

TESTIMONY OF HON. KENNETH L. MARCUS  
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"CRISIS ON CAMPUS: ANTISEMITISM, RADICAL FACULTY, AND THE FAILURE OF  
UNIVERSITY LEADERSHIP" TESTIMONY  
BEFORE THE UNITED STATES HOUSE COMMITTEE ON WAYS AND MEANS  
JUNE 13, 2024

CHAIRMAN SMITH, RANKING MEMBER NEAL, AND MEMBERS OF THE  
COMMITTEE ON WAYS AND MEANS:

I am honored to appear before you today at this hearing on “Crisis on Campus: Antisemitism, Radical Faculty, and the Failure of University Leadership.”<sup>1</sup> My name is Kenneth L. Marcus. I am the Chairman of the Louis D. Brandeis Center for Human Rights Under Law, which I founded to advance the civil and human rights of the Jewish people and promote justice for all. Our primary focus is anti-Semitism on and off college campuses. Additionally, I am a former Assistant U.S. Secretary of Education for Civil Rights, Staff Director of the U.S. Commission on Civil Rights, and General Deputy Assistant Secretary of Housing and Urban Development for Fair Housing and Equal Opportunity.

Over the last decade, the Brandeis Center has tracked anti-Semitic incidents on college campuses, provided legal representation and support to Jewish students, and demanded that university administrators uphold their legal obligation to protect students’ civil rights. Jewish students are entitled to the same rights and protections as their classmates. What we have witnessed over the last eight months has been heinous. Jewish students have been physically assaulted, forced to hide in their dorms, and forced to leave campus altogether for their own safety. Based on the weak response from university administrators, these students have reason to doubt that they will be protected while on campus.

The national breadth, violent extremism, and sheer monstrosity of these attacks – which began in response to the Hamas atrocities of October 7, 2023 – suggest that we are dealing with something very different than what we have ever seen before. These are not mere demonstrations

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<sup>1</sup> Brandeis Center Director of Policy Education Emma Enig provided research assistance for this testimony.

of political viewpoints. Nor are they just discrete if unpleasant expressions of hate. This is a national crisis revealing profound rot at the heart of our most prestigious collegiate institutions.

On countless campuses throughout every part of the United States, Jewish students face physical assault, verbal threats, and online attacks. At the University of California Berkeley, for example, a Jewish undergraduate student draped in an Israeli flag was struck in the head with a metal water bottle during a pro-Hamas rally on campus. A Jewish prayer service was disrupted by pro-Palestinian protesters and rallies blocked the main entrance to campus. Students participating in pro-Hamas rallies on campus have spouted hatred and threats against Jews, harassed Jewish students, demanded the dismantling of Israel, honored Hamas “martyrs” who were killed while butchering Jewish civilians, and chanted phrases such as “intifada, intifada,” condoning violence against Jews, and “from the river to the sea, Palestine will be free,” calls for the elimination of Israel and the eradication of the seven million Jews that live there.<sup>2</sup>

At Harvard University, a mob swarmed and surrounded a Jewish student, and began physically accosting him and yelling in his face. The student pleaded with them to stop but the assailants grabbed him, pushed him, and he was physically attacked until he was able to escape. Harvard’s student message boards are filled with vile anti-Semitic slurs, threats and conspiracy theories, including calls for Jews to “cook” and the Harvard Hillel to “burn[ ] in hell.” And it’s not just individual students who post anti-Semitic propaganda, but student groups and faculty members too.<sup>3</sup>

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<sup>2</sup> “Brandeis Center Sues UC Berkeley for ‘Longstanding, Unchecked Spread of ANTI-SEMITISM’ - Brandeis Center.” The Brandeis Center, November 28, 2023. <https://brandeiscenter.com/brandeis-center-sues-uc-berkeley-for-longstanding-unchecked-spread-of-anti-semitism-11-28-23/>.

<sup>3</sup> “Harvard Sued for Tolerating Rampant and Pervasive ANTI-SEMITISM - Brandeis Center.” The Brandeis Center, May 22, 2024. <https://brandeiscenter.com/harvard-sued-for-tolerating-rampant-and-pervasive-anti-semitism/>.

At Ohio State University, a group of Jewish students were violently assaulted and punched in the face, one suffering a broken nose and one a broken jaw, after being identified as Jewish and being called “Zionist kike.” Jewish students seeking signatures for a petition against antisemitism were confronted by a man saying he wanted to “kill Jews,” a Shabbat dinner at the campus Hillel was interrupted by pro-Palestinian protesters, and Jewish students’ doors were vandalized.<sup>4</sup>

These are just a few examples that have precipitated lawsuits and complaints filed with the Department of Education’s Office for Civil Rights (OCR), but they share a common problem: student misbehavior and feckless administrator responses. Administrators have the duty to protect their Jewish students under Title VI, and failure to do so may result in loss of federal funding. Despite the seriousness of this penalty, many universities seem unabashed. This may be attributed to administrators’ inability to identify anti-Semitism or properly handle internal complaints but is also likely a result of OCR’s slowness when it comes to resolving complaints.

The current crisis may be understood as a perfect storm of student radicalism, professorial extremism, academic politicization, foreign funding, and administrative neglect. Many university presidents have lacked the moral clarity to promptly *condemn* these incidents, but the fact is that administrations have effectively *created* the conditions in which they have been unavoidable. Students were specifically admitted, in some cases, based on their desire to engage in “social justice” protest activities, rather than on their academic merit.<sup>5</sup> They are

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<sup>4</sup> “StandWithUs, ADL & Brandeis Center File Title VI Complaint Against Ohio State, Alleging Pervasive Antisemitic Climate for Jewish Students.” The Brandeis Center, April 9, 2024. <https://brandeiscenter.com/wp-content/uploads/2024/01/American-University-Title-VI-Complaint.pdf>.

<sup>5</sup> Gecker, Jocelyn. “College Protesters Want ‘amnesty.’ at Stake: Tuition, Legal Charges, Grades and Graduation.” AP News, April 29, 2024. <https://apnews.com/article/student-protest-gaza-war-arrest-amnesty-ae235703d6a9b99114078fca13a530a0>].

encouraged by radical faculty who profess to be “exhilarated” by Hamas’s atrocities against the Jewish people.<sup>6</sup> On the morning of October 7, an Assistant Professor at Albany Law School tweeted “Long live the Palestinian resistance & people of Gaza ... The Palestinians are a beacon for us all.” That same morning, a Yale University professor of American Studies, Ethnicity, Race, and Migration Studies, and Religious Studies tweeted “Israel is a murderous, genocidal settler state and Palestinians have every right to resist through armed struggle, solidarity #FreePalestine.”<sup>7</sup> An assistant professor at the University of California, Davis encouraged violence against “Zionist journalists,” tweeting “they have houses [with] addresses, kids in school ... they can hear their bosses, but they should fear us more” followed by emojis of a knife, axe, and drops of blood.<sup>8</sup>

These professors are often employed within departments and programs that are avowedly political, focused less on disseminating knowledge than on resisting mainstream institutions. Even university-based Diversity, Equity, and Inclusion (DEI) programs, which should ameliorate these problems, seem instead to be worsening them. They often ignore anti-Semitism altogether or, worse, subject Jewish students or faculty to anti-Semitic and anti-Zionist stereotypes. The reason that universities find it so hard to condemn anti-Semitic incidents is that, in a deeply important sense, they have created them.

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<sup>6</sup> Rubinson, Sofia, Tamara Kamis, and Meghna Maharishi. “Cornell Professor ‘Exhilarated’ by Hamas’s Attack Defends Remark - the Cornell Daily Sun.” The Cornell Daily Sun, October 18, 2023. <https://cornellsun.com/2023/10/16/cornell-professor-exhilarated-by-hamass-attack-defends-remark/>.

<sup>7</sup> Ben Raab, Kaitlyn Pohly. “Petition to Oust Pro-Palestine Professor for ‘promoting Lies and Violence’ Gains 25,000 Signatures in Just over a Day.” Yale Daily News, October 13, 2023. <https://yaledailynews.com/blog/2023/10/12/petition-to-oust-pro-palestine-professor-for-promoting-lies-and-violence-gains-25000-signatures-in-just-over-a-day/>.

<sup>8</sup> Clerkin, Ben. “US Professor Posts Tweet Threatening Jewish Journalists and Their Children - and Keeps Her Job.” US professor posts tweet threatening Jewish journalists and their children - and keeps her job - The Jewish Chronicle, October 20, 2023. <https://www.thejc.com/news/world/us-professor-posts-tweet-threatening-jewish-journalists-and-their-children-and-keeps-her-job-toxhh9h2>.

While the profound cultural problems in American higher education require profound cultural changes – which can only be achieved with the support of university trustees or state legislators – there are steps that can be taken now to assist Jewish students and help shore up the integrity of higher education in America. At a minimum, as we approach the new school year, it is imperative that the executive and legislative branches address these issues.

**Passage of the Antisemitism Awareness Act:** The House recently passed the Antisemitism Awareness Act, which would require the Department of Education to use the gold-standard International Holocaust Remembrance Alliance’s (IHRA) working definition of anti-Semitism and its contemporary examples. This was a huge step in ensuring that OCR has the tools necessary to appropriately recognize anti-Semitism when evaluating complaints. I hope the Senate will follow suit.

**Retaliation against Jewish students:** One of our biggest concerns for the upcoming school year is the alarming increase in retaliation against Jewish students. In some cases, those who report anti-Semitic incidents have been met with retaliatory complaints or counter-complaints. Students should be encouraged to report their abuse without fear of reprisal. OCR had the opportunity to address this problem in a recent case but failed to do so. Retaliatory complaints undermine the credibility of OCR’s complaint-resolution policies, and those of its recipients, and have the potential to drain the Department’s resources and effectiveness. The Department of Education should take immediate steps to address this issue when evaluating complaints and provide school administrators with the tools and information necessary to discern and prevent retaliatory complaints within their internal grievance processes. This should be a priority as the Department and its recipients prepare for students’ return to school.

**Unlawful dismissal of complaints by OCR:** We are also concerned about OCR’s unlawful dismissal of complaints alleging anti-Semitism. Earlier this year, OCR dismissed a complaint against the University of Pennsylvania, citing a lawsuit containing the same allegations filed in federal court.<sup>9</sup> Under Section 110(h) of OCR’s Case Processing Manual, OCR has the right to close or dismiss an allegation “where a class action with the same allegation(s) has been filed against the same recipient with state or federal court and the relief sought is the same as would be obtained if OCR were to find a violation regarding the allegation(s).” The Department has been unlawfully using this provision as a pretext to dismiss certain cases even in the absence of class action litigation. Dismissing these cases prematurely denies students the opportunity to have their matters reviewed by the Department of Education and to obtain the resolutions that their claims deserve. The recently introduced Civil Rights Protection Act of 2024 may address this issue, stating that OCR shall “not close or dismiss any complaint regarding discrimination on the basis of race, color, or national origin in violation of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) due to the filing of a complaint involving the same allegations against the same recipients by an individual other than the complainant with another Federal, State, or local agency, a court, or the recipient, unless [OCR] determines that such other individual’s complaint is part of a class action in which the complainant is part of such class.”<sup>10</sup> The unlawful dismissal of cases is only made worse by the fact that OCR recently eliminated students’ ability to appeal dismissal of their complaints. The

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<sup>9</sup> Snyder, Susan. “Penn’s Antisemitism Case Dismissed by U.S. Education Department, Citing a Lawsuit Containing Same Allegations.” <https://www.inquirer.com>, January 17, 2024. <https://www.inquirer.com/education/university-of-pennsylvania-campus-antisemitism-investigation-20240117.html#:~:text=Penn’s%20antisemitism%20case%20dismissed%20by,if%20a%20violation%20were%20fo und.>

<sup>10</sup> Text - H.R.8648 - 118th Congress (2023-2024): Civil Rights Protection Act of 2024, H.R.8648, 118th Cong. (2024), <https://www.congress.gov/bill/118th-congress/house-bill/8648/text/ih>.

elimination of appeal from the complaint-resolution process undermines confidence and trust in the Department and denies a long-standing history of due process.

**Increase prioritization of shared ancestry cases:** As long as the current crisis persists, OCR should prioritize opening, investigating, and resolving shared ancestry cases. The department must make these cases a priority and increase the timeliness of their handling of these cases, as more complaints with OCR are filed by Jewish students. Unfortunately, we do not expect the anti-Semitic climate on university campuses to subside by the next school year. Therefore, OCR must address its growing backlog of anti-Semitism cases while the crisis persists.

**Nationwide compliance initiatives:** There is no need for the Department of Education to wait for complaints to come in. The Secretary of Education has the authority to commence self-directed investigations and proactive compliance reviews. In the last eight months, it has become clear to (nearly) all that anti-Semitism poses a systemic threat to American campuses. University administrators need not wait for more incidents to inevitably occur. Instead, administrators should ensure that they are following federal and state law. The Department of Education has done this previously, probing schools on their handling of sexual violence in K-12 public schools and probing schools on inappropriate use of restraint and seclusion to protect children with disabilities.<sup>11</sup>

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<sup>11</sup>Meckler, Laura. "Education Department Vows Probes of How Schools Handle Sexual Violence - the Washington Post." The Washington Post, February 26, 2020. [https://www.washingtonpost.com/local/education/education-department-vows-probes-of-how-schools-handle-sexual-violence/2020/02/26/662f209c-58be-11ea-9000-f3cffee23036\\_story.html](https://www.washingtonpost.com/local/education/education-department-vows-probes-of-how-schools-handle-sexual-violence/2020/02/26/662f209c-58be-11ea-9000-f3cffee23036_story.html); Meckler, Laura. "Betsy DeVos Takes Aim at Improper Restraint of Students with Disabilities." The Washington Post, January 17, 2019. [https://www.washingtonpost.com/local/education/betsy-devos-takes-aim-at-improper-restraint-of-students-with-disabilities/2019/01/17/d468f50a-1a95-11e9-9ebf-c5fed1b7a081\\_story.html](https://www.washingtonpost.com/local/education/betsy-devos-takes-aim-at-improper-restraint-of-students-with-disabilities/2019/01/17/d468f50a-1a95-11e9-9ebf-c5fed1b7a081_story.html).



**Joint compliance by DOJ and ED:** The Department of Justice (DOJ) and OCR should perform joint anti-Semitism investigations. DOJ and OCR have teamed up to perform joint investigations and compliance reviews in the past. For example, DOJ and OCR performed a joint investigation and compliance review of the University of Montana-Missoula's handling of allegations of sexual assault and harassment.<sup>12</sup> They also performed a joint investigation of the University of California San Diego's compliance after racial discrimination and harassment claims.<sup>13</sup> Joint efforts enhance credibility and allow for resource sharing, potentially expediting the initiative.

**Investigation into material support of terrorism:** Last year, joined by the Anti-Defamation League, we urged university presidents to investigate the activities of Students for Justice in Palestine (SJP) for potential violations of the prohibition against materially supporting a foreign terrorist organization under 18 USC 2339A and B, and its state equivalents.<sup>14</sup> Numerous campus chapters have endorsed the actions of Hamas on October 7 and issued pro-Hamas messaging on campus, calling for the elimination of Israel and promoting violence and terrorism. Shortly after the massacre, SJP issued a "Day of Resistance Toolkit" declaring their affiliation with Hamas. They stated "We as Palestinian students in exile are PART of this movement, not [merely] in solidarity with this movement. This is a moment of mobilization for all Palestinians. We must act as part of this movement. All of our efforts continue the work and

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<sup>12</sup> "Title IX: Sexual Harassment: University of Montana-Missoula (MT): (10126001)." Office for Civil Rights, May 9, 2013. <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/10126001.html>.

<sup>13</sup> "Department of Justice Investigation Into UCSD Concludes." The UCSD Guardian, April 19, 2012. <https://ucsdguardian.org/2012/04/19/departement-of-justice-investigation-into-ucsd-concludes/>.

<sup>14</sup> Cohen, Haley. "ADL, Brandeis Center Send Letter to University Presidents Calling on Them to Investigate SJP's Terrorism Ties." Jewish Insider, October 27, 2023. <https://jewishinsider.com/2023/10/adl-brandeis-center-send-letter-to-university-presidents-calling-them-to-investigate-sjps-terrorism-ties/>.

resistance of Palestinians on the ground.”<sup>15</sup> According to the toolkit, this resistance includes “armed struggle.” Student groups affiliating with a designated terrorist organization and promoting violence on campus should be investigated immediately.

**Remedies short of funding elimination:** While the threat of revoking federal funding from schools that do not comply with Title VI of the Civil Rights Act of 1964 should be sufficient to ensure compliance, it has not been sufficient. Instituting fines or other additional remedies may be necessary.

**Increase transparency in foreign funding:** It is no secret that universities receive large sums of money from foreign governments, but we rarely know what it is used for and what impact it has on the curriculum and campus environment. Universities have an obligation to report donations of \$250,000 or more to the Department of Education, but they sometimes fail to do so. A recent study has shown that since 1981, American universities have accepted over \$13 billion from the governments of Qatar, Saudi Arabia, the United Arab Emirates, and Kuwait.<sup>16</sup> The Department of Education must enforce existing penalties for non-compliance. Additionally, lowering the threshold on mandatory reporting, as well as increasing penalties for noncompliance, would spur greater transparency.

This is a time of crisis for American universities. To say university administrators were ill-prepared to protect their Jewish students after October 7 would be an understatement. The fact is that administrators and faculty spent years creating the conditions under which campus anti-

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<sup>15</sup> Kissel, Adam. “Resistance Toolkits Open SJP Chapters to Felony Charges in Florida.” Minding The Campus, October 25, 2023. <https://www.mindingthecampus.org/2023/10/25/resistance-toolkits-open-sjp-chapters-to-felony-charges-in-florida/>.

<sup>16</sup> Bard, Mitchell G. Arab Funding of American Universities: Donors, Recipients, and Impact, May 2024. <https://www.jewishvirtuallibrary.org/jsource/pub/Arab-Funding-of-American-Universities-2024-for-jvl-Edited-2.pdf>.

Semitism would become not only possible but unavoidable. Violent rallies, disruptive encampments, and punitive faculty members and administrators have created a hostile environment for Jewish students. Retaliatory attacks and counter-complaints against students brave enough to come forward create a climate of fear. A backlog of cases and unlawful dismissals by OCR provides little remedy for those who have suffered. It is therefore imperative that Congress and the Department of Education take action now.