but

it dispositive that the United States Department of State has defined antisemitism as "[d]enying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor." Office of the Special Envoy to Monitor and Combat Antisemitism, *Defining Antisemitism,* U.S. Dep't of State https://www.state.gov/defining-antisemitism [https://perma.cc/2KZF-TRBY] (last visited Sept. 29, 2025). As the Supreme Court has repeatedly emphasized, "new categories of unprotected speech may not be added to the list by a legislature that concludes certain speech is too harmful to be tolerated." *Brown* v. *Ent. Merchs. Ass'n,* 564 U.S. 786, 791 (2011) (citing *United States* v. *Stevens,* 559 U.S. 460, 469–472 (2010)).

This absence of consensus reflects ongoing debate as to the relationship between anti-Zionism and antisemitism – debate that our constitutional scheme resolves through discourse, not judicial fiat. Indeed, the debate on occasion has been formal and high

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"criticism of Israeli policy . . . can be expressed in ways that indicate an underlying anti-Jewish animus or that help create an environment conducive to anti-Semitism"); Note, *Wielding Antidiscrimination Law to Suppress the Movement for Palestinian Rights,* 133 Harv. L. Rev. 1360, 1373, 1376 (2020) (arguing that "Zionism does not reflect the views of all Jewish people" and "equating anti-Zionism (a political ideology that opposes Jewish ethno-nationalism) with anti-Semitism (anti-Jewish animus) requires a logical leap that defeats finding direct evidence of religious discrimination"); Derek Penslar, *Who's Afraid of Defining Antisemitism?,* 6 Antisemitism Stud. 133, 136 (2022) (contending that "[a]lternatives to sovereign Jewish statehood . . . are not antisemitic," and observing that even if antisemitism is defined to permit "criticism of Israel similar to that leveled against any other country," "separatists have long called for . . . dissolution" of countries like Canada and Spain, and some people have labeled the United States "structurally racist").

profile. *See, e.g.*, *Munk Debate on Anti-Zionism,* Munk Debates (June 17, 2024), https://munkdebates.com/debates/munk-debate-on-anti-zionism [https://perma.cc/9MQ6-Y2EK] (debating the proposition that "anti-Zionism is antisemitism"); *Anti-Zionism is Anti-Semitism,* Intelligence Squared (June 20, 2019), https://www.intelligencesquared.com/events/anti-zionism-is-anti-semitism [https://perma.cc/28M6-7XGS] (same). We decline to interpret Title VI as arming either side of that debate with the powers of a censor.

MIT also had to contend with the inverse of plaintiffs' contention: that Muslim and Palestinian students could, by similar logic, claim that expressing support for Israel's actions in the West Bank and Gaza was Islamophobic or anti-Arab. Indeed, plaintiffs' complaint cites a faculty note arguing that MIT's response to the campus conflict manifested racism against Arab and Muslim students. We struggle to imagine how a university faced with such conflicting views could plausibly eliminate all unwelcome speech without quashing all speech concerning the conflict between Israelis and Palestinians, particularly because – as MIT's president Kornbluth observed in a statement cited by plaintiffs – MIT's community included both "people who lost friends and family to the brutal terror attack of October 7, and people with friends and family currently in mortal danger in Rafah." *Cf. Rosenberger,* 515 U.S. at 831 ("[E]xclusion of several views on [a] problem is just as offensive to the First Amendment as exclusion of only one.").

This is not to say that anti-Zionism is never wielded as a tool of the antisemite. *See Gartenberg* v. *Cooper Union for the Advancement of Sci. & Art,* 765 F. Supp. 3d 245, 269 (S.D.N.Y. 2025) (finding that "From the river to the sea, Palestine will be free" graffiti on a

bathroom stall that was "made to resemble the stylized font commonly associated with Hitler's *Mein Kampf*" could be used, among other evidence, to show antisemitic motivation). It is to say, instead, that one person does not lose the right to express a political opinion on a matter of public concern merely because another who expresses the same view does so for condemnable reasons. One individual might criticize a government program as an inefficient use of taxpayer resources; another might criticize the program because of hostility toward its beneficiaries on the basis of their race or religion. The latter individual's view, while reprehensible, could not justify restricting the former individual's speech, nor imposing a categorical ban on criticism of the program. *See NAACP* v. *Claiborne Hardware Co.,* 458 U.S. 886, 915–20 (1982) (holding that civil rights protestors did not forfeit their First Amendment rights merely because certain group members' conduct exceeded the scope of constitutional protections); *cf. Black,* 538 U.S. at 365 ("The act of burning a cross may mean that a person is engaging in constitutionally proscribable intimidation. But that same act may mean only that the person is engaged in core political speech."). Nor can the possibility that antisemitism motivates one speaker's anti-Israel speech justify assuming that all criticism of Israel or advocacy for Palestinian sovereignty is motivated by antisemitism. We therefore reject plaintiffs' claimed right to stifle anti-Zionist speech by labeling it inherently antisemitic.

Nor do plaintiffs allege facts that, if true, would otherwise permit the inference that in these specific circumstances the protestors' strident criticisms of Israel were driven by antisemitism. Without such an inference, the protestors' speech cannot constitute racial harassment for Title VI purposes. *See Goodman*

v. *Bowdoin Coll.,* 380 F.3d 33, 43 (1st Cir. 2004) (observing that "racial animus" is "a necessary component of . . . claims under" Title VI); *Doe* v. *Brown Univ.,* 43 F.4th 195, 208 (1st Cir. 2022) ("To succeed on his race-based claims, [plaintiff] must show, among other things, that [defendant] acted with discriminatory intent."). Here, plaintiffs proffer only conclusory allegations of antisemitic animus that are "not entitled to be assumed true." *Iqbal,* 556 U.S. at 680–81 (rejecting as conclusory the allegation that officials "adopted a policy '"because of," not merely "in spite of," its adverse effects upon an identifiable group'" (quoting *Pers. Admin'r of Mass.* v. *Feeney*, 442 U.S. 256, 279 (1979))). Plaintiffs allege no facts plausibly establishing that the protestors, as a group, opposed Israeli actions in Gaza or supported the Palestinian cause because of antisemitic animus. Nor do plaintiffs allege facts plausibly showing that the protestors as a group shared plaintiffs' view that anti-Zionism was inherently antisemitic.

We also reject plaintiffs' implicit contention that the choice to criticize Israel's actions in Gaza – rather than, for example, choosing to criticize some other alleged atrocity elsewhere in the world – necessarily manifests antisemitism. Political advocacy, by its nature, involves a choice to focus on certain issues or causes over others. Title VI does not preclude the protestors, U.S. university students, from responding to the headlines by choosing Israel as their target, particularly given the protestors' perception of the significant role played by the United States and U.S.-supplied arms in the conflict between Israelis and Palestinians. *Cf. Tinker* v. *Des Moines Indep. Cmty. Sch. Dist.,* 393 U.S. 503, 514 (1969) (upholding students' rights to "exhibit their disapproval of the Vietnam hostilities and their advocacy of a truce, to make their

views known, and . . . to influence others to adopt them").

Finally, plaintiffs point to the fraught subject of genocide. First, plaintiffs claim that accusing Israel of committing genocide against Palestinians is antisemitic. But even prominent Israelis have lodged the same accusation. *See, e.g.*, Omer Bartov, Opinion, *I'm a Genocide Scholar. I Know It When I See It.,* N.Y. Times (July 15, 2025), https://www.nytimes.com/2025/07/15/opinion/israel-gaza-holocaust-genocide-palestinians.html [https://perma.cc/P9GM-3RRX]. Second, plaintiffs claim in their brief that some protestors called for the genocide of the Jewish people. But there are no factual allegations supporting this claim. Rather, plaintiffs say that we should construe chants of "from the river to the sea, Palestine will be free" and "intifada revolution" as calls to wipe out the Jewish people as such. But neither slogan says as much on its face, nor do plaintiffs allege facts suggesting that either chant was commonly so construed by the protestors. So plaintiffs must again rely on a theory that they can dictate the interpretation of the protestors' speech in order to suppress it, without any facts suggesting that the protestors were using these slogans in the way plaintiffs claim.

In reviewing these claims, our role is not to approve or disapprove of the protestors' strident advocacy, nor of the ideas they so vigorously expressed. We do not question the anguish plaintiffs felt at hearing a few of their peers justify the October 7 massacre or deny Israel the right to defend itself. But our Constitution bars the government from forcing a private university to prohibit students from voicing vehement support for, or opposition to, the policies and conduct of the United States and its allies. For these reasons, we

decline plaintiffs' invitation to hold that the protestors' speech constituted antisemitic harassment actionable under Title VI merely because it was stridently pro-Palestinian and anti-Zionist.

b.

Trying a different approach to support their claim that the protests constituted antisemitic harassment, plaintiffs also point to the protestors' disruptive physical presence. This presence first impeded travel across and within MIT's campus during seven days of protest spread out over approximately five months, and later included a three-week encampment by a small group of students. For the most part, even as alleged by plaintiffs, these impediments rendered travel more difficult for all students and prevented all students from using Kresge Lawn as they might otherwise have planned – including, as plaintiffs describe, for a planned celebration of the state of Israel.

Certainly, the protests may have interfered with campus life and the university's educational mission in a way that could have disappointed many students (and their parents). But our Title VI focus is not on how the protests affected students generally. Rather, we train our focus only on the extent to which the protests might have harassed Jewish students as such. *See Davis,* 526 U.S. at 651 (explaining that to plead deliberate indifference, a plaintiff must plausibly allege that she was "deprived . . . of an educational opportunity on the basis of" her protected characteristic). We recognize that because the encampment, in particular, took place across from Hillel, its impact on Jewish students was plausibly heightened. Indeed, plaintiffs allege that they moved a scheduled Passover seder "to an alternate location" because MIT had not yet cleared the encampment and thus students did not

feel comfortable attending the seder at Hillel. But plaintiffs allege no facts to plausibly indicate that the protestors chose Kresge Lawn for their encampment because of its proximity to Hillel rather than for its prominent location and preferred terrain for tents.

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. "[B]y collective effort individuals can make their views known, when, individually, their voices would be faint or lost." *Citizens Against Rent Control* v. *City of Berkeley,* 454 U.S. 290, 294 (1981). This practice is "deeply embedded in the American political process." *Id.*; *see Boos,* 485 U.S. at 318 (emphasizing that the display of signs criticizing foreign governments are "at the core of the First Amendment" and constitute "classically political speech"); *see also Claiborne Hardware,* 458 U.S. at 910 (1982) ("Speech does not lose its protected character, however, simply because it may embarrass others or coerce them into action."). For these reasons, we conclude that plaintiffs have failed to plausibly allege facts showing that the disruptive protests and campsite gatherings were antisemitic in message or purpose. Rather, they were time-worn methods of grabbing more attention for the broadcast of the protestors' political views.

3.

That being said, the cacophony of protests and ensuing debates over the course of seven months, as alleged, plausibly spun off several isolated incidents of antisemitism. Plaintiffs allege that student protestors specifically blocked Plaintiff Boukin from entering Lobby 7 on one occasion while a protest was underway "because she was Jewish," while permitting other

students and faculty to cross. They also allege Boukin was denied access to the Kresge Lawn encampment area on one occasion "because she was Jewish," while others were allowed to enter. One protestor on October 19, 2023, seemed to presume that Plaintiff Meyers bore responsibility for the actions of the Israeli government because her ancestors were Jewish. MIT Coalition Against Apartheid members allegedly "heckled" another individual "because he was visibly Jewish." Plaintiffs also allege that on December 6, 2023, an Israeli-American speaker urged listeners to "go to MIT Hillel and confront MIT's Jewish students there about Gaza,"[15] and that on one occasion a graduate student authored a tweet equating Jews with Nazis.[16] So although we find no basis for insisting that MIT view the thrust of the protests themselves or even a large subset of the protestors as antisemitic, we agree that plaintiffs allege a handful of incidents, occurring over the course of seven months, that any thoughtful person would regard as antisemitic – that is, as confronting Jewish students "on the ground," 42 U.S.C. § 2000d, that they were Jewish.[17]

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[15] In reviewing the link to a video of the speaker's talk, which plaintiffs supplied in their complaint and thereby incorporated by reference, we were unable to identify this statement.

[16] The allegation to which plaintiffs cite does not allege what the student actually said, nor that plaintiffs themselves were even aware of the tweet.

[17] We do not, however, credit plaintiffs' conclusory assertions that other scattered speech and conduct manifested antisemitism: for example, a book group discussing a controversial memoir, at which an MIT staff member "invited students to sympathize" with a Palestinian author (an unremarkable invitation for any curious reader), or an event at which an MIT staff member expressed her view that Palestinians were being "wrongly subjugated and oppressed by white European

That these incidents were few in number and, even then, not all trained on any plaintiff raises the question of whether the antisemitic conduct that plaintiffs plausibly allege was "severe, pervasive, and objectively offensive." *Davis,* 526 U.S. at 633. MIT makes a convincing case that it was not. Indeed, it is hard to see how plaintiffs' allegations could plausibly show that these antisemitic incidents were so pervasive and disruptive as to "effectively bar the victim[s'] access to an educational opportunity or benefit." *Id.* As the Supreme Court has emphasized in the analogous Title IX context, "the [harassing] behavior [must] be serious enough to have the *systemic* effect of denying the victim equal access to an educational program or activity." *Id.* at 652 (emphasis added). The requirement that the deprivation of educational access be systemic is key: "Although, in theory, a single instance of sufficiently severe one-on-one peer harassment could be said to have such an effect," the Supreme Court has deemed it "unlikely that Congress would have thought such behavior sufficient to rise to this level." *Id.* at 652–53.

Additionally, that the alleged incidents were perpetrated by other students or by guest speakers further undermines any inference of severe or pervasive harassment. "The relationship between the harasser and the victim necessarily affects the extent to which the misconduct can be said to breach" Title VI. *Id.* at 653. "Peer harassment, in particular, is less likely to satisfy these requirements than is teacher-student harassment." *Id.* In light of these considerations and without more instances of such conduct, the alleged incidents fall short of the

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colonizers" and asked attendees if they were Kosher in order to give them a dessert that matched their dietary needs.

"systemic" deprivation of educational opportunities and benefits required by *Davis.*

In any event, plaintiffs fail to plausibly allege that MIT had any knowledge of these isolated events. Liability under Title VI requires that an "'appropriate person' . . . with authority to take corrective action to end the harassment" have "actual knowledge" of the offending conduct. *Grace* v. *Bd. of Trs., Brooke E. Bos.*, 85 F.4th 1, 11 (1st Cir. 2023) (quoting *Santiago* v. *Puerto Rico,* 655 F.3d 61, 74 (1st Cir. 2011)); *see also Davis,* 526 U.S. at 650 (requiring that a recipient of federal funding have "actual knowledge" of harassment to be held liable under Title IX). Although MIT was clearly aware of the protests generally, plaintiffs do not allege that they or others brought the specific, identified incidents of antisemitism to the attention of MIT officials who could take corrective action.

Given the foregoing findings, plaintiffs' Title VI claims fail even assuming that Title VI compels a private university to take reasonable steps to shield its students from racist speech per se. The disruptive political protests sympathetic to Palestinian views of the conflict with Israel were not, by and large, antisemitic. And to the extent that the complaint alleges any incidents that were plausibly antisemitic and targeted at one or more plaintiffs, such incidents were not sufficiently severe and pervasive to constitute actionable harassment; furthermore, the complaint is bereft of any allegation that appropriate MIT officials were made aware of such incidents or who the perpetrators were. For these reasons alone, we can affirm the dismissal of plaintiffs' Title VI claim.

B.

Although the foregoing analysis suffices to dispose of plaintiffs' Title VI claim, for the sake of completeness, we proceed to examine the alternative grounds adopted by the district court – that even if the protests are viewed as the type of harassment proscribed by Title VI, MIT was not deliberately indifferent. For the following reasons, we agree with the district court's reasoning.

This is not a case in which plaintiffs claim their school took no action in response to reported harassment. *See Grace,* 85 F.4th at 12–14 (finding a triable issue as to deliberate indifference where a jury could conclude that school officials took no remedial measures for more than a year despite reports that students repeatedly targeted their classmate with homophobic epithets); *Doe* v. *Pawtucket Sch. Dep't,* 969 F.3d 1, 7–8, 10, 11 (1st Cir. 2020) (vacating dismissal of complaint where plaintiff could plausibly show that the school took no action whatsoever upon learning plaintiff had been raped by another student in a school bathroom).

Rather, plaintiffs claim that MIT "dragged its feet," "took only minimal action," and "fail[ed] to discipline" student protestors so as to effectively deter their conduct. But as our caselaw makes clear, Title VI does not subject a private entity to damages liability merely because its response did not deter or eradicate the alleged peer harassment. *See Fitzgerald* v. *Barnstable Sch. Comm.,* 504 F.3d 165, 175 (1st Cir. 2007), *rev'd on other grounds,* 555 U.S. 246 (2009) ("To avoid Title IX liability, an educational institution must act reasonably to prevent future harassment; it need not succeed in doing so."); *Davis,* 526 U.S. at 648 (explaining that schools need not "purg[e] their schools of actionable

peer harassment" to avoid suit under Title IX). A university is deliberately indifferent under Title VI only if its response to known harassment is "so lax, so misdirected, or so poorly executed as to be clearly unreasonable under the known circumstances." D.L., 86 F.4th at 511 (quoting *Fitzgerald,* 504 F.3d at 175). As we will explain, MIT's response to the political divide among its students was far from "clearly unreasonable."

As the protest gatherings occurred over the course of seven months, culminating in the Kresge Lawn encampment, MIT took an escalating series of actions aimed at calming the turmoil without violence. Following the first student protests after the October 7 attack, MIT revised its campus expression rules and policies and, on November 8, 2023, issued a letter "announcing procedures for accelerated action on reports of harassment and discrimination." During the rally in Lobby 7 on November 9, 2023, MIT met with "leaders of the Jewish community." It instructed protestors to vacate the area by a set time or face discipline. It then announced that it would suspend from non-academic activities students who remained after that deadline.

MIT then formed a Standing Together Against Hate initiative to combat antisemitism on campus, hosting an event about antisemitism on February 12, 2024. When the MIT Coalition Against Apartheid protested that event via an "emergency rally" that violated MIT rules, MIT suspended the organization's student-group privileges. And when the Kresge Lawn encampment was installed in late April 2024, MIT escalated its suppressive efforts by prohibiting evening noise and installing a 24-hour police presence. On April 27, President Kornbluth called for a peaceful end to the

encampment. When the student protestors continued the encampment and outside community members began to join, MIT placed high fencing around the encampment to contain it. And, significantly, when MIT first attempted to impose a deadline for the encampment to cease, a flood of new arrivals, many from outside MIT, knocked down and demolished the safety fencing, further swelling the encampment. As tensions rose, MIT suspended students following unruly protests, and nine protestors were arrested for blocking the Stata Center garage. Finally, MIT managed to clear the encampment successfully on May 10, 2024, and it had the remaining ten protestors arrested.

Fair-minded persons might question whether MIT acted quickly and decisively enough.[18] Other fair-minded persons might be sympathetic to a university's concern that it not counterproductively aggravate the situation, as might have occurred on May 6 when the university attempted to clear the encampment and instead sparked a surge that overwhelmed the barricade. We need to keep in mind, too, the nature of the activity that plaintiffs say MIT should have eliminated more quickly. Even if we accept plaintiffs' position that some conduct of some protestors was antisemitic, that would not provide a Title VI pretext

[18] Plaintiffs also point to two letters received by MIT: one from a member of Congress that plaintiffs describe as "urg[ing]" President Kornbluth "to take more proactive measures to ensure the safety and inclusion of Jewish students on MIT's campus," and another from Department of Education "reminding schools of their obligations under Title VI." Although plaintiffs rely on these letters to bolster their complaint, the issue is not whether MIT was aware of its obligations – we assume that it was – but rather whether MIT was deliberately indifferent to antisemitic harassment constituting a Title VI violation.

for requiring MIT to eliminate the protests entirely. In that respect, by managing the situation so as to avoid escalation and violence, MIT was much more effective than plaintiffs claim. All in all, the complaint simply fails to allege facts plausibly supporting a claim of deliberate indifference to antisemitic harassment.

Nor are we persuaded by plaintiffs' theory that the university's response was "clearly unreasonable" because it "failed to take additional reasonable measures after it learned that its initial remedies were ineffective," *Grace,* 85 F.4th at 11 (quoting *Porto,* 488 F.3d at 73-74), or because its strategies "produced no results," *Vance* v. *Spencer Cnty. Pub. Sch. Dist.,* 231 F.3d 253, 262 (6th Cir. 2000). To the contrary, any reasonable school administrator in MIT's position could have reasonably surmised that its progressively evolving responses prevented the on-campus conflict from exploding into real violence between October 2023 and May 2024. Based on plaintiffs' allegations, we are confident that, as the district court ably explained, MIT's handling of this challenging situation was simply not indifferent.

As we have often repeated, Title VI does not require schools to "craft perfect solutions," *D.L.*, 86 F.4th at 511 (quoting *Fitzgerald,* 504 F.3d at 174), nor does it entitle students to their preferred "remedial demands," *Davis,* 526 U.S. at 648. It simply requires that a school's response to known harassment not be "clearly unreasonable." *Id.* at 649. Plaintiffs do not allege facts plausibly indicating that MIT's course of action fell below that standard. *See D.L.,* 86 F.4th at 514

(affirming that in assessing a school's response to alleged harassment, "perfection is not the test").[19]

We therefore agree with the district court that even were we to accept plaintiffs' view of the protests as manifesting a degree and form of antisemitism that could be viewed as actionable harassment under Title VI, MIT's reaction was not clearly unreasonable. For that reason – independent of our conclusion as to the nature of the student protestors' speech and conduct – plaintiffs' challenge to the dismissal of their Title VI claim fails.

IV.

Plaintiffs next claim that MIT violated the Ku Klux Klan Act, 42 U.S.C. § 1986, by knowingly failing to prevent a conspiracy by the student protestors to deprive Jewish and Israeli students of their civil rights. To state a claim under § 1986, a plaintiff first must plausibly plead a conspiracy under 42 U.S.C. § 1985(3). *Gattineri* v. *Town of Lynnfield,* 58 F.4th 512, 516 (1st Cir. 2023). And to state a claim under § 1985(3), a plaintiff must plausibly allege:

> (1) a conspiracy, (2) a conspiratorial purpose to deprive a class of persons, directly or indirectly, of the equal protection of the laws

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[19] Nor does the unnamed MIT staff member's incorrect suggestion that Jewish students were "not members of a protected class" make MIT's otherwise reasonable handling of the campus conflict clearly unreasonable. In a different setting, the remark might have implied indifference to complaints of antisemitism if made by a senior official "with authority to take corrective action." *Grace*, 85 F.4th at 11. But here, as we have described, plaintiffs' allegations make clear that senior university administrators were not indifferent, and plaintiffs allege no facts suggesting that those decisionmakers agreed with the unnamed staff member's statement.

> or of equal privileges and immunities under the laws, (3) an overt act in furtherance of the conspiracy, and (4) either (a) an injury to person or property, or (b) a deprivation of a constitutionally protected right or privilege.

Aulson v. *Blanchard,* 83 F.3d 1, 3 (1st Cir. 1996). Furthermore, a plaintiff may recover "only when the conspiratorial conduct of which he complains is propelled by 'some racial, or perhaps otherwise class-based, invidiously discriminatory animus.'" *Id.* (quoting *Griffin* v. *Breckenridge,* 403 U.S. 88, 102 (1971)).

The district court dismissed plaintiffs' claim because it found that they failed to plead a conspiratorial agreement. Specifically, it held that plaintiffs failed to raise a plausible inference that the student protestors acted in concert "at least in part for the very purpose" of depriving plaintiffs of their civil rights. *See Bray* v. *Alexandria Women's Health Clinic,* 506 U.S. 263, 276 (1993)). This was error, plaintiffs argue, because their allegations give rise to a plausible inference that the student activists' "conscious objective" was the impairment of Jewish and Israeli students' rights to be free from racial violence under the Thirteenth Amendment, to make and enforce contracts under 42 U.S.C. § 1981, and to hold real and personal property under 42 U.S.C. § 1982.

For purposes of this appeal, we assume without deciding that violations of §§ 1981 and 1982 can form the basis of an unlawful conspiracy under § 1985(3). *But see Great Am. Fed. Sav. & Loan Ass'n* v. *Novotny,* 442 U.S. 366, 378 (1979) ("[D]eprivation of a right created by Title VII cannot be the basis of a cause of action under § 1985(3)."); *Jimenez* v. *WellStar Health Sys.,* 596 F.3d 1304, 1312 (11th Cir. 2010) (extending

that logic to bar claims based on violations of § 1981); *see also Brown* v. *Philip Morris Inc.,* 250 F.3d 789, 806 (3d Cir. 2001) (observing that "[t]he great weight of precedential authority . . . does not suggest that §§ 1981 or 1982 claims in general may form the basis of a § 1985(3) action"); *Pirghaibi* v. *Moss,* 175 F. App'x 120, 122 (9th Cir. 2006) (noting that "whether violations of sections 1981 and 1982 [could] serve as the basis for a § 1985(3) claim" was an "uncertain proposition under Supreme Court precedent"). We need not reach this issue because, for the reasons explained below, we hold that plaintiffs failed to plead that the student activist groups conspired "for the very purpose" of depriving plaintiffs of their constitutional right to be free from racial violence, their contractual rights, or their property rights. *Bray,* 506 U.S. at 276.

We begin with plaintiffs' claim that the MIT Coalition Against Apartheid and other MIT student groups conspired to engage in "racially and ethnically motivated violence against Jews and Israelis in contravention of the Thirteenth Amendment." But plaintiffs have supplied no facts that, if proven, could justify recovery on this theory. *See Aulson,* 83 F.3d at 3–7 (affirming dismissal for failure to state a claim where complaint failed to plausibly allege discriminatory animus). Plaintiffs' complaint alleged two acts of arguable "violence" against Jewish or Israeli students: a protestor, who plaintiffs do not allege was even affiliated with MIT or belonged to the challenged student groups, raising a bike tire at a passing Jewish student; and a single, unnamed protestor shoving a Jewish student who was filming the protest. Plaintiffs' complaint did not allege that these two incidents were authorized, endorsed, or planned by any student group, let alone that they were the purpose of the protests. To imagine that these two altercations were

the "conscious objective" of protests coordinated, as plaintiffs allege, by multiple groups and involving dozens of students overly strains credulity, as does the suggestion that only these two incidents would have occurred if "racially and ethnically motivated violence" were the explicit purpose of the protests. And for the reasons we have already expressed, we are not persuaded by plaintiffs' assertion that the student protestors' speech itself constituted "serious racial violence" under the Thirteenth Amendment. Although we must draw reasonable factual inferences in plaintiffs' favor at this stage, we need not credit "bald assertions, unsupportable conclusions, periphrastic circumlocutions, and the like." *Aulson,* 83 F.3d at 3; *see Iqbal,* 556 U.S. at 679 ("While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations.").

Plaintiffs' next theory is that the purpose of the alleged conspiracy between the student groups was to interfere with Jewish and Israeli students' property and contract rights by forcing them to "endure[] chants that [were] overtly antisemitic" and to be "subjected to walkouts," "doxed," "kicked out of study groups," and "prevented from entering public areas of campus" because they were Jewish or Israeli.[20] As we have explained above, little of what occurred can be deemed antisemitic merely because plaintiffs declare it to be so, and plaintiffs' allegations offer no facts to plausibly

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[20] Plaintiffs also claim that their property rights were violated when a man "urinated on [Hillel] after being provoked at" a MIT Coalition Against Apartheid protest. However, the complaint does not allege that the man was in any way affiliated with MIT or the student groups it accuses of conspiracy, and the report plaintiffs attached to their complaint indicates that the man was someone with "paranoid beliefs" who had "nothing to do with MIT."

suggest that the protestors agreed to target Jewish students, as opposed to agreeing to demand that the university adopt the activists' position regarding the conflict between Israelis and Palestinians.

In lieu of pointing to any evidence of the student groups' purpose, plaintiffs instead catalogue the harms suffered by Jewish and Israeli students. They argue that "the co-conspirators' actions aimed to impair the rights of Jews and Israelis because[] they repeatedly impaired their contractual rights . . . and[] violated their property rights." But "[a] conspiracy is not 'for the purpose' of denying equal protection simply because it has an effect on a protected right." *Bray,* 506 U.S. at 275. In short, plaintiffs' conclusory assertions fail to state a claim that impairing the rights of Jewish students was among the student protestors' "conscious objective[s]." *Bray,* 506 U.S. at 275–76; *see Alston* v. *Spiegel,* 988 F.3d 564, 577–78 (1st Cir. 2021) (observing that inferences "are not infinitely elastic").

Plaintiffs' theory is particularly implausible given the joint statements from the student groups to which it points as evidence of a conspiracy. Those statements state plainly the protestors' purported goals: to pressure MIT to "divest" from Israel and to cease "sponsored research for the Israeli Occupation Forces," to express "solidarity with Columbia students" who were "calling for divestment," to "speak out" to "stop the genocide" and "defend Palestine," and to express their shared desire for a "permanent ceasefire in Gaza." We need not, of course, take the protestors' word for it. But where plaintiffs have failed to adduce any facts suggesting a purpose beyond or behind these stated goals, "dismissal is proper." *Alston,* 988 F.3d at 571; *see Iqbal,* 556 U.S. at 681 (holding that, while plaintiffs' allegations were "consistent with" a discriminatory

purpose, they did not "plausibly establish this purpose" given "more likely explanations").

All told, plaintiffs have failed to state a claim of conspiracy under § 1985(3), and thus their § 1986 claim must fail.

V.

Plaintiffs' final claims are that MIT is liable under Massachusetts law for breaching its contracts with Jewish and Israeli students by failing to uphold various policies, and for negligently failing to protect its students from antisemitic harassment. After dismissing plaintiffs' federal claims, the district court declined to exercise supplemental jurisdiction over plaintiffs' state-law claims. Because we agree that plaintiffs failed to state a federal claim, we affirm the dismissal without prejudice of plaintiffs' state-law claims. *See Rodriguez* v. *Doral Mortg. Corp.,* 57 F.3d 1168, 1177 (1st Cir. 1995) ("As a general principle, the unfavorable disposition of a plaintiff's federal claims at the early stages of a suit, well before the commencement of trial, will trigger the dismissal without prejudice of any supplemental state-law claims.").

VI.

One loose end remains. Plaintiffs contend that the district court abused its discretion by denying plaintiffs leave to amend their amended complaint yet again after it was found lacking. The district court's final order made no mention of plaintiffs' request for leave to amend, which – plaintiffs argue – means there was "no adequate basis for the court's decision." *See Foman* v. *Davis,* 371 U.S. 178, 182 (1962) ("[O]utright refusal to grant the leave [to amend] without any justifying reason appearing for the denial . . . is merely abuse of [a district court's] discretion . . . "); Fed. R. Civ.

P. 15(a)(2) ("The court should freely give leave [to amend a pleading] when justice so requires.").

It is unsurprising that the district court did not grant plaintiffs the leave they desired, because plaintiffs never moved to amend their complaint any further. Instead, plaintiffs added a single sentence in their memorandum of law opposing MIT's motion to dismiss: "To the extent the Court deems any of Plaintiffs' allegations inadequate, Plaintiffs request permission to amend their complaint." This cursory mention, presented not as a motion but embedded in some other document, does not require a district court's express response under our caselaw. "It is within the court's discretion to deny leave to amend implicitly by not addressing the request when leave is requested informally in a brief filed in opposition to a motion to dismiss." *Fire & Police Pension Ass'n of Colo.* v. *Abiomed, Inc.,* 778 F.3d 228, 247 (1st Cir. 2015) (quoting *Joblove* v. *Barr Labs, Inc.,* 466 F.3d 187, 220 (2d Cir. 2006), *abrogated on other grounds by, F.T.C.* v. *Actavis, Inc.,* 570 U.S. 136 (2013)). Furthermore, this court has specified that a statement that "in the event that the Court finds that the Amended Complaint fails to state a claim, Plaintiff requests leave to replead," contained within an opposition to defendants' motion to dismiss, does not constitute a motion for leave to amend under Rule 15(a). *Gray* v. *Evercore Restructuring L.L.C.*, 544 F.3d 320, 327 (1st Cir. 2008). Here, as in *Gray,* plaintiffs "failed to request leave to amend," and the district court "cannot be faulted for failing to grant such leave sua sponte." *Id.* The district court did not abuse its discretion by declining to grant plaintiffs an additional opportunity to amend their complaint a second time.

VII.

For the foregoing reasons, we *affirm* the district court's order on all counts.[21]

[21] This conclusion moots any need to consider MIT's challenge to the standing of the organizational plaintiff.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 24-1800

STAND WITH US CENTER FOR LEGAL JUSTICE;
KATERINA BOUKIN; MARILYN MEYERS,

Plaintiffs, Appellants,

v.

MASSACHUSETTS INSTITUTE OF TECHNOLOGY,

Defendant, Appellee.

Entered: October 21, 2025

JUDGMENT

This cause came on to be heard on appeal from the United States District Court for the District of Massachusetts and was argued by counsel.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The district court's dismissal of the suit for failure to state a claim is affirmed.

By the Court:

Anastasia Dubrovsky, Clerk

cc: Marlene Jaye Goldenberg, Melissa S. Weiner, Glenn Danas, Ashley Boulton, Daryl J. Lapp, Elizabeth Howar Kelly, Ishan Kharshedji Bhabha, Lauren J. Hartz, Edward M. Wenger

APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No. 24-10577-RGS

STANDWITHUS CENTER FOR LEGAL JUSTICE,
KATERINA BOUKIN, AND MARILYN MEYERS

v.

MASSACHUSETTS INSTITUTE OF TECHNOLOGY

July 30, 2024

MEMORANDUM AND ORDER ON
DEFENDANT'S MOTION TO DISMISS

STEARNS, D.J.

This putative class action against Massachusetts Institute of Technology (MIT) challenges the adequacy of MIT's response to acts of antisemitism occurring on its campus. Plaintiffs StandWithUs Center for Legal Justice (SCLJ), Katerina Boukin, and Marilyn Meyers claim that, after the bloody October 7, 2023 Hamas terrorist attack on Israel, repeated incidents of antisemitic conduct took place on the MIT campus, causing Jewish and Israeli students to fear for their personal safety. The First Amended Complaint (FAC) alleges four counts: deliberate indifference to a hostile educational environment impacting Jewish and Israeli students in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (Count I); failure to prevent

a conspiracy to interfere with civil rights in violation of 42 U.S.C. § 1986 (Count II); negligence (Count III); and breach of contract (Count IV).[1] Plaintiffs seek compensatory and punitive damages and prospective injunctive relief.

MIT now moves to dismiss the FAC, lodging challenges under Rules 12(b)(1) and 12(b)(6). On July 24, 2024, the court convened a hearing on MIT's motion. After careful consideration and commendable argument from both sides, the court will allow MIT's motion.

BACKGROUND

The relevant facts, drawn from the FAC and taken in the light most favorable to plaintiffs, are as follows. On October 7, 2023, the Palestinian Sunni Islamist terrorist group Hamas committed a violent terrorist attack on Israel.[2] The day after the attack, multiple MIT student groups – including the Coalition Against Apartheid (CAA) and Palestine@MIT – released a joint statement "hold[ing] the Israeli regime responsible for all unfolding violence." FAC ¶ 147. The statement was posted on CAA's and Palestine@MIT's blogs, was sent to every undergraduate student's email, and was shared on Palestine@MIT's Instagram account. *See id.*

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[1] Counts I-III are alleged by all plaintiffs. Count IV is alleged by Boukin and Meyers individually and, for injunctive relief only, on behalf of a putative class of "[a]ll Jewish and/or Israeli students enrolled at MIT after October 7, 2023, who did not participate in the pro-Palestine protests described [in the FAC]." First Am. Compl. (FAC) (Dkt. # 40) ¶ 366.

[2] "Hamas" is an acronym for Harakat al-Muqawama al-Islamiya, which translates roughly into Islamic Resistance Movement. In 1997, the U.S. Department of State designated Hamas as a Terrorist Organization under § 219 of the Immigration and Nationality Act, 8 U.S.C. § 1189.

¶ 145. On October 19, 2023, CAA hosted a rally, which Meyers attended. A protestor shouted at Meyers and a friend, "Your ancestors . . . didn't die to kill more people." *Id.* ¶ 156. Others at the rally chanted phrases such as "Palestine will be free, from the river to the sea."[3] *Id.* ¶ 157. Student groups continued demonstrating throughout the semester, walking out of classes, organizing "die-ins," and protesting in Lobby 7, a "major thoroughfare" on the MIT campus. *See id.* ¶¶ 159-162, 169-188.

On November 9, President Sally Kornbluth issued a statement warning the Lobby 7 protestors that their conduct violated MIT's Code of Conduct; threatening the students with disciplinary action, including potential suspension; and ordering them to vacate Lobby 7 immediately.[4]

After deciding that suspending students could lead to "collateral consequences . . . such as visa issues," MIT changed course and chose to suspend student violators from only non-academic campus activities. *Id.* ¶ 184. Around the same time, MIT also provision-

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[3] "From the river to the sea" refers to the area between the Jordan River and the Mediterranean Sea, in which Israel, the West Bank, East Jerusalem, and the Gaza Strip are located. While some claim the phrase is a call for peace in the region, many, including the majority of members of the U.S. House of Representatives, condemn the phrase as "outrightly antisemitic." *See* H.R. Res. 883, 118th Cong. (2023).

[4] MIT provided documents intended to show that MIT began responding forcefully to the intimidation of Jewish and Israeli students on October 10, 2023. *See* Mem. of Law in Supp. of Def. MIT's Mot. to Dismiss the Am. Compl. (Mot.), Ex. 1 (Dkt. # 42-2). As these are not properly before the court on a 12(b)(6) motion (and they have no bearing on MIT's 12(b)(1) motion), the court is unable to consider them. *See Trans-Spec Truck Serv., Inc. v. Caterpillar Inc.*, 524 F.3d 315, 321 (1st Cir. 2008).

ally suspended CAA, *see id.* ¶ 125 n.3, and created the Standing Together Against Hate initiative, which was intended to "spearhead efforts to combat antisemitism at MIT,"[5] *id.* ¶ 201.

As the protests continued over the academic year, many Jewish and Israeli MIT students, including plaintiffs and SCLJ's members, felt abandoned by the school's administration. For example, when a member of Congress asked President Kornbluth whether "calling for the genocide of Jews violate[s] MIT's code of conduct," President Kornbluth gave a hairsplitting legalistic response: "If targeted at individuals, not making public statements." *Id.* ¶ 198. And when students complained to MIT's Institute Discrimination & Harassment Response Office (IDHR) about the perceived antisemitic incidents, IDHR responded that the complained-of conduct "did not seem to violate the policies that IDHR has jurisdiction over" and, moreover, that Jews are not members of a protected class. *Id.* ¶ 205.

The protest activity at MIT reached a boiling point on April 21, 2024, when students erected an encampment on Kresge lawn (across from Hillel, an organization promoting Jewish campus life), protesting Zionism and MIT's ties to Israeli academics and government contractors. *See id.* ¶ 221. A Jewish student promptly emailed MIT Chancellor Melissa Nobles expressing dismay over the encampment, prompting Chancellor Nobles to reply that MIT was "working to move in a constructive direction with those who are protesting." *Id.* ¶ 224.

A week after the encampment appeared, President Kornbluth released a video statement. She informed

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[5] MIT disbanded the initiative in February of 2024. FAC ¶ 202.

students that the encampment violated MIT policy but, in the interest of protecting free speech, MIT had elected not to forcibly remove the student protestors. *See MIT Community Message from President Kornbluth* (April 27, 2024), https://president.mit.edu/writing-speeches/video-transcript-mit-community-message-president-kornbluth.[6] President Kornbluth directed the MIT Police Department to patrol the area around the encampment 24 hours a day. *See id.* On May 6, President Kornbluth warned student demonstrators that if they did not take down the tents and leave by 2:30pm, they would face disciplinary proceedings. FAC ¶ 238. All but five students eventually complied with President Kornbluth's ultimatum. *See* Sally Kornbluth, *Update on the Encampment* (May 6, 2024), https://orgchart.mit.edu/letters/update-encampment. Despite the departure of most of the protestors, that evening, "an individual jumped over the fencing surrounding the [mostly abandoned encampment], causing a surge, and soon the area was breached," and the encampment started anew. FAC ¶ 239. Tensions continued to rise over the next several days. On May 8, after protestors defaced Israeli flags, "[t]he day ended with more suspensions." Sally Kornbluth, *Actions This Morning* (May 10, 2024), https://orgchart.mit.edu/letters/actions-encampment. The next day, protestors blocked Vassar Street – a main campus thoroughfare – and, after refusing to disperse, nine of them were arrested. *Id.* On May 10, after further police pressure, the encampment was discontinued. *See id.*

MIT maintains various policies that govern student conduct, including the Code of Conduct, Chalking

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[6] Plaintiffs cite – and link – to the transcript of President Kornbluth's speech in the FAC, so the court may consider it. *See Beddall v. State St. Bank & Tr. Co.*, 137 F.3d 12, 17 (1st Cir. 1998).

Policy, and Events Policy, (together, the Policies). The Policies proscribe, *inter alia*, physical violence, behavior that has "serious ramifications" for the wellbeing of any student, and discrimination. If a student violates the Policies, they are subject to a salmagundi of discipline, including a warning, probation, suspension, expulsion, or degree revocation. The Chalking Policy limits where students may chalk and hang posters and prohibits the removing or defacing of other groups' posters. The Events Policy bans expression used to harass, discriminate against, or target any groups or individuals.

DISCUSSION

Subject Matter Jurisdiction

MIT challenges the court's jurisdiction on three grounds: (1) SCLJ lacks associational standing to pursue any of the claims; (2) all plaintiffs lack standing to obtain prospective injunctive relief; and (3) Count I is unripe. To establish standing, plaintiffs must, "for each claim that they press and for each form of relief that they seek," "establish each part of a familiar triad: injury, causation, and redressability." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021); *Katz v. Pershing, LLC*, 672 F.3d 64, 71 (1st Cir. 2012). Standing to seek prospective relief hinges on a showing that the plaintiff is "likely to suffer future injury." *City of L.A. v. Lyons*, 461 U.S. 95, 105 (1983).

An association has standing to sue on its members' behalf when "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt v. Wash. State Apple*

Advert. Comm'n, 432 U.S. 333, 342 (1977). Because an association's members are not parties to the case, to recover damages on behalf of its members, the association must show that the damages are "common to the entire membership." *Warth v. Seldin*, 422 U.S. 490, 515 (1975). Similar conditions apply to injunctive relief; if "member circumstances differ and proof of them is important," the association lacks standing to obtain an injunction for its members. *N.H. Motor Transp. Ass'n v. Rowe*, 448 F.3d 66, 72 (1st Cir. 2006), quoting *Pharm. Care Mgm't Ass'n v. Rowe*, 429 F.3d 294, 314 (1st Cir. 2005) (Boudin, J., concurring).

In assessing ripeness, the court considers "the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." *Abbott Lab'ys v. Gardner*, 387 U.S. 136, 149 (1967), *abrogated on other grounds by Califano v. Sanders*, 430 U.S. 99 (1977). A claim is not fit for decision if it "rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." *City of Fall River v. F.E.R.C.*, 507 F.3d 1, 6 (1st Cir. 2007), quoting *Texas v. United States*, 523 U.S. 296, 300 (1998).

The court perceives no jurisdictional bar to this case proceeding. Although MIT is correct that SCLJ lacks standing to seek damages on Counts I and III,[7] Boukin

[7] SCLJ seeks to recover compensatory and punitive damages on behalf of its members. Because Title VI is "much in the nature of a contract," the scope of available damages relief is contractual in nature. *Barnes v. Gorman*, 536 U.S. 181, 186-187 (2002), quoting *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981) (emphasis omitted). Contractual damages, however, are not "common to the entire membership." *See Warth*, 422 U.S. at 515. So, too, is the case with tort-based damages, which are designed to redress individualized non-economic losses.

and Meyers have standing to seek damages for these counts. Because the FAC plausibly alleges ongoing injuries, Boukin and Meyers also have standing to seek prospective injunctive relief. *See Roe v. Healey*, 78 F.4th 11, 21 (1st Cir. 2023). Nor is the court persuaded that SCLJ's members need to be joined as parties to the case. Even if SCLJ's claims require "proof specific to individual members of the association," this is no bar to associational standing for purposes of injunctive relief. *See Playboy Enters., Inc. v. Pub. Serv. Comm'n of P.R.*, 906 F.2d 25, 35 (1st Cir. 1990).

Plaintiffs' Title VI claim is also ripe. MIT argues that it should not have to "defend the adequacy of its response [to on-campus antisemitism] while that response [is] underway." Mot. at 21. Boukin's and Meyers's damages claims depend, however, on past events that have fully unfolded, so there can be no dispute that they are ripe. *See Ernst & Young v. Depositors Econ. Prot. Corp.*, 45 F.3d 530, 535 (1st Cir. 1995). And MIT's arguments that plaintiffs' claim for prospective injunctive relief is unripe turn largely on the merits of the dispute, *i.e.*, whether MIT has been deliberately indifferent and whether this alleged deliberate indifference is "sufficiently likely to happen" when campus life resumes this fall. *See Gun Owners' Action League, Inc. v. Swift*, 284 F.3d 198, 205 (1st Cir. 2002). Because the ripeness issue is intertwined with the merits, the court need not rule on it at this juncture. *See Valentin v. Hosp. Bella Vista*, 254 F.3d 358, 363 n.3 (1st Cir. 2001)

Failure to State a Claim

To survive a motion to dismiss under Rule 12(b)(6), a complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662,

678 (2009), quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). If the allegations in the complaint are "too meager, vague, or conclusory to remove the possibility of relief from the realm of mere conjecture," the complaint will be dismissed. *SEC v. Tambone*, 597 F.3d 436, 442 (1st Cir. 2010) (en banc).

(a) Count I: Title VI

Title VI forbids recipients of federal funds from discriminating "on the ground of race, color, or national origin." 42 U.S.C. § 2000d. The parties agree that discrimination against Jewish students comes within the statute's prohibition. A Title VI hostile environment claim[8] has five elements: (1) plaintiffs were "subject to 'severe, pervasive, and objectively offensive' . . . harassment"; (2) the harassment "caused the plaintiff to be deprived of educational opportunities or benefits"; (3) the school "knew of the harassment"; (4) the harassment occurred "in [the school's] programs and activities"; and (5) the school "was deliberately indifferent to the harassment such that

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[8] Although the FAC also gestures at a direct discrimination theory, plaintiffs have not pursued this theory in their briefing on the motion to dismiss. At any rate, plaintiffs' direct discrimination theory is indubitably one of vicarious liability. Although there is no Supreme Court or First Circuit precedent squarely addressing the issue, the Supreme Court has held that a school district cannot be held vicariously liable under Title IX for the actions of its teachers. *See Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 288 (1998). The remedial schemes for Titles VI and IX generally mirror one another. *See Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 258 (2009); *see also Doe v. Galster*, 768 F.3d 611, 617 (7th Cir. 2014) ("Title VI and Title IX are so similar that a decision interpreting one generally applies to the other."). It follows that vicarious liability is unavailable under Title VI. *See Corbett ex rel. Corbett v. Browning*, 2024 WL 862160, at *3 (D. Mass. Feb. 13, 2024).

its response (or lack thereof) is clearly unreasonable in light of the known circumstances." *Porto v. Town of Tewksbury*, 488 F.3d 67, 72-73 (1st Cir. 2007), quoting *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 650 (1999).

Deliberate indifference is a "stringent standard of fault." *Bd. of the Cnty. Commis v. Brown*, 520 U.S. 397, 410 (1997). "[A] claim that an institution could or should have done more does not establish deliberate indifference." *M.L. ex rel. D.L. v. Concord Sch. Dist.*, 86 F.4th 501, 511 (1st Cir. 2023). Rather, plaintiffs must allege facts showing that MIT's response to the incidents was "so lax, so misdirected, or so poorly executed as to be clearly unreasonable under the known circumstances." *Fitzgerald v. Barnstable Sch. Comm.*, 504 F.3d 165, 175 (1st Cir. 2007), *rev'd on other grounds*, 555 U.S. 246 (2009). The test is not to be viewed through the lens of hindsight; instead, the court must consider whether MIT responded in a clearly unreasonable manner based on what it knew at the time. *See Porto*, 488 F.3d at 74; *see also Farmer v. Brennan*, 511 U.S. 825, 844 (1994) (even where officials are aware of a risk of harm, they "may be found free from liability if they responded reasonably to the risk, even if the harm ultimately was not averted"). Boiled down to its essence, deliberate indifference means affirmatively choosing to do the wrong thing, or doing nothing, despite knowing what the law requires. Tempered by this understanding, the court cannot find that MIT acted with deliberate indifference.

The FAC compellingly depicts a campus embroiled in an internecine conflict that caused Jewish and Israeli students great anguish. Plaintiffs frame MIT's response to the conflict largely as one of inaction. But

the facts alleged tell a different story. Far from sitting on its hands, MIT took steps to contain the escalating on-campus protests that, in some instances, posed a genuine threat to the welfare and safety of Jewish and Israeli students, who were at times personally victimized by the hostile demonstrators. MIT began by suspending student protestors from non-academic activities, permitting them only to attend academic classes, while suspending one of the most undisciplined of the pro-Palestine student groups. These measures proved ineffective when, in April of 2024, protestors erected the Kresge lawn encampment. MIT immediately warned students of impending disciplinary action, but its threat went unheeded when student demonstrators "surge[d]" and "breached" the largely evacuated encampment. When MIT's attempt to peacefully clear the encampment proved futile, it suspended and arrested trespassing students.

In hindsight, one might envision things MIT could have done differently. Indeed, some campus administrators elsewhere, as plaintiffs allege, reacted to the protests differently (and with more positive results) than MIT. But that is not the applicable standard. That MIT's evolving and progressively punitive response largely tracked its increasing awareness of the hostility that demonstrators directed at Jewish and Israeli students shows that MIT did not react in a clearly unreasonable manner.

The court adds some concluding thoughts. The pain and hurt felt by plaintiffs and the Jewish and Israeli students that they seek to represent is genuine and fully understandable. But at bottom, the fault attributed to MIT is its failure to anticipate the bigoted behavior that some demonstrators – however sincere their disagreement with U.S. and Israeli policies –

would exhibit as events unfolded. The transgressors were, after all, mostly MIT students whom the school (perhaps naively) thought had internalized the values of tolerance and respect for others – even those with whom one might disagree – that a modern liberal university education seeks to instill. To fault MIT for what proved to be a failure of clairvoyance and a perhaps too measured response to an outburst of ugliness on its campus would send the unhelpful message that anything less than a faultless response in similar circumstances would earn no positive recognition in the eyes of the law. Count I will thus be dismissed.

(b) Count II: 42 U.S.C. § 1986

Plaintiffs seek to hold MIT liable under § 1986 for knowingly failing to prevent the formation of a conspiracy consisting of MIT student groups to deprive plaintiffs of their civil rights.[9] An essential element of this claim is proof of at least one of the conspiracies defined by 42 U.S.C. § 1985. *See Gattineri v. Town of Lynnfield*, 58 F.4th 512, 516 (1st Cir. 2023). Plaintiffs look to § 1985(3), which prohibits conspiracies undertaken to deprive, "either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws." 42 U.S.C. § 1985(3).

To plead an actionable § 1985(3) conspiracy, plaintiffs must allege: (1) the existence of a conspiracy; (2) that the "purpose of the conspiracy [was] 'to deprive

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[9] The court is aware of no case (and plaintiffs cite none) holding a party liable under § 1986 for failing to prevent a conspiracy in which the party was not involved. Nonetheless, the court will proceed on the shaky assumption that § 1986 liability could attach in these circumstances.

the plaintiff[s] of the equal protection of the laws'"; (3) at least one overt act was committed in furtherance of the conspiracy; and (4) "either injury to person or property, or deprivation of a constitutionally protected right" followed as a consequence of the illegal undertaking. *Alston v. Spiegel*, 988 F.3d 564, 577 (1st Cir. 2021), quoting *Péréz-Sánchez v. Pub. Bldg. Auth.*, 531 F.3d 104, 107 (1st Cir. 2008). To plausibly plead that a conspiracy existed, plaintiffs must allege either "facts indicating an agreement among the conspirators" or facts "sufficient to support a reasonable inference that such an agreement was made." *Parker v. Landry*, 935 F.3d 9, 18 (1st Cir. 2019). The requisite agreement must be to deprive plaintiffs of their civil rights. *See Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 275 (1993) (the right's "impairment must be a conscious objective of the enterprise").

Plaintiffs fail to plead any conspiratorial agreement. They claim that MIT student groups (1) jointly announced rallies, walkouts, and the encampment; (2) had overlapping membership; and (3) recruited participants for (and participated in) the encampment. These allegations establish that student groups acted in concert to plan protest events advocating their shared views, but nothing in the FAC raises a plausible inference that the groups agreed to plan the events "at least in part for the very purpose of" depriving plaintiffs of their civil rights. *See id.* at 276. Nor does plaintiffs' contention that the "clear practical effect" of the protests "was to impede the rights of Jewish and Israeli students on campus" rescue their claim. *See* Pls.' Mem. of Law in Opp'n to Def.'s Mot. to Dismiss the Am. Compl. (Dkt. # 46) at 26. "A conspiracy is not 'for the purpose' of denying equal protection simply because it has an effect upon a protected

right."[10] *Bray*, 506 U.S. at 275. Count II will therefore be dismissed.

(c) Counts III and IV: Negligence and Breach of Contract

Having dismissed all claims over which the court has original jurisdiction (and because plaintiffs have not pled diversity jurisdiction), the court will decline to exercise supplemental jurisdiction over plaintiffs' state-law claims. *See Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988); 28 U.S.C. § 1367(c)(3).

ORDER

For the foregoing reasons, MIT's motion to dismiss the federal claims (Counts I and II) is ALLOWED. The court declines to exercise jurisdiction over the state-law claims (Counts III and IV). The Clerk will close the case.

SO ORDERED.

/s/ Richard G. Stearns
UNITED STATES DISTRICT JUDGE

[10] It is also unclear whether student groups, rather than their constituent members, can form a § 1985(3) conspiracy. In the somewhat analogous civil RICO context, "[i]t is only a person, or one associated with an enterprise, not the enterprise itself, who can violate" RICO. *Schofield v. First Commodity Corp. of Bos.*, 793 F.2d 28, 30 (1st Cir. 1986). Other courts have concluded in the § 1985(3) context that "fail[ure] to allege with any specificity the persons who agreed to the alleged conspiracy" dooms a civil rights conspiracy claim. *E.g.*, *A Soc'y Without a Name v. Virginia*, 655 F.3d 342, 347 (4th Cir. 2011).

APPENDIX D

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No. 1:24-cv-10577-RGS

STANDWITHUS CENTER FOR LEGAL JUSTICE *et al*

Plaintiffs

v.

MASSACHUSETTS INSTITUTE OF TECHNOLOGY

Defendant

ORDER OF DISMISSAL

Stearns, D. J.

Pursuant to the Court's Memorandum and Order [Doc. No. 53] GRANTING Defendant's motion to dismiss the federal claims, Plaintiffs' Complaint is hereby dismissed. This case is CLOSED.

IT IS SO ORDERED.

8/21/2024
Date

By the Court,

/s/ Caetlin McManus
Deputy Clerk

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 24-1800

STANDWITHUS CENTER FOR LEGAL JUSTICE;
KATERINA BOUKIN; MARILYN MEYERS,

Plaintiffs - Appellants,

v.

MASSACHUSETTS INSTITUTE OF TECHNOLOGY,

Defendant - Appellee.

Before
Barron, *Chief Judge,*[*]
Kayatta, Gelpí, Montecalvo, Rikelman, Aframe,
Dunlap, *Circuit Judges,* and Smith,
District Judge.[**]

ORDER OF COURT

Entered: January 21, 2026

The petition for rehearing having been denied by the panel of judges who decided the case, and the petition for rehearing en banc having been submitted to the active judges of this court and a majority of the judges

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[*] Chief Judge Barron is recused and did not participate in the consideration of this matter.

[**] Of the District of Rhode Island, sitting by designation.

not having voted that the case be heard en banc, it is ordered that the petition for rehearing and the petition for rehearing en banc be *denied*.

DUNLAP, *Circuit Judge,* concurring. This case touches on the intersection of the First Amendment and Title VI, 42 U.S.C. § 2000d. As such, it presents difficult issues relating to the constitutional guarantee of freedom of speech and the scope of antidiscrimination laws – and it does so in the fraught context of hot-button geopolitical controversies and the insidious reality of antisemitism. In my view, the panel went further than it ought to have gone to resolve the present dispute; nevertheless, I do not believe that the arguments raised justify rehearing en banc. *See* Fed. R. App. P. 40(b)(2), (c). I write separately to briefly note my concerns and rationale for denying rehearing.

As the panel rightly acknowledges, antisemitism has a "sordid history." *StandWithUs Ctr. for Legal Just.* v. *Mass. Inst. of Tech.,* 158 F.4th 1, 16 (1st Cir. 2025). This history is also, unfortunately, a long one; indeed, it necessitated emphatic rejection by our first President. *See* Letter from George Washington to the Hebrew Congregation in Newport, R.I. (Aug. 18, 1790), in 6 *Papers of George Washington* 284, 285 (D. Twohig ed. 1996) ("May the Children of the Stock of Abraham, who dwell in this land, continue to merit and enjoy the good will of the other Inhabitants; while every one shall sit in safety under his own vine and figtree, and there shall be none to make him afraid."). As recent cases attest, President Washington's expressed opinion remains to some degree an aspiration – perhaps increasingly so. *See Gartenberg* v. *Cooper Union for the Advancement of Sci. & Art,* 765 F. Supp. 3d 245 (S.D.N.Y. 2025) (denying motion to dismiss Title VI claims based on antisemitic conduct); *Kestenbaum*

v. *President and Fellows of Harvard Coll.,* 743 F. Supp. 3d 297 (D. Mass. 2024) (same).

The challenge here is that antidiscrimination law, of necessity, only provides a partial remedy for antisemitism because of our concomitant dedication to freedom of speech. Title VI provides that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d. The First Amendment, however, prohibits government restrictions on speech based on its message, ideas, subject matter, or content, *Nat'l Inst. of Fam. & Life Advocs.* v. *Becerra,* 585 U.S. 755, 766 (2018), and provides "special protection" to speech relating to matters of public concern – even if it is outrageous, *Snyder* v. *Phelps,* 562 U.S. 443, 458 (2011). Title VI must therefore be applied with care for the constitutional problems that would arise if it were construed to suppress political speech. *Cf. Honeyfund.com Inc.* v. *Governor,* 94 F.4th 1272, 1282 (11th Cir. 2024); *Saxe* v. *State Coll. Area Sch. Dist.,* 240 F.3d 200, 206 (2001); *DeAngelis* v. *El Paso Mun. Police Officers Ass'n,* 51 F.3d 591, 596 (5th Cir. 1995).

The panel addressed this tension by, first, concluding that Title VI does not require a university to "quash protected speech," and, second, concluding that the protesters' actions "did not render their speech antisemitic, much less unprotected." *StandWithUs,* 158 F.4th at 12. As to the first conclusion, the panel affirmed that speech on matters of public concern is specially protected under the First Amendment, including on college campuses. *Id.* at 12–15. The panel reached the latter conclusion to avoid determining

whether racist speech can be punished under Title VI without violating the First Amendment. *Id.* at 15–16. I have some concerns with the panel's approach.

As a preliminary matter, I note that the panel opinion does not lay out a comprehensive framework for resolving the tension between the First Amendment and Title VI, and, consequently, leaves open some important questions. A critical threshold question here is whether protected speech must be categorically exempted from Title VI, such that only conduct or speech not protected by the First Amendment could give rise to liability under that provision. Plaintiffs conceded on appeal that the answer to this question is "yes," consistent with the panel's observations about the scope of protection for free speech under the First Amendment. *Id.* at 12–15. The answer to this threshold question, however, does not resolve an important subsidiary question: Can speech that is otherwise protected by the First Amendment nevertheless support a claim under Title VI as evidence of animus (as opposed to evidence of an objectively hostile education environment)? *See Saxe,* 240 F.3d at 208. The panel opinion does not squarely address this question. In my view, the nuanced analysis set out by Judge Cronan in *Gartenberg,* 765 F. Supp. 3d at 259–67, has much to recommend it as a potential means for resolving the constitutional issues embedded in the Title VI inquiry – including as to this subsidiary question.[1] The best method of harmonizing the tension

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[1] In *Gartenberg,* the court acknowledged both the central importance of speech on matters of public concern as well as the government interest in eliminating discriminatory harassment. 765 F. Supp. 3d at 262–63. The court concluded that Title VI generally does not "reach instances of pure speech on matters of public concern." *Id.* at 267; *see id.* at 265 (observing that "speech 'on a matter of public concern, directed to the college community,'

between the First Amendment and Title VI has not been well developed in briefing here, however, as Plaintiffs' arguments focused on the contention that racist speech is itself actionable under Title VI because it falls outside First Amendment protections. *StandWithUs,* 158 F.4th at 15–16. Because I read the panel's decision as sufficiently open-ended to allow our case law to continue developing and because Plaintiffs did not squarely advance *Gartenberg's* analytical approach, I do not think that rehearing en banc is warranted to address the issue further.

These observations lead me to my central concern, which relates to the panel's determination that the speech alleged in this case was not even plausibly antisemitic. By reaching this determination, the panel avoided answering Plaintiffs' contention that racist speech may give rise to liability under Title VI notwithstanding the First Amendment. *StandWithUs,* 158 F.4th at 15–19. I think Plaintiffs' framing led the panel to reach a dubious conclusion.

Under the familiar Rule 12(b)(6) standard, we must accept all factual allegations in a complaint as true for

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will generally fail to constitute unlawful harassment" when expressed through "generally accepted methods of communication," but that a different result might obtain where, for example, there is "targeted, personal harassment aimed at a particular person" (quoting *Rodriguez* v. *Maricopa Cnty. Cmty. Coll. Dist.,* 605 F.3d 703, 710 (9th Cir. 2010)). The court also concluded, however, that speech might be relevant to determining whether actionable harassment has occurred by illuminating the actor's motivation. *Id.* at 267. Utilizing that framework, Judge Cronan first considered the alleged speech in determining whether the plaintiff had plausibly alleged discriminatory motive, and then considered whether the plaintiff had adequately alleged a hostile educational environment based on actions not protected under the First Amendment. *Id.* at 267–74.

purposes of a motion to dismiss for failure to state a claim, and must draw all reasonable inferences in the Plaintiffs' favor. *Douglas* v. *Hirshon,* 63 F.4th 49, 54–55 (1st Cir. 2023). Vague or conclusory allegations will not suffice to state a claim that is plausible on its face. *SEC* v. *Tambone,* 597 F.3d 436, 442 (1st Cir. 2010). Nevertheless, as long as the allegations are plausible, even if not the most plausible of the possible alternatives, the complaint must survive a motion to dismiss. *Evergreen Partnering Grp., Inc.* v. *Pactiv Corp.,* 720 F.3d 33, 45 (1st Cir. 2013). In my view, the complaint supports a plausible inference of antisemitism.

The panel acknowledges the existence of an "ongoing debate as to the relationship between anti-Zionism and antisemitism – debate that our constitutional scheme resolves through discourse, not judicial fiat." *StandWithUs,* 158 F.4th at 17. But even as it makes this statement, the panel seems to impose just such a resolution by concluding that statements such as "Palestine will be free, from the river to the Sea!" and "There is only one solution! Intifada revolution!" were not – at least in the context of the facts alleged – antisemitic. *Id.* at 6, 19. But I find it at least plausible that, when made in the immediate aftermath of "the deadliest massacre of Jews since the Holocaust in a manner that reasonably appears to celebrate and glorify that same violence," such phrases support an "inference of animus towards Jews." *Gartenberg,* 765 F. Supp. 3d at 269. At the very least, Plaintiffs should have been afforded the opportunity to prove whether such an inference of animus could be sustained, particularly given that – as the panel acknowledges – there were other incidents of antisemitism on campus, *see, e.g., StandWithUs,* 158 F.4th at 7–8, 20–21, that might also support the conclusion that the statements were something other than altruistic political

opinions, *see Gartenberg,* 765 F. Supp. 3d at 269–70 (finding that, although the speech was not necessarily antisemitic, the speech when taken in context at least plausibly supported the theory that animus toward Jews was a motivating factor); Stephen E. Sachs, *Zionism and Title VI,* 139 Harv. L. Rev. Forum 50, 64–72 (2025).[2]

A simpler approach beckoned. The trial court below did not reach these issues, but instead resolved the case based on its conclusion that MIT did not act with deliberate indifference toward any harassment proscribed by Title VI. *StandWithUs Ctr. for Legal Just.* v. *Mass. Inst. of Tech.,* 742 F. Supp. 3d 133 (D. Mass. 2024). On appeal, the panel agreed with this conclusion. *StandWithUs,* 158 F.4th at 22–24. If the panel had grounded the opinion solely on this rationale, it would have remained on surer footing. There is certainly room for disagreement over the adequacy of the response by the Massachusetts Institute of Technology to the alleged harassment of Jews on campus; however, as acknowledged in *Gartenberg,* "the need to avoid a collision between Title VI and the First Amendment counsels in favor of an even more limited application of the already strict deliberate indifference standard." 765 F. Supp. 3d at

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[2] Some facts supporting Plaintiffs' contentions regarding the protestors' animus include the invitation extended by student groups to a speaker who allegedly proclaimed "Come on settlers, we will slaughter you. . . . What Hitler did to you was a joke," *StandWithUs,* 158 F.4th at 8; the protestors' decision to set up camp adjacent to MIT Hillel, *id.;* Plaintiff Boukin's exclusion from Lobby 7 and the Kresge Lawn on account of her being Jewish, *id.* at 20; and another instance of a visibly Jewish student being heckled, *id.* By deconstructing the events and looking at them individually, rather than as a whole, the panel may have missed the forest for the trees.

266. In this case, at least some efforts by MIT's administration – efforts that will likely distinguish this case from others that may arise in the future – undercut a finding of deliberate indifference. In my view, the panel should have chosen the same route as the trial court and resolved the case solely on this narrower ground. *See United States* v. *Tsarnaev,* 96 F.4th 441, 446 (1st Cir. 2024) ("[I]f it is not necessary to decide more, it is necessary not to decide more." (quoting *PDK Lab'ys Inc.* v. *U.S. DEA,* 362 F.3d 786, 799 (D.C. Cir. 2004) (Roberts, J., concurring in part and concurring in judgment)).

Nevertheless, I conclude that the panel's parsimonious and ultimately unnecessary application of the Rule 12(b)(6) standard in assessing the alleged animus of the protesters does not justify rehearing en banc. This case is likely limited to the unique facts as pled; indeed, the panel itself noted that different facts may well justify a different conclusion. *See StandWithUs,* 158 F.4th at 17 (citing *Gartenberg,* 765 F. Supp. 3d at 269). Granting rehearing en banc thus is not the most appropriate mechanism for addressing these issues. *See* Fed. R. App. P. 40(b)(2), (c).

This conclusion is further supported by the framing of this case for purposes of Plaintiffs' petition for rehearing en banc. Plaintiffs focus primarily on a purported conflict between this case and *Healy* v. *James,* 408 U.S. 169 (1972). That case, however, is not directly on point, as it addressed, in dicta, universities' ability to constrain disruptive *conduct,* and did not assess the interplay between speech and Title VI that is present here. *See id.* at 189. Plaintiffs also assert an alleged conflict between this case, on the one hand, and *Zeno* v. *Pines Plains Cent. Sch. Dist.,* 702 F.3d 655 (2d Cir. 2012), and *Feminist Majority Found.* v. *Hurley,*

911 F.3d 674 (4th Cir. 2018), on the other. Those cases are factually distinguishable, much as this case will be from cases likely to arise in the future. Finally, Plaintiffs argue that the panel's opinion conflicts with *Oncale* v. *Sundowner Offshore Servs., Inc.,* 523 U.S. 75 (1998), by focusing on the intent of the protestors instead of the objective effect of the alleged harassment on the plaintiffs. But *Oncale* does not suggest that a plaintiff need not demonstrate that a harasser is motivated by hostility to a protected class. *See id.* at 80. Rather, it is the severity of the harassment that must be judged from the perspective of a reasonable person in the plaintiff's position. *See id.* at 81. I do not read the panel's opinion to contradict these principles.

For these reasons, I concur in the denial of rehearing en banc.

By the Court:

Anastasia Dubrovsky, Clerk

cc: Hon. Richard G. Stearns
Robert Farrell, Clerk, United States District Court for the District of Massachusetts
Marlene Jaye Goldenberg
Melissa S. Weiner
Glenn Danas
Ashley Boulton
Daryl J. Lapp
Elizabeth Howar Kelly
Ishan Kharshedji Bhabha
Lauren J. Hartz
Kellen Sean Dwyer
Edward M. Wenger
Mark Pinkert
Nathan Jeremiah Moelker
Olivia F. Summers
Jordan A. Sekulow