

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**

REPLY BRIEF FOR PETITIONERS

JASON B. TORCHINSKY
ANDREAS N. EPISKOPOS
HOLTZMAN VOGEL
 BARAN TORCHINSKY
 & JOSEFIAK PLLC
2300 N St. NW
Suite 643
Washington, DC 20037
SUSAN L. GREENE
SARITHA KOMATIREDDY
AKIVA SHAPIRO
JONATHAN JAROSLAWICZ
JONATHAN FRIEDEN
HOLTZMAN VOGEL
 BARAN TORCHINSKY
 & JOSEFIAK PLLC
1325 Avenue of the Americas
Suite 2843
New York, NY 10019
GLENN A. DANAS
CLARKSON LAW FIRM, P.C.
22525 Pacific Coast Hwy
Malibu, CA 90265

CHRISTOPHER MILLS
 Counsel of Record
SPERO LAW LLC
557 East Bay St. #22251
Charleston, SC 29413
(843) 606-0640
cmills@spero.law
MARK I. PINKERT
HOLTZMAN VOGEL
 BARAN TORCHINSKY
 & JOSEFIAK PLLC
2333 Ponce de Leon Blvd.
Suite 600
Coral Gables, FL 33134
CARLY F. GAMMILL
STANDWITHUS SAIDOFF LAW
P.O. Box 341069
Los Angeles, CA 90034

Counsel for Petitioners

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
INTRODUCTION.....	1
I. This Court’s Resolution Would Not Be Advisory	2
II. The First Question Presented Merits Review	5
A. The First Circuit Grounded Its Hostile Environment Holding on the Subjective Intent of the Harassers	5
B. The Circuits Are Deeply Split on the Intent Element	6
III. The Second Question Presented Merits Review	8
A. The First Circuit Decided the First Amendment Question	8
B. Petitioners Did Not Waive the Question Presented	9
C. The First Amendment Does Not Insulate Harassing Speech From Title VI Consideration.....	10
D. The First Circuit Created a Split.....	11

TABLE OF AUTHORITIES

CASES	Page(s)
<i>Alexander v. Sandoval</i> , 532 U.S. 275 (2001).....	8
<i>Bryant v. Indep. Sch. Dist.</i> , 334 F.3d 928 (10th Cir. 2003).....	11
<i>Canel v. Art Inst. of Chi.</i> , 824 F. Supp. 3d 686 (N.D. Ill. 2026).....	1
<i>Caver v. City of Trenton</i> , 420 F.3d 243 (3d Cir. 2005)	6
<i>Chatrie v. United States</i> , 146 S. Ct. 2193 (2026)	3
<i>Davis v. Monroe Cnty. Bd. of Educ.</i> , 526 U.S. 629 (1999).....	3, 8–11
<i>Doe v. Claiborne Cnty.</i> , 103 F.3d 495 (6th Cir. 1996).....	6
<i>Doe v. Nw. Univ.</i> , No. 24-cv-04831, 2026 WL 607423 (N.D. Ill. Mar. 3, 2026)	1
<i>Dunn v. Wash. Cnty. Hosp.</i> , 429 F.3d 689 (7th Cir. 2005).....	7
<i>Ellison v. Brady</i> , 924 F.2d 872 (9th Cir. 1991).....	7
<i>Fennell v. Marion Indep. Sch. Dist.</i> , 804 F.3d 398 (5th Cir. 2015).....	11
<i>Gartenberg v. Cooper Union</i> , 765 F. Supp. 3d 245 (S.D.N.Y. 2025).....	10
<i>Grace v. Bd. of Trs.</i> , 85 F.4th 1 (1st Cir. 2023).....	2

TABLE OF AUTHORITIES—Continued

	Page(s)
<i>Knabe v. Boury Corp.</i> , 114 F.3d 407 (3d Cir. 1997)	3
<i>Lounds v. Lincare, Inc.</i> , 812 F.3d 1208 (10th Cir. 2015).....	6
<i>Margolin v. Nat’l Ass’n of Immigr. Judges</i> , 146 S. Ct. 1285 (2026).....	10
<i>Matal v. Tam</i> , 582 U.S. 218 (2017).....	12
<i>Menzia v. Austin Indep. Sch. Dist.</i> , 47 F.4th 354 (5th Cir. 2022)	3, 4
<i>Newton v. Dep’t of Air Force</i> , 85 F.3d 595 (Fed. Cir. 1996)	6
<i>Segev v. Harvard</i> , No. 25-cv-12020, Dkt. 35 (D. Mass. Dec. 4, 2025)	1
<i>Sewell v. Monroe City Sch. Bd.</i> , 974 F.3d 577 (5th Cir. 2020).....	6
<i>Students for Fair Admissions, Inc. v.</i> <i>President & Fellows of Harvard Coll.</i> , 600 U.S. 181 (2023).....	6
<i>Zeno v. Pine Plains Cent. Sch. Dist.</i> , 702 F.3d 655 (2d Cir. 2012)	3, 11

CONSTITUTION

U.S. Const. amend. I	1, 8–12
----------------------------	---------

TABLE OF AUTHORITIES—Continued

OTHER AUTHORITIES	Page(s)
<i>Dear Colleague Letter: Protecting Students from Discrimination, such as Harassment, Based on Race, Color, or National Origin, Including Shared Ancestry or Ethnic Characteristics</i> , U.S. DEPT OF EDUC. (May 7, 2024).....	11

INTRODUCTION

The First Circuit’s decision denies Jewish students a Title VI remedy by requiring them to allege their harassers’ subjective intent while categorically excluding the antisemitic words and slogans that provide the best evidence of that intent. That rule conflicts with this Court’s objective, context-sensitive framework; recasts antisemitic harassment as anodyne political speech; and creates or deepens two circuit splits.

The two questions presented demand urgent resolution—especially given the notable rise in antisemitism on college campuses. *See* Hillel/ADL Br. 2 (noting “a 541% increase in antisemitic campus incidents from 2023 to 2024 alone”). The first asks whether a harasser’s subjective discriminatory intent is an element of a Title VI claim—or whether it is enough that a reasonable student experiences the environment as hostile because of shared ancestry. The second asks whether the First Amendment requires courts to disregard all statements and conduct of an expressive nature when evaluating a hostile environment claim. Both questions recur nationwide and were resolved as matters of law. As *amici* explain, the decision has already been cited to narrow Title VI protections, making review imperative.¹ Brandeis Ctr./AJC Br. 13–14.

MIT tries to evade the questions through mischaracterizations of the facts, holding, and procedural posture. Those efforts are unpersuasive. Eight *amicus*

¹ *See Segev v. Harvard*, No. 25-cv-12020, Dkt. 35 (D. Mass. Dec. 4, 2025); *Doe v. Nw. Univ.*, No. 24-cv-04831, 2026 WL 607423, at *5 (N.D. Ill. Mar. 3, 2026); *Canel v. Art Inst. of Chi.*, 824 F. Supp. 3d 686, 704–07 (N.D. Ill. 2026).

briefs filed by prominent organizations and public officials reaffirm the need for urgent review.

I. This Court’s Resolution Would Not Be Advisory

Though MIT does not question this Court’s jurisdiction, it argues that the First Circuit’s deliberate indifference discussion means the Court’s resolution would be “advisory.” BIO 16. Not so. The court’s conclusion that MIT’s response was not clearly unreasonable depended on its treatment of the alleged harassment. Deliberate indifference turns on the severity and nature of the environment. *See Grace v. Bd. of Trs.*, 85 F.4th 1, 12–14 (1st Cir. 2023). Because the First Circuit misapplied that threshold inquiry, that error infected its deliberate indifference conclusion; vacatur and remand are appropriate.

The First Circuit assessed whether MIT’s response was “clearly unreasonable” only *after* characterizing the protests as largely non-antisemitic political speech insulated from consideration. App. 35a–39a. That premise distorted the inquiry: the court asked whether MIT adequately responded to a political dispute, not to severe antisemitic harassment. The court’s language confirms the interdependence—it acknowledged the “need to keep in mind” “the nature of the activity that plaintiffs say MIT should have eliminated more quickly.” App. 37a. Then, it said that “[e]ven if we accept plaintiffs’ position that some conduct of some protestors was antisemitic,” MIT need not eliminate the protests and “[f]air-minded persons might question whether MIT acted quickly and decisively enough.” App. 37a–38a. Yet it deemed MIT’s response reasonable because it misclassified severe harassment as “political” speech. App. 15a–18a.

This Court’s precedent confirms these inquiries cannot be separated. A response is “clearly unreasonable” only when evaluated “in light of the known circumstances,” including the harassment’s *severity*. *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 648 (1999). Misjudging severity necessarily distorts the response analysis.

Courts applying *Davis* tie the response directly to harassment severity. *See Menzia v. Austin Indep. Sch. Dist.*, 47 F.4th 354, 361 (5th Cir. 2022); *Zeno v. Pine Plains Cent. Sch. Dist.*, 702 F.3d 655, 666–68 (2d Cir. 2012); *Knabe v. Boury Corp.*, 114 F.3d 407, 412–13 (3d Cir. 1997). A response cannot be judged apart from the conduct it addresses.

MIT never explains how the First Circuit could judge whether MIT “act[ed] reasonably” independently of the harassment’s nature when that court expressly “ke[pt] in mind” its cramped view of what “conduct . . . was antisemitic.” App. 37a. The First Circuit held that MIT was not deliberately indifferent because it took “an escalating series of actions aimed at calming the turmoil without violence.” App. 36a. But it never assessed harassment severity—it had already recast it as mere political speech.

Indeed, even the portions MIT relies on say the court merely assumed “a degree and form of antisemitism” that were minimally “actionable” because “some conduct” “was antisemitic.” BIO 16–18 (quoting App. 37a, 39a). So a reasonable probability exists that the First Circuit would “consider anew” MIT’s response should the Court answer the questions presented. *Chatrie v. United States*, 146 S. Ct. 2193, 2204 n.4 (2026).

As alleged, the harassment was severe and pervasive. Protesters called for violence against Jews, chanting “intifada revolution” and “death to Zionism”; shoved a Jewish student and rattled faculty office doors while chanting “you can’t hide”; and maintained a three-week encampment across from MIT Hillel, forcing Jewish students to relocate a Passover seder. App. 4a–5a, 10a, 12a.

Against that backdrop, Petitioners plausibly alleged MIT’s response was “clearly unreasonable.” MIT allowed harassment to persist for seven months, took measures the court acknowledged could have been quicker and more decisive, and cleared the encampment only after Jewish students had been driven from campus spaces. App. 37a. “[A] remedial response that a school district knows at the time of action is ineffective is clearly unreasonable,” and a school may be deliberately indifferent when it fails to take additional reasonable measures after its initial measures fail. *Menzia*, 47 F.4th at 362–64. If this response by MIT is sufficient, institutions can avoid Title VI liability through “minimal, delayed, and ineffective action that creates the appearance of a response while allowing hostile environments . . . to persist.” ACLJ Br. 10.

The deliberate indifference discussion poses no hurdle to review, and MIT’s efforts to insulate the decision fail.

II. The First Question Presented Merits Review

A. The First Circuit Grounded Its Hostile Environment Holding on the Subjective Intent of the Harassers

MIT tries to evade the first question by denying that the First Circuit required allegations of “discriminatory intent or animus” by harassers. BIO 19. But the court held:

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.*

App. 27a (emphases added). That is a legal rule, and the court treated it as dispositive, requiring Petitioners to allege discriminatory animus in their nonparty harassers.

MIT attempts to narrow that holding, arguing that the court considered intent only because it found the conduct not “inherently antisemitic.” BIO 19–21. That distinction fails.

The First Circuit assessed whether the speech and conduct were “inherently antisemitic” precisely to determine whether the protests were “motivated by antisemitism.” App. 27a; *see also* App. 23a. Those are two ways of analyzing the same question. Regardless of sequencing, the court affirmed dismissal because it found no plausible allegation that protesters were subjectively “driven by antisemitism,” making intent dispositive. Whether speech is inherently racist or

racist in context concerns the speaker’s state of mind—the very question the First Circuit demanded Petitioners plead. *See* Bernstein Br. 4.

B. The Circuits Are Deeply Split on the Intent Element

MIT’s attempt to confine the split to Title VII cases fails. Hostile-environment standards apply consistently across Titles VI, VII, and IX. *Doe v. Claiborne Cnty.*, 103 F.3d 495, 515 (6th Cir. 1996); *Sewell v. Monroe City Sch. Bd.*, 974 F.3d 577, 584 n.2 (5th Cir. 2020). MIT concedes the standards under Titles VI and IX align. BIO 22 n.3. These parallel terms should yield a uniform hostile environment rule. *See Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 290 (2023) (Gorsuch, J., concurring). Though MIT lists purported differences between statutes, BIO 24–25, none bears on whether protesters’ subjective intent must be alleged.

MIT also claims the split is illusory. But the First Circuit holds that plaintiffs must show harassers acted with an “antisemitic *motiv[e]*” to create a hostile environment. App. 27a–28a; *see also, e.g., Caver v. City of Trenton*, 420 F.3d 243, 265 (3d Cir. 2005).

Other circuits explicitly reject that requirement, holding that specific discriminatory intent is *not* an element and that the harasser’s intent is “legally immaterial.” *Lounds v. Lincare, Inc.*, 812 F.3d 1208, 1230 (10th Cir. 2015); *see also, e.g., Newton v. Dep’t of Air Force*, 85 F.3d 595, 599 (Fed. Cir. 1996). The rule was outcome-determinative here.

MIT’s proposed “inherently discriminatory” exception does not reconcile those cases. Courts have concluded that even compliments or macaw attacks may support a hostile environment claim when conduct is objec-

tively tied to a protected trait, without proof of harasser animus. *Ellison v. Brady*, 924 F.2d 872, 880 (9th Cir. 1991); *Dunn v. Wash. Cnty. Hosp.*, 429 F.3d 689, 691 (7th Cir. 2005). The cases require causation, not proof of the harasser’s discriminatory animus.

MIT’s framework is also unworkable. Courts cannot determine what is “inherently discriminatory” without context; even swastikas and nooses derive meaning from context. MIT’s approach allows repackaging antisemitic ideology as facially neutral political language. *See* CJLS Br. 19–20. Title VI cannot allow this “intellectual laundering” to erase the context that makes harassment intelligible.

MIT relies chiefly on summary-judgment cases with evidentiary records. *See* BIO 18 n.2, 26–27. This case was dismissed on the pleadings, yet the First Circuit decided whether conduct was antisemitic without drawing reasonable inferences in Petitioners’ favor. *See* Manhattan Inst. Br. 2–7.

These errors are plain in the court’s treatment of the encampment. Petitioners alleged that protesters purposefully chose the area outside Hillel during a Jewish holiday to display racist signs and intimidate students. Am. Compl. ¶ 222; App. 30a. The First Circuit acknowledged that the location “plausibly heightened” the impact on Jewish students, yet required Petitioners to show that protesters *subjectively* selected it because of its proximity to Hillel. App. 30a–31a. At the pleading stage, the court had to draw the reasonable inference that the timing and location were intentional—not demand proof of what was in each protester’s mind. The decision requires impossible direct evidence and substantially narrows Title VI.

MIT's invocation of *Davis* and *Alexander* does not help it. Those cases concern intentional discrimination by the funding recipient. A hostile environment claim based on deliberate indifference concerns the recipient's response to harassment—whether or not third-party harassers subjectively intended to discriminate. MIT conflates institutional intent with the private motives of students who created the environment. *See* Hillel/ADL Br. 7.

Whether harassers' subjective discriminatory intent is an element of a hostile environment claim needs this Court's resolution.

III. The Second Question Presented Merits Review

MIT raises four arguments: (1) the panel did not decide the First Amendment question, (2) Petitioners waived it, (3) the holding was correct, and (4) no circuit split exists. BIO 29–35. None is persuasive.

A. The First Circuit Decided the First Amendment Question

MIT contends the panel reserved whether “racist speech can be punished pursuant to Title VI without violating the First Amendment” and issued only a narrow, fact-bound holding. BIO 29–30. The decision shows otherwise. The panel expressly held that “the First Amendment erects safeguards” limiting Title VI liability and characterized the protests as “classically political speech” entitled to “special protection.” App. 16a, 21a, 31a. Those statements were key to the legal reasoning.

The panel's framework was not *dictum*. It separated protected from unprotected speech and raised “two nettlesome issues” about the First Amendment's limits

on Title VI. App. 21a. That framework supplied the premise for treating the protests as nonactionable and was necessary to the judgment. Even if the panel called the issue an assumption, the rule it used to classify and exclude expression remains a holding.

B. Petitioners Did Not Waive the Question Presented

MIT claims Petitioners reversed position on whether speech protected by the First Amendment can support Title VI liability. BIO 31–33. They did not. Petitioners have consistently argued that Title VI requires a reasonable response to a hostile environment and that obligation remains when harassment includes expression. Pet. Reh’g 12; Ct. App. Reply Br. 21. That position accords with decades of cases recognizing hostile environments based on expressive conduct.

MIT cherry-picks two statements about Petitioners’ position that courts should interpret Title VI *consistently* with the First Amendment. BIO 31. But that merely recognizes that statutory and constitutional law coexist; it does not create a categorical exception for expression-based harassment. App. 21a. *Davis* itself “comports with First Amendment principles” because it imposes a demanding threshold for hostile environment liability. The First Amendment does not require the Court to discard that framework.

MIT’s waiver argument is particularly inapt because the panel’s categorical First Amendment carveout went beyond anything MIT argued below—and therefore beyond anything Petitioners were confronting. The panel fashioned its rule largely on its own; Judge Dunlap confirmed the question was not “well developed in briefing” by either party. App. 66a–67a. Petitioners cannot waive objection to a holding

MIT did not request. *Cf. Margolin v. Nat'l Ass'n of Immigr. Judges*, 146 S. Ct. 1285, 1288–89 (2026) (per curiam) (noting “principle of party presentation”).

C. The First Amendment Does Not Insulate Harassing Speech From Title VI Consideration

MIT and the First Circuit misapply the First Amendment. At the pleading stage, the question is whether the complaint plausibly alleges a hostile environment; the remedy comes later. Title VI does not punish protected expression. It requires a reasonable response to an environment created by the full mix of words and conduct. Expressive speech can be considered as context in the totality-of-the-circumstances analysis without itself becoming punishable. *See Gartenberg v. Cooper Union*, 765 F. Supp. 3d 245, 267 (S.D.N.Y. 2025); *Bernstein Br.* 3–4, 19.

MIT makes little effort to rehabilitate the First Circuit’s rule, though it frames this case as though censorship were the only remedy. BIO 33–34; App. 21a. That is a false dichotomy. Title VI requires a reasonable response, not censorship. MIT could enforce time, place, and manner rules, provide support services, or increase security—without suppressing speech.

Under Title VI, recipients voluntarily accept federal funds subject to the promise not to discriminate. The First Circuit replaced *Davis*’s effects-based inquiry—whether harassment is “so severe, pervasive, and objectively offensive” that it denies equal access, 526 U.S. at 648—with a threshold protected/unprotected-speech classification. That rule would render hostile environment doctrine ineffective by excluding expressive harassment courts have long considered.

MIT’s censorship concern ignores *Davis*. The standard already demands harassment severe, pervasive, and objectively offensive enough to deny equal educational access. That demanding threshold both protects speech and preserves Title VI. A categorical First Amendment carveout does neither.

MIT selectively quotes the Department of Education’s May 2024 Dear Colleague Letter. BIO 30, 35. The Letter makes the point MIT omits: “the fact that harassment may involve conduct that includes speech . . . 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 Race, Color, or National Origin, Including Shared Ancestry or Ethnic Characteristics*, U.S. DEP’T OF EDUC. (May 7, 2024).

D. The First Circuit Created a Split

MIT argues that *Fennell*, *Zeno*, and *Bryant* do not establish a split because they do not mention the First Amendment. BIO 34. But that silence is telling. The Second, Fifth, and Tenth Circuits applied *Davis* without a threshold First Amendment filter, treating racial slurs, Confederate flags, KKK symbols, and nooses as part of the hostile environment totality. See *Bryant v. Indep. Sch. Dist.*, 334 F.3d 928, 931–33 (10th Cir. 2003); *Fennell v. Marion Indep. Sch. Dist.*, 804 F.3d 398, 402–10 (5th Cir. 2015); *Zeno*, 702 F.3d at 666–67. The First Circuit’s carveout for expressive conduct conflicts with that precedent.

MIT says those cases would come out the same under the First Circuit’s rule because they involved “explicitly and unapologetically racist” speech. BIO 34–35. But “[s]peech that demeans on the basis of race, ethnicity, gender, religion, age, disability, or any

other similar ground”—while “hateful”—is generally “protect[ed]” by the First Amendment. *Matal v. Tam*, 582 U.S. 218, 246 (2017) (plurality op.).

MIT’s distinction is also unworkable: How are courts to say—especially at the pleading stage—that a Confederate flag is something “unapologetically racist” rather than “political” speech supporting southern pride? For many Jews and non-Jews alike, meanwhile, calling for “intifada” is “explicitly and unapologetically racist” because it invokes a campaign of suicide bombings, car bombs, and bus attacks against innocent Jewish civilians. CJLS Br. 15–17, 20, 24; ISGAP Br. 18; ACLJ Br. 7–8. MIT cannot impose its preferred meanings on these phrases.

The First Circuit’s “political speech” carveout finds no support in statutory or constitutional text. It is unclear what distinguishes “unapologetic” from apologetic racism. As *amici* explain, the combination of this rule with the novel subjective intent requirement creates a near-total barrier to Title VI claims: Rule 1 requires well-pleaded allegations of the harasser’s discriminatory intent; Rule 2 excludes the harasser’s words from consideration. See Cruz/Scott/NJAC Br. 18–19.

At this stage, the sole question is whether Petitioners plausibly allege severe and pervasive harassment. Calling for a violent uprising against Jews outside Hillel during a Jewish holiday is at least plausible harassment, as much as waving a Confederate flag outside a Black fraternity. Though Petitioners made this point, Pet. 23–30, MIT offers no response. MIT’s misdirection about “a serious chill on campus free speech” is hard to take seriously. It is the Jewish community at MIT whose education was “seriously chilled.” And Petitioners are not calling for

liability based on whether “students experience [political] opinions as discriminatory.” BIO 36. Petitioners seek only what Title VI requires: an educational environment free of objectively severe and pervasive harassment.

The decision below whitewashes anti-Jewish harassment and overrides decades of civil rights precedent. This Court should grant certiorari.

Respectfully submitted,

JASON B. TORCHINSKY
ANDREAS N. EPISKOPOS
HOLTZMAN VOGEL
BARAN TORCHINSKY
& JOSEFIAK PLLC
2300 N St. NW
Suite 643
Washington, DC 20037

SUSAN L. GREENE
SARITHA KOMATIREDDY
AKIVA SHAPIRO
JONATHAN JAROSLAWICZ
JONATHAN FRIEDEN
HOLTZMAN VOGEL
BARAN TORCHINSKY
& JOSEFIAK PLLC
1325 Avenue of the Americas
Suite 2843
New York, NY 10019

GLENN A. DANAS
CLARKSON LAW FIRM, P.C.
22525 Pacific Coast Hwy
Malibu, CA 90265

CHRISTOPHER MILLS
Counsel of Record
SPERO LAW LLC
557 East Bay St. #22251
Charleston, SC 29413
(843) 606-0640
cmills@spero.law

MARK I. PINKERT
HOLTZMAN VOGEL
BARAN TORCHINSKY
& JOSEFIAK PLLC
2333 Ponce de Leon Blvd.
Suite 600
Coral Gables, FL 33134

CARLY F. GAMMILL
STANDWITHUS SAIDOFF LAW
P.O. Box 341069
Los Angeles, CA 90034

Counsel for Petitioners

September 9, 2026