

No. 25-1404

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

**BRIEF OF HILLEL: THE FOUNDATION FOR
JEWISH CAMPUS LIFE AND
ANTI-DEFAMATION LEAGUE AS
AMICI CURIAE SUPPORTING PETITIONERS**

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INTEREST OF AMICI CURIAE¹

Hillel: The Foundation for Jewish Campus Life (Hillel) is the world's largest Jewish campus organization. As a leading nonpartisan 501(c)(3) organization, it serves students at more than 850 college campuses. Hillel has a key role in confronting antisemitism and ensuring the safety and security of Jewish students. Through various initiatives, including its flagship Campus Climate Initiative, Hillel provides customized workshops on antisemitism to higher education administrators, faculty, and staff; conducts research; tracks antisemitic incidents; and partners with campus stakeholders to devise action plans to build inclusive and thriving campus environments.

The Anti-Defamation League (ADL) is a leading nonpartisan 501(c)(3) anti-hate organization. Founded in 1913 to protect the Jewish people, ADL works to stop the defamation of the Jewish people and to secure justice and fair treatment to all. In the face of rising antisemitism and extremism, ADL works to protect, advocate, and educate through a mix of programs and services using the latest innovations and technology. ADL's interest in this case stems from its commitment to combatting antisemitism and creating a world without hate.

¹ Under Rule 37.2, amici state that counsel of record for all parties received timely notice of amici's intent to file this brief. And under Rule 37.6, amici state that no counsel for a party authored this brief in whole or in part, that no such counsel or party made a monetary contribution intended to fund the brief's preparation or submission, and that no person other than amici and their counsel made such a monetary contribution.

Hillel and ADL co-sponsor several initiatives, including Report Campus Hate, an online system for students at North American colleges to report antisemitic incidents on their campuses.

Amici submit this brief to underscore the urgent need for this Court's intervention. Courts considering Title VI deliberate indifference claims must properly assess the objective severity of alleged hostile environments under the totality of the circumstances. This Court's hostile environment precedents best protect all students within Title VI's reach and safeguard the statutory objective of holding institutional defendants that receive federal financial assistance accountable for compliance with the law. Amici also explain the ramifications to Jewish and other students should review not be granted.

INTRODUCTION & SUMMARY OF ARGUMENT

Since October 7, 2023, many Jewish students have faced a barrage of antisemitic harassment on college and university campuses. The hateful conduct they have endured too often has devastated their academic experience and made them live in abject fear for their physical safety. ADL and Hillel report that 83% of Jewish college students surveyed experienced or witnessed antisemitism following October 7. Hillel data shows a 541% increase in antisemitic campus incidents from 2023 to 2024 alone.

Rather than address this flood of antisemitic harassment, several federally funded colleges violated Title VI through their deliberate indifference to their Jewish and Israeli students' suffering. Petitioners

more than adequately pleaded that Massachusetts Institute of Technology (MIT) was among them.

The First Circuit dismissed Petitioners' complaint based on a deeply flawed premise. The court faulted Petitioners for insufficiently alleging that their non-party harassers subjectively harbored antisemitic intent. But that approach—focusing the Title VI inquiry on non-party harassers' subjective intent—founders on this Court's hostile environment precedents, flouts the principles animating our civil rights laws, and threatens to harm all students who fall within Title VI's ambit.

Plaintiffs satisfy Title VI's actionable harassment standard when they allege that reasonable students in their position would perceive their educational environments as discriminatory and hostile, considering the totality of the circumstances. This objective, context-specific standard serves Title VI's purposes by vesting responsibility for discrimination in the federal funding recipient; focusing on the impact on victims who have reasonably perceived their educational environment as discriminatory and hostile; and ensuring that educational institutions cannot evade liability when responding appropriately would be unpopular, or when harassers profess ignorance or conceal bias behind coded slurs.

The decision below warrants this Court's immediate review because it instead required, as a necessary condition for actionable harassment, that Petitioners plead and prove their non-institutional, non-party harassers' subjective intent. To make matters worse, the decision below categorically excluded from its analysis pleaded conduct and speech that reasonable students in Petitioners' position view

as contributing to the full constellation of circumstances constituting a hostile environment.

The First Circuit's analysis adopts a pleading standard in deliberate indifference cases that undermines protected students' opportunities to learn free from discriminatory harassment. Left unchecked, the First Circuit's approach would cabin funding recipients' legal responsibilities and impede our civil rights law's ability to combat emerging or evolving forms of discrimination that are objectively offensive and require continuing coverage under Title VI.

This Court should grant review.

ARGUMENT

I. The Actionable Harassment Inquiry Requires an Objective Analysis Considering the Totality of the Circumstances.

Title VI prohibits, *inter alia*, universities that receive federal funding from treating some students worse than others on the grounds of race, color, or national origin. *See* 42 U.S.C. § 2000d. The touchstone of the actionable harassment element of a deliberate indifference claim against a university based on peer-on-peer harassment is whether a reasonable student in the plaintiff's position would perceive the environment as discriminatory and hostile. This objective inquiry requires considering the totality of the circumstances, as this Court emphasized in *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75 (1998), and *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999), decisions addressing Title VII and Title IX hostile environment claims.

In *Oncale*, this Court emphasized that “the objective severity of harassment should be judged from the perspective of a reasonable person in the plaintiff’s position, considering all the circumstances.” 523 U.S. at 81 (citation modified). Justice Scalia, writing for a unanimous Court, underscored the reasonable person standard’s import, illustrating how “careful consideration of the social context in which particular behavior occurs and is experienced by its target” determines whether that behavior constitutes actionable harassment. *Id.* This standard recognizes that harassment’s “real social impact . . . often depends on a constellation of surrounding circumstances, expectations, and relationships which are not fully captured by a simple recitation of the words used or the physical acts performed.” *Id.* at 82.

In *Davis*, which considered allegations that a school was responsible for sexual harassment perpetrated by a fifth grader, this Court applied the same reasoning to its Title IX hostile educational environment analysis, holding that “[w]hether gender-oriented conduct rises to the level of actionable ‘harassment’ [] ‘depends on a constellation of surrounding circumstances, expectations, and relationships,’” and that “in the context of student-on-student harassment,” such conduct must be “objectively offensive.” 526 U.S. at 651–52 (quoting *Oncale*, 523 U.S. at 82). This Court did not discuss whether the fifth-grade perpetrator intended his conduct to be sexually harassing.

A deliberate indifference claim therefore turns on whether the funding recipient defendant—MIT here—adequately responded to harassment “that 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.” *Id.* at 650. This objective, context-dependent inquiry serves Title VI’s objectives by focusing the analysis on the victim and the institution’s response. Indeed, Title VI contemplates liability by “a recipient of federal funds . . . only for its own misconduct,” *id.* at 640, and aims to “protect[] individuals from discriminatory practices carried out by recipients of federal funds,” *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 287 (1998) (citation modified).

II. The Panel’s Approach Is Flawed Because It Required Pleading Non-Party Harassers’ Subjective Intent and Excluded Key Contextual Allegations.

The First Circuit disregarded these settled principles. Instead, it based its analysis on non-party harassers’ subjective intent. It faulted Petitioners for not plausibly alleging that the aggressors “were driven by antisemitism” or acted with “antisemitic animus.” Pet. App. 27a–28a. The decision below therefore introduced a subjective intent requirement—centered on a nonparty—that conflicts with this Court’s hostile environment precedents. *Cf. Oncale*, 523 U.S. at 81; *Davis*, 526 U.S. at 651–52.

The First Circuit’s error stems from its extending case law that requires institutional defendants to harbor discriminatory animus toward victims to be liable for direct discrimination claims. *See* Pet. App. 27a–28a (citing *Goodman v. Bowdoin Coll.*, 380 F.3d 33, 43 (1st Cir. 2004); *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.”)).

But an educational institution separately violates Title VI, and intentionally discriminates, when it is deliberately indifferent to student-on-student harassment. *See Davis*, 526 U.S. at 643. By requiring that plaintiffs plead non-party harassers’ subjective intent in actions against educational institutions, the decision below collapsed the distinction between direct discrimination and deliberate indifference claims and focused on the wrong actor. Indeed, the First Circuit’s requirement is unnecessary for the latter claim because this Court’s precedents ensure that the deliberate indifference standard addresses educational institutions’ intentional conduct. *See, e.g., id.* at 645. (discussing requirements that institutions have disciplinary control over harassers, know of the harassment, and cause students to be subjected or more vulnerable to harassment).

The concurrence denying the petition for rehearing en banc below suggests that *Oncale* can be harmonized with a requirement that plaintiffs plead non-party harassers’ motivation. Pet. App. 71a. But *Oncale* was clear that “an objectively hostile or abusive [] environment” is “an environment that a reasonable person would find hostile or abusive.” 523 U.S. at 81 (quoting *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993) (discussing “actionable [] conduct” standard)). Indeed, in *Harris*, that the alleged harasser “was surprised that [the victim] was offended” and “claimed he was only joking” did not factor into this Court’s analysis. 510 U.S. at 19; *accord Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 256 (2023) (Thomas, J., concurring) (“In fact, it is error for a court to defer to the views of an alleged discriminator while assessing claims of racial discrimination.”).

The First Circuit's contrary standard minimizes and marginalizes victims' lived experiences and incentivizes educational institutions to ignore students' cries for help by instead deferring to the potential that non-party harassers had benign motives. It places the burden on student victims to know whether their harassers might have meant something other than what a reasonable person would understand in context.

Institutions therefore would be immunized whenever harassers could potentially claim ignorance to their behavior's effect or mask their discriminatory intent with coded language. Whether the alleged non-party harassers at MIT subjectively recognized (or admit they recognized) their actions and epithets' discriminatory effect, if their harassment interfered with victims' education benefits, then MIT was bound to protect them with adequate responses.

Indeed, by incorrectly anchoring the actionable harassment analysis to the harassers' subjective intent, the First Circuit dismissed the objective impact on the victims. For example, Petitioners alleged that they reasonably perceived the three-week-long MIT encampment as antisemitic. Pet. App. 30a. Despite the panel's recognition that the encampment's proximity to MIT's Hillel building "plausibly heightened" the "impact on Jewish students," it affirmed dismissal because Petitioners did not allege that protestors subjectively chose the demonstration location "because of its proximity" to

the Hillel building, a safe haven for Jewish students.² Pet. App. 30a–31a.

The First Circuit similarly discounted Petitioners’ allegations that they reasonably perceived the harassers’ chants of “from the river to the sea, Palestine will be free” and “intifada revolution” as antisemitic calls for the genocide of the Jewish people. Pet. App. 29a. The panel acknowledged “the anguish plaintiffs felt” based on this behavior. Pet. App. 29a. But it affirmed dismissal of the complaint for failure to “allege facts suggesting that either chant was commonly so construed by the protestors” or that “the protestors were using these slogans in the way plaintiffs claim.” Pet. App. 29a.

The First Circuit’s approach is also flawed because it excluded certain behavior, including these chants, from its actionable harassment analysis altogether. *See, e.g.*, Pet. App. 29a–30a. The panel cast aside conduct it characterized as protected speech, then separately analyzed the “several isolated incidents of antisemitism” which “spun off” from “the cacophony of protests and ensuing debates” following October 7, 2023, holding the incidents too isolated to constitute systemic educational deprivation. Pet. App. 31a–33a.

Even assuming that these chants constitute protected speech in some circumstances and in isolation, words can contribute to a hostile environment, and schools must respond under

² As a well-known Jewish campus organization, Hillel recently has become a principal target for antisemitic harassment and violence. Hillel has recorded 366 antisemitic incidents directly targeting official Hillel campus spaces since October 7, 2023. An astonishing 6,067 antisemitic incidents on university campuses have been reported to Hillel since that time.

Title VI, when that environment becomes objectively hostile. All the more so when such chants are accompanied by other discriminatory conduct.³ That is what Petitioners alleged occurred at MIT. *See, e.g.*, Pet. App. 5a–6a (summarizing a takeover of a campus building space, during which aggressors chanted these slogans and physically intimidated and assaulted Jewish students).

The First Circuit’s approach therefore undermines this Court’s mandate that courts consider the “constellation of surrounding circumstances” in evaluating a deliberate indifference claim. *Oncale*, 523 U.S. at 82; *Davis*, 526 U.S. at 651.

III. The Panel’s Approach Threatens to Destroy Students’ Access to Educational Programs and Activities Free of Harassment and Discrimination.

The First Circuit’s approach improperly forecloses—as a matter of law at the pleading stage—consideration of abundant evidence that Jewish and

³ *See* David E. Bernstein, *Title VI Hostile-Environment Law in the Shadow of Antisemitic Violence*, 6 J. Free Speech L. 1007, 1033 (2026) (“As at MIT, violent anti-Israel rhetoric on many campuses has been accompanied by illicit conduct beyond protected speech, such as unlawful building takeovers, threats, vandalism, harassment, and demonstrations in violation of time-, place-, and manner restrictions. These actions make violent-sounding rhetoric salient to hostile-environment claims.”); Stephen E. Sachs, *Zionism and Title VI*, 139 Harv. L. Rev. 50, 69 (2025) (“True, ‘intifada’ may . . . refer to things other than . . . the First and Second Intifadas, in which many Israeli civilians were targeted. . . . But whether chanting it can *contribute* to a hostile environment is a different question, one that’s answered by the totality of the circumstances and from the perspective of the reasonable plaintiff.”).

Israeli students in Petitioners' position reasonably construe specific behaviors and chants as antisemitic and disruptive to their learning environment.

Hillel and ADL are intimately familiar with this empirical reality. For example, Hillel tracked a 541% increase in antisemitic campus incidents year over year from 2023 to 2024. And a 2025 Hillel, ADL, and College Pulse survey found that 83% of polled Jewish college students experienced or witnessed antisemitism since October 7, 2023.⁴

This increase in antisemitism has deeply impacted many Jewish students and deprived them of their full college experiences. One multiyear study found that the rates at which students hid their Jewish identities and reported that fear of antisemitism caused them to avoid Jewish campus activities doubled from 2022 to 2023.⁵ Another study found that when Jewish students report increased personal experiences with

⁴ *83% of Jewish College Students Have Experienced or Witnessed Antisemitism Firsthand Since Oct. 7 Attack, Survey Finds*, Hillel Int'l (Jan. 30, 2025), <https://www.hillel.org/83-of-jewish-college-students-have-experienced-or-witnessed-antisemitism-firsthand-since-oct-7-attack-survey-finds> [https://perma.cc/9F6H-54AU].

⁵ Eitan Hersch & Dahlia Lyss, *A Year of Campus Conflict and Growth: An Over-Time Study of the Impact of the Israel-Hamas War on U.S. College Students* 48, 56–57 (2024), https://jimjosephfoundation.org/wp-content/uploads/2024/08/Hersh_Final_Report_Campus_Conflict_and_Growth.pdf [https://perma.cc/JMK3-ZKZU].

antisemitism, they report greater depressive symptoms, even controlling for outside factors.⁶

The First Circuit excluded the types of student experiences described in amici’s and others’ findings. As ADL has explained, Jews and Israelis widely understand chants like those Petitioners alleged as calls for their destruction. For example, “globalize the Intifada” “is generally understood as a call for indiscriminate violence against Israel, and potentially against Jews and Jewish institutions worldwide.”⁷ And “From the river to the sea, Palestine will be free” “is an antisemitic charge denying the Jewish right to self-determination, including through the removal of Jews from their ancestral homeland,” which “has the effect of making members of the Jewish and pro-Israel community feel unsafe and ostracized.”⁸

The First Circuit’s erroneous legal standard has far-reaching ramifications for a statute designed to hold federally funded institutions (not non-party harassers) accountable for their own discriminatory conduct. If allowed to stand, its approach threatens all students within Title VI’s protection by forcing them to allege and prove the discriminatory motivations of

⁶ Talia Morstead & Anita DeLongis, *Antisemitism on Campus in the Wake of October 7: Examining Stress, Coping, and Depressive Symptoms Among Jewish Students*, Stress & Health, Jan. 2025, at 5.

⁷ *Slogan: Globalize the Intifada*, ADL (Jan. 16, 2024), <https://www.adl.org/resources/backgrounder/slogan-globalize-intifada> [<https://perma.cc/3R6Y-PFVP>]; see also Bernstein, *supra* note 3, at 1027–28.

⁸ *Slogan: “From the River to the Sea Palestine Will be Free,”* ADL (Oct. 26, 2023), <https://www.adl.org/resources/backgrounder/slogan-river-sea-palestine-will-be-free> [<https://perma.cc/TP8W-GWC9>]; see also Sachs, *supra* note 3, at 72.

persons not party to the litigation. And it could deny them any protection under our civil rights laws when they are unable to access educational opportunities due to harassment that they reasonably find discriminatory in context. That cannot be.

CONCLUSION

This Court should grant the petition for a writ of certiorari.

Respectfully submitted.

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July 22, 2026