

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 ON BEHALF OF *AMICUS CURIAE*
THE INSTITUTE FOR THE STUDY OF
GLOBAL ANTISEMITISM AND
POLICY IN SUPPORT OF THE
PETITION FOR CERTIORARI**

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CORPORATE DISCLOSURE STATEMENT

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**BRIEF OF THE INSTITUTE FOR THE
STUDY OF GLOBAL ANTISEMITISM AND
POLICY IN SUPPORT OF THE PETITION
FOR A WRIT OF CERTIORARI¹**

INTEREST OF *AMICUS CURIAE*

The Institute for the Study of Global Antisemitism and Policy (“ISGAP”) is a nonprofit, tax-exempt organization devoted to scholarly research on the origins, development, and contemporary manifestations of antisemitism. A central focus of ISGAP’s work is the study of antisemitism as it arises on university campuses, including where hostility toward Jews is expressed through the denial of the Jewish people’s right to self-determination or through the targeting of Jews or those perceived as Jewish, Israeli or Zionist.

Founded in 2004 by Dr. Charles Asher Small, an internationally recognized scholar of antisemitism, ISGAP convenes and supports scholars worldwide through research initiatives, academic programs, and publications. (*See* ISGAP Background). ISGAP’s faculty include Professor Cary Nelson, an emeritus professor from the University of Illinois, and a leading scholar of antizionism, antisemitism, and academic freedom. This brief is largely informed by the scholarship of Professor Nelson.

1. Pursuant to Sup. Ct. R. 37.2(a), counsel of record for all parties received timely notice of Amicus Curiae’s intent to file this brief. Pursuant to Rule 37.6, no counsel for a party authored this brief in whole or in part, and no person or entity other than Amicus Curiae, its members, or its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

ISGAP has observed an increasing pattern in which antizionism, as defined in widely adopted governmental and institutional standards, has become a vehicle for antisemitic harassment and exclusion of Jewish students and faculty.

ISGAP submits this brief in support of the Petition for Certiorari (“Pet”) to address issues within its scholarly expertise: the historical evolution of contemporary antisemitism, the relationship between eliminationist antizionism and antisemitism, and the way those issues bear on claims of antisemitic harassment under Title VI under the allegations presented.

SUMMARY OF ARGUMENT

This case presents a recurring question of substantial importance: how courts should evaluate allegations of antisemitic harassment when the challenged conduct includes words, symbols, slogans, and other conduct characterized as political expression. Rather than directing the district court to determine whether the complaint plausibly alleged harassment sufficiently severe, pervasive, and objectively offensive to deny Jewish students equal access to educational opportunities, and whether MIT responded with deliberate indifference, the First Circuit undertook a threshold First Amendment inquiry that displaced the hostile-environment analysis prescribed by Title VI and this Court’s decision in *Davis v. Monroe County Board of Education*.

In undertaking that threshold inquiry, the court relied both on the asserted absence of evidence of protestors’ subjective intent and on a perceived lack of scholarly or

communal “consensus” regarding whether the challenged conduct constituted discrimination against Jewish students. The result was to insulate an entire category of alleged discriminatory conduct from the statutory analysis Title VI requires.

Further, the existence of First Amendment protection for political expression does not eliminate the need to determine whether the alleged conduct, considered in its full historical, political, and factual context, plausibly created a hostile educational environment under Title VI.

Amicus does not ask the Court to rule on whether “criticism” of Israel or Israeli policy, however forceful or strident, is actionable under Title VI. The allegations here are not about criticism but on the impact of eliminationist antizionism—the denial of Jewish collective self-determination and calls for the dismantling of the world’s only Jewish state—which plaintiffs allege operated as discriminatory harassment directed at MIT’s Jewish community in the aftermath of Hamas’ October 7, 2023 invasion of Israel.

A substantial body of historical and contemporary scholarship has examined eliminationist antizionism as a modern adaptation of all-too-recognizable antisemitic motifs. The impact of that work does not depend on unanimity among scholars or communities. It reflects sustained inquiry into how antisemitism has mutated over time, preserving core features while evolving into its current iteration that demonizes and negates Jewish national existence, alone among the world’s almost 200 nations.

This scholarship is complemented by widely adopted governmental and institutional definitions of antisemitism, including the IHRA Definition and Executive Branch guidance concerning Title VI enforcement, including Executive Order 13899. These sources recognize that eliminationist antizionism functions not merely as criticism of Israeli state policy, but as collective exclusion directed at Jews as a people and is actionable under Title VI. Irrespective of whether these adoptions in fact equate to a “consensus” this scholarship and the complementary governmental pronouncements stand on their own, as does the offensive conduct alleged in the complaint.

Plaintiffs alleged that actionable harassment manifested itself through widely recognized slogans, chants, and coordinated demonstrations with established provenance in antisemitic tropes. The conduct, signaled exclusion and intimidation based on protected status, adversely affecting the educational environment for members of MIT’s Jewish community. The First Circuit, however, did not evaluate these allegations under the hostile-environment framework required by Title VI. Instead, it treated the challenged conduct as categorically protected political speech, effectively ending the inquiry before determining whether plaintiffs plausibly alleged actionable harassment and, if so, whether MIT responded with deliberate indifference.²

In effect, the First Circuit’s decision transformed perceived disagreement over the meaning and effect

2. MIT Professor Yossi Sheffi has recently published an exhaustive account of the 2023-24 upheaval on the MIT campus. (Sheffi, *Unsafe at MIT*).

of eliminationist antizionist expression, together with an asserted inability to discern protestors' subjective motivations, into a threshold legal barrier. That methodology, if adopted widely, permits courts to bypass civil-rights analysis whenever alleged actionable discrimination is embedded in what some characterize as political discourse.

Additionally, even assuming the challenged slogans, demonstrations, and campus upheaval constituted protected political expression, as the court assumed without meaningful inquiry, that assumption did not resolve the Title VI inquiry. Title VI requires courts to determine whether the alleged conduct, viewed in its full context—including its manner, frequency, location, and cumulative effect—plausibly created a hostile educational environment before considering whether the institution's response was deliberately indifferent.

The Court should grant certiorari to review the First Circuit's far-reaching conclusions.

ARGUMENT

I. The Historic Evolution of Antizionism and its Relation to Antisemitism

To understand how the outburst on MIT's campus and elsewhere following the October 7, 2023 attack ("October 7") implicated not only political antizionist sentiment but actionable antisemitism as well, we begin with some basic definitions and then take brief account of the historic evolution of antizionism and its intimate relationship to antisemitism. These definitions and the

historical context are offered to explain why this Court should review the First Circuit’s analysis, which glossed over plaintiffs’ well-pled claims of harassment and denial of equal educational opportunity as proscribed by Title VI.

The standard definition of Zionism is straightforward: Zionism is the political and religious belief that Jews have a right to self-determination and the establishment of a Jewish nation-state in their ancestral homeland of Israel.

Although antizionism has taken multiple forms, its core is opposition to both the concept and the reality of a Jewish homeland in “Zion,” *i.e.*, Israel. With the wave of antisemitism that swept the world on October 7 and thereafter, eliminationist antizionism—antizionism committed to eliminating the existence of the Jewish state—became the movement’s dominant form. Plaintiffs alleged that such opposition functioned as discriminatory hostility toward Jews and those perceived as Zionists, an allegation the First Circuit did not deem necessary to evaluate under Title VI. One leading scholar, Izabella Taborovsky, observed, “In the wake of October 7, it is becoming increasingly clear that although opposition to Zionism does not have to be antisemitic in theory, in practice it virtually always is.” (Taborovsky, Antizionism—Without the Hyphen).

In the early 20th century, Zionism was eschewed by some who believed that Jews would be better off assimilating within existing European nations rather than seeking a state of their own. For Jews facing pogroms in Eastern Europe and Russia, however, assimilation was not a viable option. The Zionist movement drew on centuries of Jewish prayer and culture that had made the aspiration of

“next year in Jerusalem!” a central feature of Jewish life. That ancient call has long been issued at the conclusion of Yom Kippur services and at the end of the Passover seder. (Alperin, Next Year).

Around the world, including in the U.S. and the Soviet bloc, liberal and leftist elements supported the creation of the Jewish state. Israel was even seen as an anti-colonial country because it replaced what had become British-controlled territory after the Ottoman Empire collapsed in World War I. The United Nations 1947 partition plan, calling for the division of the British Mandate of Palestine into a Jewish state and an Arab state was the result, leading to the establishment of Israel in 1948.

In the 1960s, however, and particularly after the 1967 “Six-Day War,” the geopolitical situation in the Middle East changed dramatically, and opposition to the existence of Israel grew in tandem with the rise of Palestinian nationalism. The Soviet Union reversed its position and became the major international source of antizionist propaganda, which had its roots in centuries of Russian antisemitism. (Tabarovsky, Antizionism—Without the Hyphen).

A signal development came in 1975 when the antizionist forces at the United Nations, marshalled by the Soviet Union, gained sufficient support to declare Zionism a form of racism. (UNGA Resolution 3379). Although the UN repealed the resolution in 1991 (UNGA 46/86), it was revived at the international conference on racism in Durban, South Africa, in 2001 (ADL, Durban Conference). At that point the declaration “Zionism = Racism” became a defining slogan of the antizionist

movement. It was obvious to many that the declaration was antisemitic. It branded Israel with the claim that the movement establishing the Jewish state was morally abhorrent, that racism was the foundation of Israel. For Zionists, the slogan is an antisemitic slander. It remains a defining motto for antizionists today. (Neuer, Zionism as Racism).

From the outset of modern Jewish immigration to Ottoman Palestine and later Mandatory Palestine, the Arab population rejected both large-scale Jewish immigration and the prospect of eventual Jewish sovereignty. Following the Oslo Accords (1993-95), however, a discernible current within Arab and broader antizionist discourse appeared to accept, at least pragmatically, the possibility of a Jewish state alongside a Palestinian state in the West Bank and Gaza.

The quest for a two-state framework peaked in 2000 under President Bill Clinton's peace initiatives. The Palestinians, however, rejected President Clinton's "parameters" for peace (*see* News Article, Bill Clinton) and waged the Second Intifada (2000-2005), featuring suicide bombings against Israeli civilians. Antizionist rhetoric increasingly adopted ideological frameworks casting international conflict in terms of oppressor and oppressed peoples, situating Israelis and Palestinians within those opposing categories and rejecting Israel, labeling it a settler-colonial enterprise engaged in racial domination and displacement. In the ensuing years, as the conflict festered, these claims expanded in scope and intensity, particularly within Western academic and activist settings. (Nelson, *College Zionists*, 55-119 (extensive documented discussion of the Spring 2024

events at the center of the MIT case)). Israel's complete withdrawal from Gaza in 2005, rather than opening a door to a two-state accommodation, had the opposite effect as Israel and Hamas periodically engaged in armed conflict in response to Hamas rocket attacks on Israel. The intellectual and ideological antipathy towards Israel deepened. (*Id.*)

Following the October 7 attacks, even those segments of antizionist discourse that had previously appeared to countenance a two-state solution, and many who had not previously engaged in the controversy (*e.g.*, students), rejected the two-state vision. (*Id.*) The movement adopted a singular line of attack, rejecting the legitimacy of Jewish sovereignty on any borders in historic Palestine. Arguments long present in Palestinian and antizionist narratives—particularly those centered on the “catastrophe” (“Nabka”) of Israel's founding in 1948—became the organizing premise. The focus on occupation of the West Bank and Gaza (from which Israel had withdrawn in 2005) as a source of grievance receded, and any distinction between opposition to Israeli policies and opposition to Israel's existence largely collapsed. In this reframed narrative, fulfilling the vision of anti-Israel advocacy developed at the 1991 Durban Conference, the remedy for perceived injustice was not territorial compromise but the dismantling of Israel as a Jewish state, “from the river to the sea.” (Nelson, *College Zionists*, 67-71).

On U.S. campuses, including MIT, this shift was reflected in slogans, demands, and organizing frameworks that rejected any form of Jewish sovereignty in historic Palestine and instead made the singular demand for a single Palestinian state “from the river to the sea.”

Escalation And Transformation, 2023-2024

It is impossible to understand the dramatically more hostile eliminationist antizionism we have faced on campuses and in communities alike, including MIT, since October 7, 2023, without specifying how the movement has been radically transformed since then. Within hours of Hamas's murderous assault on civilians in the Israeli communities near Gaza, antizionist student groups at MIT and elsewhere declared Israel wholly responsible for the day's violence. (Nelson, *College Zionists*, 62-63). Those groups soon embraced what had been limited to an outlier accusation until then, that Israel was "committing genocide" in Gaza. Then, with the ground war in Gaza, antizionists charged Israel with targeting Gazan civilians, particularly children, with genocidal intent (Goda, *Genocide Libel*), including the accusation that Israel was enforcing starvation with the result of mass famine in Gaza. Neither the genocide nor the famine accusations could be resolved by debates over the facts. Both became irrefutable emotional beliefs echoing age-old antisemitic tropes. Israel in the eyes of antizionists had become irredeemably evil. (Hirsch, *Starvation Fraud*).

As the movement reached its peak in the spring 2024 campus encampments at MIT and universities throughout the US, Canada, and Britain, it adopted a cluster of additional false accusations that gave students still more reasons to revile Israel and its supporters. The movement accused Israel of being the world's worst violator of human rights. Its actions in Gaza, and the resulting death and destruction, were not couched in the context of fighting a war they had not started nor as an effort to prevent future October 7th massacres,

as Hamas promised to do “again and again” (Haaretz, Hamas Official); instead, it was presented as Israel targeting Gazans, particularly children, in furtherance of its “genocidal character.” (Adesnik, *Casualties in Gaza*, at 29-55). And it went even further: the movement accused Israel of being the main barrier to worldwide liberation. Freedom for all oppressed peoples was interdependent, and Israel’s very existence, not just its policies, was the lynchpin of oppression everywhere. (Nelson, *College Zionists*, 120-168). According to the complaint, this eliminationist antizionism was manifest on the MIT campus. (*See, e.g.*, Pet. 4, 8-11). It forms the basis of the Title VI claim but was never evaluated by the courts below.

II. The First Circuit’s Reliance on the Absence of “Consensus” as a Threshold Barrier to a Title VI Claim Warrants Review by this Court

A central underpinning of the First Circuit’s decision was its conclusion that absent “consensus” “as to the relationship between anti-Zionism and antisemitism,” it was impossible for the court to “interpret Title VI as arming either side of the debate with the powers of a censor.” (Pet. App. 26a; *see also* 24a-25a and ns. 13 and 14). This framing was outcome determinative. It meant that the existence of a dispute over the meaning of antizionist rhetoric effectively resolved the Title VI inquiry at the threshold.

But Title VI does not require ideological consensus before discriminatory harassment may be recognized. Courts routinely evaluate words, symbols, and conduct

whose meanings are contested. The relevant inquiry is not whether all observers agree on the meaning of the challenged conduct, but whether the alleged conduct, viewed in context and under the totality of the circumstances, plausibly contributed to a hostile educational environment based on a protected characteristic.

That inquiry was particularly important here because the relationship between contemporary eliminationist antizionism and antisemitism is not a fringe proposition. A substantial body of scholarship, historical analysis, and governmental guidance recognizes that opposition to the existence of the Jewish state can function as a manifestation of antisemitism. The point is not that every criticism of Israel is antisemitic, or that courts must adopt one side of a political debate. The point is that allegations of antisemitic harassment cannot be rejected at the threshold merely because the alleged harassers may claim a different understanding of their conduct.

The long-running debate over the relationship between antizionism and antisemitism has produced extensive scholarly analysis. As journalist Brendan O'Neill observes, following the October 7 attacks and the resulting wave of anti-Israel demonstrations, "the thinness of the line between so-called antizionism and anti-Semitism had never been more apparent." (O'Neill, *After the Pogrom*, 120). French historian Jacques Ehrenfreund similarly concludes that "the line between antizionism and antisemitism has disappeared completely." (Ehrenfreund, October 7). Sociologist Eva Illouz explains that "the claim that anti-Zionism is entirely distinct from antisemitism is cognitively implausible and morally fraudulent . . . antisemitism gives anti-Zionism its

fuel and passion, its semantics and archetypes.” (Illouz, anti-Zionism). And philosopher Bruno Karsenti observes that acceptance of the “intrinsic illegitimacy of Zionism” permits positions that are “clearly antisemitic, to spread and renew themselves,” making contemporary anti-Zionism “now the channel” of antisemitism. (Karsenti, Student Mobilization).

Legal scholar Tal Fortgang describes the result as “endless, pedantic, circular discussions about where exactly to draw the line between anti-Semitism and anti-Zionism.” (Fortgang, Jewish Civil Rights). Anthony Julius similarly concludes that, with respect to antizionism “in its present, dominant form,” the distinction has lost practical force: “They are now routes to the same lethal outcome. We can term the hatred and the malice, the threats and the violence, ‘antisemitism,’ or we can term it the current version of ‘antizionism’ (‘today’s antizionism’). It doesn’t matter.” (Julius, Antisemitism, 135).

This scholarship reflects a broad consensus among those who recognize the legitimacy of Jewish self-determination that contemporary eliminationist antizionism has increasingly become indistinguishable from antisemitism, particularly in the aftermath of October 7.

The First Circuit effectively allowed disagreement itself to become dispositive. But Title VI does not require unanimity before courts may distinguish protected expression from discriminatory harassment, and to determine whether the facts alleged, viewed in context, plausibly state a claim under the governing legal standard.

The question presented is not whether this Court should declare antizionism categorically antisemitic, nor whether “strident criticism” of Israel is protected speech. (Pet. App. 27a, 29a, 30a). The question is whether allegations that eliminationist antizionist rhetoric and conduct targeted Jewish and Israeli students because of their shared ancestry and identity were entitled to the ordinary contextual analysis required under Title VI.

This is also consistent with governmental guidance that the First Circuit discounted. Executive Order No. 13,899, directs federal agencies to consider the IHRA Definition, which recognizes that antisemitism may include “[d]enying the Jewish people their right to self-determination. . . .” The First Circuit treated such guidance as legally irrelevant (Pet. App. 24a-25a), but more fundamentally failed to recognize what it confirms: that the relationship between eliminationist antizionism and antisemitism presents a recognized framework for evaluating alleged discrimination—not a controversy whose existence precludes evaluation.³

3. Like other antizionist writers, Holocaust historian Omer Bartov, relied upon by the First Circuit as support in its “no consensus” analysis (Pet. App. 29a), dismisses the possibility either slogan has any aggressive force. “From the river to the sea” he reminds us “goes back to revisionist Zionism. To call that anti-Semitic is ridiculous—like denouncing the dismantling of colonialism as racist. And ‘intifada’ simply means ‘shaking off’ the occupation.” (Bartov Interview). The claim that “intifada” carries no implications beyond its linguistic root is irresponsible. It is the name given to two historical events, the second featuring suicide bombings used to terrorize and destroy lives. At a minimum, a question for this Court is whether the existence of views such as those expressed by Prof. Bartov, contradicting competing scholarship and, moreover, the actual experiences alleged by plaintiffs, disables the Title VI analysis, as the First Circuit essentially held.

By making the absence of consensus dispositive, the First Circuit displaced the inquiry Title VI requires. It transformed disagreement over meaning into a barrier to considering meaning at all.

III. The First Circuit’s Classification of Plaintiffs’ Allegations as Mere Political Speech by Declining to Analyze the Provenance and Impact of the Slogans and Demonstrations Under Title VI Warrants Review by this Court

At MIT and throughout the West, from October 7 on, anti-Israel groups and later the 2024 encampments made much of their public impact through group chanted slogans and antizionist signage. Those were supplemented with actions that included demonstrations blocking access to campus passageways and, on some campuses both here and abroad, with building occupations and property destruction.

At the outset, the question is not whether any slogan is unlawful *per se* or rendered meaningless because it may be subject to competing interpretations. The question is whether the complaint could be properly dismissed without analyzing these slogans considering their provenance and alleged impact on plaintiffs.

Thus, although the First Circuit (Pet. App. 22A, n.12) “assume[d] that antisemitic harassment constitutes actionable racial harassment under Title VI,” its consensus requirement, coupled with the court’s focus on discerning antisemitic intent, disabled it from considering the allegedly antisemitic underpinnings of the demonstrations. The focus on unobtainable consensus and reading the

minds of protestors neutered the court's assumption. In effect, it propelled the court to the conclusion that the complaint was predicated on political speech protected under the First Amendment, irrespective of the complaint's allegations of antizionism constituting the very antisemitic harassment the court otherwise recognized to be actionable under Title VI.

From The River to the Sea

At MIT, the mother of all eliminationist antizionist slogans, "From the river to the sea Palestine will be free!" supplied the omnipresent motto for post-October 7 organizing and for the spring 2024 encampment. (AC 157 and n.96, 237, 317). For many of the demonstrators, the violent details of the October 7 massacre were displaced by this celebratory chant. (Nelson, *College Zionists* 65-77). The abstract, pseudo-idealized goal of erasing the Jewish state absorbs the gruesome particulars of actually doing so. But the more explicitly violent "Intifada revolution!" outburst on MIT's campus, joined with the "river to the sea" incantation (AC 157 and n. 97, 186), was reasonably interpreted as endorsement of Hamas's barbarism and a call for its adoption against Jews everywhere.

Indeed, the omnipresent slogan "From the River to the Sea, Palestine Will Be Free," whatever purported ambiguities, has always meant eliminating the Jewish state, which exists in the land between the Jordan River and the Mediterranean Sea, and the right of its citizens to self-determination. Moreover, the slogan acquired intentional murderous and genocidal force with the Hamas massacre.

Several of the other post-October 7 antizionist campus slogans, like “resistance is justified” (AC 174, 187) (which embraces Hamas’ murderous assault as justified resistance), or “glory to our martyrs” (Sheffi, Unsafe at MIT, 180) carry genocidal freight as well. If the need for universities to respond to explicit calls for genocide is hypothetical, the need to respond to implicit calls for genocide is not. Like much else that changed with the Hamas pogrom, the impact of anti-Israel rhetoric has been dramatically transformed. (Nelson, *College Zionists*, 55-119).

Those who long insisted “river to the sea” has no eliminationist implications, were more challenged after Hamas launched the genocidal pogrom that was intended to reach from the river to the sea. Michigan Congresswoman Rashida Tlaib claims the slogan is a call for peace and coexistence. (Nelson, *College Zionists*, 67). Whatever her motivation, a lone speaker in any case cannot successfully assert an alternative meaning for a slogan chanted by thousands of others. The step from self-deception about a slogan to self-deception about Hamas is not substantial. As Jonathan Chait writes about another omnipresent slogan, “Globalize the Intifada,” “the ambiguity of the slogan is not a point in its defense but a point against it. The dual meanings allow the movement to contain both peaceful and militant wings, without the former having to take responsibility for the latter.” (Chait, *Dangerous Slogan*). One can posture, as then NYC mayoral candidate Zohran Mamdani did, claiming “Globalize the Intifada” refers to the “desire for equality and equal rights” (Arkin, NYC), while knowing your radical allies will hear it as a dog whistle for a global murder spree, as demonstrated by

the December 2025 slaughter of Jews on Australia's Bondi Beach during Chanukah. (Nelson, College Zionists, 67-69).

Speaking from Qatar, former chair of Hamas's politburo Khaled Mashal explained the meaning of the "river to the sea" slogan in a January 2024 interview with Kuwaiti podcaster Amar Taki. (JT News, Hamas). "From the river to the sea," a slogan from Hamas's 1988 charter, is an explicit call for Hamas dominance throughout, from east to west and north to south, "Hanikra to Eilat." Any less totalizing reference, he adds, is merely a temporary political deception. If there was any ambiguity as to the true meaning of the River to the Sea chant, it was removed by Mashal with his statement. The overt aim in the Hamas charter is genocidal, calling for murdering Jews worldwide. It is at best naive for a college student to claim the slogan can usher in a utopia of peaceful coexistence.

However one may seek to neutralize chants such as "globalize the intifada" or "There is only one solution, intifada revolution!" (AC Ex. A, at 12), the term "intifada" carries widely recognized associations with the second intifada, during which suicide bombings killed 735 Israelis and injured 4,554 others. (Israel Ministry of Foreign Affairs).

The plausibility of the complaint's allegations regarding the effect of that rhetoric on Jewish students is reinforced by MIT Professor Sheffi's contemporaneous account of the campus atmosphere. As he observed, "To the students listening from Hillel, that word—*intifada*—landed like a fist. The term evoked suicide bombings, charred buses, bodies burnt and torn by shrapnel, and blood-soaked hands raised in triumph." (Unsafe at MIT, at

40). Professor Sheffi describes a campus climate in which many Jewish students perceived a hostile educational environment. (*Id.* at 80–81). The mere existence of competing explanations for the protestors’ narrative should not, at the pleading stage, displace the inquiry required by Title VI into whether the alleged conduct, viewed in its full context and cumulative effect, plausibly created that hostile educational environment.

Despite having eschewed consideration of any of the chants and slogans within the context of Hamas’ commitment to deadly intifada against Jews,⁴ the First Circuit nonetheless concluded plaintiffs failed to “allege facts plausibly showing that the protestors as a group shared plaintiffs’ view that anti-Zionism was inherently antisemitic.” (Pet. App. 28a; *see also* 27a). This conclusion was essentially pre-ordained. Despite numerous allegations of the adverse educational and psychological impacts of the anti-Israel campus mayhem (*e.g.*, AC 350-365), the court never permitted plaintiffs to demonstrate that the challenged behaviors, in fact, represent antisemitic harassment, creating the hostile environment actionable under Title VI. For the court, once it determined a lack of evidence of discriminatory intent and a lack of scholarly and communal consensus, the inquiry was at an end. This hands-off approach to discerning actionable claims of discrimination under

4. Hamas’s October 7 pogrom itself made its unbridled hatred of Jews the basis of its murderous hostility to the Jewish state and to Jews everywhere. Hamas is theologically opposed to a Jewish state and to the presence of Jews anywhere on what it regards as Islamic land. Its original charter explicitly calls for the murder of Jews qua Jews. (Herf, *Why They Fight*, 203-10).

Title VI threatens the statute's utility and warrants this Court's review.

IV. The First Circuit's Focus on the Intent of the MIT Demonstrators' Slogans, Manifestos, and Chants, Rather Than Recognizing Their Effect on Jewish Community Members, Warrants Review by this Court

The First Circuit upheld dismissal by assuming the challenged conduct at MIT constituted protected political expression. The court, finding no consensus on whether antizionism can constitute antisemitism and insufficient evidence of antisemitic intent, defaulted to the First Amendment rather than permitting plaintiffs to develop their claims that they experienced antisemitic harassment in violation of Title VI.

Few observers of the antizionist demonstrations at MIT would imagine they were likely to influence Israeli military or political policy. As plaintiffs allege, that impact was felt by Jewish students, faculty and staff at MIT, the overwhelming majority of whom are Zionists. The First Circuit, however, imposed a burden on *plaintiffs* to establish the demonstrators' subjective intent, which is notoriously difficult to discern and, in any event not legally required as a pleading matter. (*See* Pet. 15-22). Yet, citing an absence of "evidence" of antisemitic intent, and discounting the connection between antizionism and antisemitism explicated by Zionist scholars and commentators, the First Circuit assumed the local demonstrators were engaged in protected political expression, however strident it may have been. Plaintiffs' allegations that they and MIT's broader Jewish

community experienced a hostile environment were left untested.

As alleged in the complaint, slogans such as “Intifada revolution” and the functional equivalent may be expressed by some demonstrators as rhetorical or hyperbolic, but for Jewish students who understand commitment to Israel as part of their identity, and what calls for an Intifada actually means to the targeted students (e.g., Pet. 4, 9, 14, 15-16), the demonstrations go beyond political expression and plausibly constitute antisemitic harassment actionable under Title VI.

The House Antisemitism Report (46) offers a definitive statement regarding the impact on students of the “river to the sea” chant, in this case delivered to Harvard’s then-president Claudine Gay:

[Rabbi David] Wolpe, one of the most prominent members of Gay’s eventual Antisemitism Advisory Group, told Gay that the phrase “asserts that Israeli Jews will be removed from the entire tract of land that is Eretz Yisrael. It’s intended as a threat and implies that Jews don’t have any intrinsic right to be there.” He further explained that “it is not a call for a two state solution; it’s a call for a final solution” and that “the language word for word might not seem anti-Jewish, it’s intended to frighten, marginalize, and spell out a Judenrein future. That’s why we believe it’s antisemitic.”⁵

5. *See also*, Smith, Shibboleth.

Whatever the actual intent of the protestors—a matter upon which one can only speculate—the psychological and educational impacts on the Jewish targets is a threshold inquiry for courts construing Title VI complaints. At issue was not simply the constitutional need to tolerate insulting, and even outrageous, speech, but rather whether Jewish community members are legally helpless in the midst of a threat environment they reasonably perceived, as alleged, that criminalized their identities and plausibly put them in fear of their physical safety—but without any recourse to Title VI. (*E.g.*, AC 350-365).

Research shows this impact is especially acute for undergraduate students, many of whom are at psychologically vulnerable stage of identity formation. (Nelson, *et al.*, Impact of Antisemitism, 35-52). Beyond the verbal assaults, the AC delineates numerous instances of physical intimidation and exclusion from campus locations (AC 162, 172-179, 223-24, 232, 242).

Data underscore the centrality of Israel to Jewish identity for American Jews. The percentages vary over time, but polls show that a substantial majority of American Jews support Israel's right to exist as a Jewish democratic state. (JFNA Poll). While the First Circuit observed that Zionism does not necessarily reflect the views of all Jewish people, it erred in treating the absence of unanimity as a reason to foreclose Title VI analysis altogether. The relevant question at the pleading stage is not whether all Jews identify as Zionists or experience calls for the dissolution of Israel as antisemitic, but whether the complaint plausibly alleged that plaintiffs did.

This Court should consider whether lower courts must evaluate the hostile environment allegations in the broader context of the national and transnational political movement from which they arose. The world-wide surge of eliminationist antizionism from 2023-2025 shaped the context in which the MIT demonstrations occurred and in which plaintiffs experienced them. Nonetheless, the court required plaintiffs to demonstrate that local protestors’ “strident criticism of Israel were driven by antisemitism” (Pet. App. 27a), rather than assessing whether the conduct, properly understood from plaintiffs’ perspective, plausibly contributed to a hostile antisemitic environment, as plaintiffs alleged they experienced. (*E.g.*, Pet. 8-9).

This assumption—that the challenged conduct was insulated from the broader national and international surge in antisemitism following October 7—buttressed the First Circuit’s conclusion, without any factual development, “the disruptive political protests sympathetic to Palestinian views of the conflict with Israel were not, by and large, antisemitic” (Pet. App. 34a), thereby improperly resolving the complaint’s well-pled factual allegations to the contrary.

This premature fact-finding approach, in turn, led to the court’s effort to determine whether individual plaintiffs were physically present at demonstrations to assess whether they were adversely affected, and concluding the complaint did not so allege. (Pet. App. 5a). In so doing, the court allowed plaintiffs no opportunity to develop how once having been exposed directly or indirectly to hostile demonstrations they might reasonably avoid future physical encounters—yet still experience the effects of a hostile environment through pervasive

visibility, campus communications, social media and news coverage. (*Cf.* Pet. App. at 8a-10a).

While the First Circuit stated, as it must, it was “drawing all reasonable factual inferences in plaintiffs’ favor” (Pet. App. 2a), the series of conceptual and factual assumptions described above constrained what the court was willing to recognize as plausible at all. Plaintiffs did not demand that MIT “put an end to the protestors’ speech.” (Pet. App. 18a). Rather, they alleged that MIT failed to take the antisemitic character and discriminatory effects of that conduct—as plausibly alleged in the complaint—seriously enough to address its impact on Jewish students and faculty. Whether MIT’s response amounted to indifference cannot be resolved properly by assuming away the harassment alleged. This Court’s review is essential to ensure that Title VI claims are not dismissed at the threshold based on analytic shortcuts and assumptions that displace the statute’s required inquiry.

V. Even Assuming the Challenged Expression Constituted Protected Political Speech, That Assumption Did Not Resolve the Title VI Inquiry, Warranting Review by this Court

The First Circuit’s analysis rests on the premise that the challenged slogans, demonstrations, and advocacy constituted protected political expression. Even accepting that premise, however, dismissal of plaintiffs’ Title VI claim did not follow. The constitutional status of the challenged expression did not answer the antecedent statutory questions governing liability under Title VI.

Under this Court’s decision in *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999), a funding recipient violates Title VI’s hostile-environment framework only where it has actual knowledge of harassment that is so severe, pervasive, and objectively offensive that it effectively deprives students of equal access to educational opportunities and responds with deliberate indifference. The inquiry therefore focuses on the objective effect of the alleged conduct viewed in its totality and the adequacy of the institution’s response—not simply the constitutional status of individual acts of expression considered in isolation.

The First Circuit inverted that analysis. Rather than first determining whether plaintiffs plausibly alleged actionable harassment under Title VI and then considering whether MIT responded with deliberate indifference, the court effectively treated the presumed political nature of the challenged expression as dispositive effectively ending the inquiry. In doing so, it bypassed both the hostile-environment analysis required by *Davis* and the separate deliberate-indifference inquiry that follows. *Amicus* respectfully refers the Court to the Petition and the briefs of other *amici* for a full explication of this argument.

CONCLUSION

The Petition for Certiorari Should be granted.

Respectfully submitted,

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