

VIA E-MAIL

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Re: Civil Rights Violations by the University of Pennsylvania

I. Introduction

In recent months, the University of Pennsylvania (Penn), a prestigious Ivy League school, has allowed its campus to become not only a hostile environment for its Jewish students, but a magnet for anti-Semites attending other colleges or just living nearby (the University refers to persons living in the area as the “Penn community”). By sponsoring, hosting, and funding a “Palestine Writes Festival” whose speakers included notorious anti-Semites, and by allowing university departments to publish brochures and fliers advertising the event in Penn’s name, the University effectively took ownership of the Festival and signaled to the Penn community that its campus is the place to go to engage in anti-Semitic rhetoric and activities.

In the days leading up to the September Festival, anti-Semitic graffiti and a Penn student’s violent attack on Penn’s Hillel signaled trouble to come for Jewish students and institutions on campus. The Festival itself, which coincided with the Jewish High Holy Days of Awe, included at least 25 speakers notorious for anti-

Semitic speech and conduct, whose talks—as could be anticipated—featured the anti-Semitic rhetoric for which they are known. Although Penn’s President, Liz Magill, was urged by scores of its students, alumnae, faculty, donors and trustees to take Penn’s name off the Festival and condemn the anti-Semitic nature of the event, including the speakers, President Magill offered only tepid statements of support for Penn’s Jewish community, while justifying the Festival in the name of free speech. President Magill later conceded that her statements were inadequate.

On October 7, less than two weeks after the Festival ended, displays of anti-Semitism exploded on campus after Hamas terrorists advanced on Israel, massacring, torturing, and kidnapping Israeli civilians—including babies, children, and the elderly. The attack horrified the western world and the U.S. government, with President Biden condemning Hamas’ barbarism in no uncertain words. But instead of arresting the spread of anti-Semitism on Penn’s campus, the attacks gave rise to increased hate-mongering on a campus already hostile to its Jewish community.

Evidently emboldened by Penn’s lax attitude toward the Festival’s anti-Semitic display, Penn professors and staff publicly praised Hamas, while registered student groups like Penn Against the Occupation (PAO) organized and led (and continues to lead) day-long student rallies on Penn’s campus in support of Hamas atrocities. Participants at the rallies have included Penn students and the larger “Penn community,” who flock to Penn because they see it as a “safe space” for anti-Semitic expression and conduct.

According to Penn students who witnessed the rallies, speakers and participants chanted statements in support of Hamas’ violence, including:

“There is only one solution: intifada resolution,” a phrase that deliberately echoes Hitler’s “final solution” and calls for deadly violence against Jews in Israel, if not beyond;

“From the river to the sea, Palestine will be free,” a phrase that refers to the Jordan River and the Mediterranean Sea, i.e., the entire State of Israel, which means that Israel should be emptied of Jews and occupied only by Palestinians;

a chant heard alternatively as “We want Jewish genocide” and “We charge you with genocide,” both of which are anti-Semitic. The latter justifies Hamas atrocities on the basis of the spurious claim that Israel has engaged in genocide against Palestinians, whose population has only grown since 1948;

“Go back to Moscow, Brooklyn ... f*cking Berlin where you came from”; students report that Penn Professor Huda Fakhreddine, who was standing nearby, enthusiastically clapped in support of this statement.

Penn students also report that many Penn professors have also made anti-Semitic, pro-Hamas statements in the classroom and on social media. As we discuss below, Penn students report feelings of intense distress and fears for their safety while the rallies continue and while their professors continue to show their support for Hamas.

On November 6, the Penn Hillel rabbi advised the community that “a small number of Penn staff members received vile, disturbing antisemitic emails threatening violence against members of our Jewish community, specifically naming Penn Hillel and Lauder College House. These messages also included hateful language, targeting the personal identities of the recipients. Penn’s Division of Public Safety was immediately notified and responded. Penn Police also notified the FBI of this potential hate crime and a joint investigation is underway.”

While Penn has been responsive to security threats, its leadership has made only vague statements in support of its Jewish students, including in the days following the October 7 massacre. President Magill and Provost Jackson issued a statement on October 15 denouncing Hamas’ acts of terrorism, but neither has condemned the rallies or professors’ anti-Semitic statements, even after acknowledging in the October 15 statement that their condemnation of anti-Semitism at the Festival was inadequate and should have been stronger.

It certainly was inadequate. Penn’s production of an anti-Semitic conference on its campus has led to escalating hostility against Jewish students, many of whom are now afraid to go to class or be on campus during the continuing day-long rallies in support of Hamas terrorists. Penn’s nurturing of a hostile environment toward Jewish students is a patent violation of Title VI—indeed it is the opposite of what Title VI requires.

For the foregoing reasons, and as detailed more fully in this Complaint, the Louis D. Brandeis Center for Human Rights Under Law (the “Brandeis Center” or “LDB”) requests that the Office for Civil Rights (“OCR”) initiate an investigation of UPenn,

a recipient of federal financial assistance,¹ for violations of Title VI and the statute's implementing regulations.²

II. Zionism is an integral part of Jewish ethnic and ancestral identity for many Jewish students, including at Penn.

For many Jews, including Jewish students at Penn, identifying with and expressing support for the Jewish homeland is a sincere and deeply felt expression of their Jewish ethnic and ancestral identity.³ Anti-Semitism directed at Jewish ethnicity is often part of a concerted strategy to marginalize Jewish students on campus and make them feel unwelcome.⁴

Those who are hostile to the modern State of Israel frequently seek to deny or **erase** this ancestral connection of the Jewish people to the Land of Israel. This was a key strategy of the Festival, which sought to erase the history of the Jewish people in the land of Israel, where they have existed for 3000 years.

For example, the Palestine Writes website claims that "Palestinians" are *the* indigenous people of the land that is now Israel, ignoring that the name "Palestine" did not refer to a state or even a particular people until the 1940's, when the PLO claimed the name for itself.⁵

¹ See, e.g., SUNY New Paltz, HEERF Student Aid Funds, <https://www.newpaltz.edu/heerf/>; SUNY New Paltz, Student Financial Services, Undergraduate Federal Student Loans, <https://www.newpaltz.edu/financialaid/loansug.html>; see also "Multi-million dollar statewide funding for SUNY campus childcare centers," (Mar. 11, 2022), <https://wrrv.com/suny-campus-childcare-funding/>

² See 42 U.S.C. § 2000d *et seq.*; see also 34 CFR §§ 100.3(b)(1)(i), (iv), (vi).

³ Alyza D. Lewin, *Zionism: The Integral Component of Jewish Identity that Jews are Historically Pressured to Shed*, 26 ISRAEL AFFAIRS 330 (2020), <https://www.tandfonline.com/doi/abs/10.1080/13537121.2020.1754577>.

⁴ See, generally, U.S. Commission on Civil Rights, Briefing Report: Campus Anti-Semitism (July 2006), p.,3, <https://www.usccr.gov/files/pubs/docs/081506campusantibrief07.pdf>.

⁵ According to Dr. Moshe Dann, a historian and journalist, "Until the State of Israel was established in 1948, references to "Palestinians" meant Jews who lived in Palestine, not Arabs; "Palestinian" meant Jewish," and "Palestinianism and the idea of a Palestinian people and a Palestinian state did not become popular until Yasser Arafat formed the PLO in 1964." See Moshe Dann, "Are Palestinians an indigenous people," Jewish News Syndicate, (Dec. 20, 2021), <https://www.jns.org/are-palestinians-an-indigenous-people/#:~:text=Their%20tribal%2Ffamily%20names%2C%20however,%E2%80%9D%20and%20%E2%80%9Coccupied%E2%80%9D%20it>.

The “history” erases Jews and Christians altogether, asserting that Judaism and Christianity were just an assembly of “folk traditions” common to many peoples. “Indigenous life in Palestine,” the site tells us, “is the product of the blending and evolution of [Christian, Jewish and Muslim] traditions over centuries[.]” Indeed, we are told, these traditions “shared many common rituals, shrines, and popular saints throughout history. Their practices were ‘neither Islamic, nor Christian, nor Jewish, but a local magical adaptation of the sacred texts to daily needs of peasants,’ according to Palestinian sociologist Salim Tamari.”⁶

This fabricated history, which ignores Jewish history dating back three millennia, and Christian history dating back two, teaches students that there were no actual Jews or Christians in the area until the 20th century, when “colonizers” invented them to “steal” land from Palestinians. This revisionist history, which erases and denies Jewish identity and the Jews’ ancestral connection to the land of Israel, is the ideology that was promoted and celebrated at the Palestine Writes Festival.

The latest round of pro-Hamas rallies and statements decrying the Jewish State of Israel and falsely accusing it of “genocide” against Palestinians are further instances of erasive anti-Semitism⁷ which not only distorts and falsifies history, but seeks to justify Hamas’ atrocities and whitewash harassment of Jews.

⁶ <https://palestinewrites.org/place-of-many-beginnings.php>.

⁷ Reut English. “ERASIVE ANTI-SEMITISM,” 2016.

<https://www.reutgroup.org/Publications/ERASIVE-ANTI-SEMITISM>. See also Ben M. Freeman, “Erasive Antisemitism — Naming a Subcategory of Antisemitism.” Medium. Medium, September 20, 2020. <https://benmfreeman.medium.com/erasiveantisemitism-cc71bf7259bb>.

III. Statement of Facts

A. Penn Hosts a “Palestine Writes Festival” in September that features at least 25 anti-Semitic speakers.

In early September 2023, Penn departments began to advertise a Festival called “Palestine Writes,” to be held on Penn’s campus on September 22 to 24, during the Jewish Days of Awe leading up to Yom Kippur, one of the holiest days on the Jewish calendar. Although the Festival advertised itself as “the only North American literature festival dedicated to celebrating and promoting cultural productions of Palestinian writers and artists,”⁸ it featured speeches by a host of controversial figures known for espousing anti-Semitic rhetoric, including calls for the destruction of the Jewish State of Israel.

In the days leading up to the Festival, anti-Semitic graffiti and conduct began to poison the campus. A week before the Festival began, a student in the architecture department discovered a swastika painted on the wall of a classroom in Meyerson Hall. The day before the Festival began, Penn’s Hillel was vandalized by an intruder who burst into the building screaming obscenities such as, “F*ck the Jews,” while he proceeded to destroy Hillel property.⁹¹

Although Penn stated that it was not “organizing”¹⁰ the Festival, it was promoted as a Penn event, with Penn’s name and logo and academic departments appearing on the announcement. The event was sponsored by Penn programs and departments, including the Middle East Center (MEC),¹¹ the Department of Cinema & Media Studies, the Near Eastern Languages and Civilization Department, the Sachs

⁸ About Palestine Writes, <https://palestinewrites.org/about-palestine-writes/>.

⁹ Jonah Miller and Jared Mitovich, “Penn Hillel Vandalized Thursday Morning, Witnesses Say,” *The Daily Pennsylvanian*, (September 21, 2023), <https://www.thedp.com/article/2023/09/penn-hillel-vandalism-incident>.

¹⁰ Penn Office of the President, Statement on Palestine Writes Literature Festival, (Sept. 12, 2023), <https://president.upenn.edu/content/statement-palestine-writes-literature-festival>.

¹¹ In August 2022, The MEC lost its federal Title VI funding due to insufficient institutional support from the university. As a result, Penn fully funds the MEC and will continue to do so through its next application for federal funding from the U.S. Department of Education (DOE). See Jared Mitovich and Sierra Wei, “Penn to Fund Middle East Center After Loss of all Federal Funding Sparked Outcry,” *The Daily Pennsylvanian*, (Oct. 19, 2022), <https://www.thedp.com/article/2022/10/penn-middle-east-center-funding-plan>.

Program for Arts Innovation, the Wolf Humanities Center, and the Kelley Writers House.¹²

The three-day Festival took place on Penn’s campus, at Irvine Auditorium, Penn Commons, The Kelley Writers House, and other university spaces. And Penn was a fiscal sponsor of the Festival through MEC.

The ADL identified 25 speakers known for their anti-Semitic views slated to speak at the Festival. The following are just a few examples of the anti-Semitism spewed by speakers who were invited to present (and did present) at the event, as the Brandeis Center and others apprised Penn *before* the event took place:

Susan Abulhawa, the co-chair of Palestine Writes and the Festival’s executive director, has equated Israel with Nazi Germany, spread incitement with provocative and false rhetoric, supported and praised terrorists, and denied Jewish history. After seven Jews were murdered in a shooting outside a synagogue in Jerusalem, Abulhawa stated, “Every Israeli, whether in a synagogue, a checkpoint, settlement, or shopping mall is a coloniser [sic] who came from foreign lands and kicked out the native inhabitants. They all serve in their racist colonial military. The whole country is one big, militarized tumor.”¹³ Earlier this year, she tweeted: “Calling Israel a Nazi state doesn’t quite capture the depths of their malevolence.”¹⁴ Abulhawa also posted recently on social media: “This is your daily reminder that Zionism is the contemporary face of Nazism and white supremacy. The fairytales of Israel’s benevolence, democracy, etc., are promulgated by an intensely funded global propaganda machine.”¹⁵

In March 2023, Abulhawa and others created upheaval by promoting anti-Semitism at the Adelaide Writers Week in Australia. Major supporters of the event withdrew

¹² See Palestinian Writes Literature Festival: Supporters, <https://palestinewrites.org/supporters-2023/>.

¹³ Justin Amler and Tammy Reznik, “Writers Festival Must Not Embrace anti-Semitic Hate,” Australia/Israel & Jewish Affairs Council (Feb. 20, 2023), <https://aijac.org.au/op-ed/writers-festival-must-not-embrace-anti-semitic-hate/>.

¹⁴ TWITTER, Susan Abulhawa, (Feb. 25, 2023), <https://twitter.com/sjabulhawa/status/1629588707983360001>.

¹⁵ TWITTER, Susan Abulhawa, (Feb. 19, 2023), <https://twitter.com/sjabulhawa/status/1627286736484155393>.

due to Abulhawa’s presence.¹⁶ This traditionally welcoming and peaceful writer’s festival became a hate-filled event where panels became so contentious the organizers had to cut the microphone at times.¹⁷ In Abulhawa’s session, she accused Jewish settlers of poisoning and destroying Palestinian water sources.¹⁸ Josh Feldman, an attendee who kept his Jewish identity under wraps at the festival to avoid being targeted for harassment, told reporters, “In all these talks, there was a clear implication that the Palestinians were indigenous to the land and the Jews have no connection there; they’re European colonialists. It was totally disconnected from reality.”¹⁹ In an interview following the writer’s festival, Abulhawa did not deny that she had engaged in hate speech and was unapologetic. Indeed, she maintained that Palestinians have free license to use such rhetoric due to their “powerless” status.²⁰

Randa Abdel-Fattah, an Australian writer of Palestinian heritage, was slated to present (and did present) at two events—“Palestine and the Global South” and “Storytime with Randa Abdel-Fattah.” She has written, “Israel is a demonic, sick project, and I can’t wait for the day we commemorate its end,”²¹ and “Israel is an abomination.” Every single act of violence is calculated & a logical manifestation of its core identity as a racist, Jewish supremacist, settler-colonial regime of hell.”²² Abdel-Fattah was another controversial writer at the Adelaide Writers Festival earlier this year. She joined Mohammed El-Kurd on the “Authors Take Sides”

¹⁶ Minter Ellison, the country’s largest law firm, withdrew, stating that it did not support “racist or antisemitic commentary.” See Meg Watson, “Key Sponsor Boycotts Writers’ Festival over Inclusion of Palestinian Authors,” *The Sydney Morning Herald*, (Feb. 21, 2023), <https://www.smh.com.au/culture/books/law-firm-boycotts-writer-s-festival-over-inclusion-of-palestinian-authors-20230221-p5cm7e.html>.

¹⁷ Ash Obel, “Australian Literary Fest Hosts Palestinian Writers who Peddle Antisemitic Tropes,” *The Times of Israel*, (Mar. 13, 2023), <https://www.timesofisrael.com/australian-literary-fest-hosts-palestinian-writers-who-peddle-antisemitic-tropes/>.

¹⁸ Jews in medieval Europe were periodically accused of poisoning wells in an effort to kill Christians, often resulting in deadly pogroms. See *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Matthew Kassel, “UPenn to Host Festival Featuring Speakers Calling for the Destruction of Israel,” *Jewish Insider*, (Sept. 14, 2023), <https://jewishinsider.com/2023/09/university-of-pennsylvania-palestinian-writes-literature-festival-israel/>.

²² TWITTER, Randa Abdel-Fattah, (April 4, 2023), <https://twitter.com/RandaAFattah/status/1643412890416996352>.

panel, condemning and vilifying Israel, using words like “pogrom, massacre, and apartheid.”²³

Bill V. Mullen, a professor at Purdue University, who was slated to present (and did present) at an event entitled “The Tent Generations, by Mohammed Sawaie,” has falsely claimed that Israel subjects Palestinians to “ethnic cleansing” and written that “The solution is to de-Zionize our campuses.”²⁴

Marc Lamont Hill, who was fired from CNN in 2018 after calling for a “Free Palestine, from the [Jordan] river to the [Mediterranean] Sea,” which effectively calls for the elimination of Israel, was slated to present (and did present) at two events entitled “Palestine and the Global South” and “Reporting Palestine.” Hill has tweeted that calls for Palestinians “to reject hatred and terrorism are offensive and counterproductive.”²⁵ He has also lauded Palestinian terrorists such as Rasmia Odeh as a “freedom fighter being railroaded for her commitment to justice.”²⁶ He has similarly expressed support for terrorist Ali Jiddah on social media and actively assisted in running a 2016 fundraiser for him.²⁷ Further, Hill has placed the blame for Gaza violence solely on Israel and defended his relationship with the anti-Semitic Nation of Islam leader Louis Farrakhan.²⁸

²³ Caroline Overington, “Plenty of Palestinian Passion But No Debate at Festival,” *The Australian*, (Mar. 5, 2023), <https://www.theaustralian.com.au/nation/plenty-of-palestinian-passion-but-no-debate-at-festival/news-story/e037003ddcf51e3a12a94742c9253473>.

²⁴ Bill V. Mullen, “Salaita Firing Shows Where Zionism Meets Neoliberalism at US Universities,” *The Electronic Intifada*, (Sept. 2, 2014), <https://electronicintifada.net/content/salaita-firing-shows-where-zionism-meets-neoliberalism-us-universities/13826>.

²⁵ Noa Tishby, “What Part of Antisemitism Does the UPenn Administration Not Get?” *Jewish Journal*, (Sept. 13, 2023), <https://jewishjournal.com/commentary/opinion/362769/what-part-of-antisemitism-does-the-upenn-administration-not-get/>.
<https://jewishjournal.com/commentary/opinion/362769/what-part-of-antisemitism-does-the-upenn-administration-not-get/>

²⁶ David Lange, “The Really Disturbing Truth About Palestine Writes Literature Festival at UPenn,” *IsraellyCool*, (Sept. 15, 2023), <https://www.israellycool.com/2023/09/15/the-really-disturbing-truth-about-palestine-writes-literature-festival-at-upenn/>.

²⁷ *Id.*

²⁸ Zach Kessel, “The University of Pennsylvania Has Become Comfortably Numb to Antisemitism,” *The National Review*, (Sept. 15, 2023), <https://www.nationalreview.com/corner/the-university-of-pennsylvania-has-become-comfortably-numb-to-antisemitism/>.

Roger Waters, a musician and former member of Pink Floyd, is by far the most famous speaker at this Festival. He was slated to present (and did present) at an event titled “The Cost, Reward, & Urgency of Friendship.” Waters has compared Israel to Nazi Germany and made comments about “Jewish Power.²⁹ During a recent concert in Berlin, he wore a mock Nazi uniform and projected Anne Franks’ name on stage.³⁰ The U.S. State Department condemned the concert, stating that Water’s performance had “minimized the Holocaust.” The State Department also noted his long track record of using anti-Semitic tropes to denigrate the Jewish people.³¹ Water’s former bandmate, David Gilmour, publicly conceded that Waters is an anti-Semite.³² Water’s participation in this Festival was puzzling as he is neither a Palestinian nor an author of Palestinian literature or poetry. Given Water’s previous anti-Semitic behavior, statements, and tirades, it can be inferred he was invited to promote anti-Semitism.

In addition to the Festival’s choice of speakers, the event included a screening of the Jordanian film *Farha*, which depicts fictitious Jewish atrocities against Palestinian Arabs during the 1948 War and promotes an antisemitic blood libel against Israel.³³ The film presents IDF soldiers as bloodthirsty monsters who amuse themselves by randomly killing Palestinian civilians. This film is inciteful, inflammatory, and presents dangerous falsehoods. Historically, blood libels have been used to justify violence against Jews.³⁴

An entire panel at the Festival was dedicated to the works of terrorist Ghassan Khanafani, who was a member of the Popular Front for the Liberation of Palestine (PLFP) terrorist organization.³⁵ Khanafani has been linked to the May

²⁹ Waters has repeatedly flown a pig balloon emblazoned with the Star of David at his concerts, intimated that Israelis are not human, accused Jews of controlling American media, and referred to a “Zionist cabal,” an antisemitic canard dating back to the Protocols of the Elders of Zion. *See Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ David Lange, “An Antisemitic Blood Libel Streaming on Netflix,” *Israelly Cool*, (Dec. 3, 2022), <https://www.israellycool.com/2022/12/03/an-antisemitic-blood-libel-streaming-on-netflix/>.

³⁴ ADL Backgrounder: “Blood Libel: A False Incendiary Claim Against Jews,” (Sept. 1, 2016), <https://www.adl.org/resources/backgrounder/blood-libel-false-incendiary-claim-against-jews>.

³⁵ JNS Update Desk, “Palestinian Envoy to UK Memorializes PFLP Terrorist,” *Jewish News Syndicate*, (July 9, 2023), <https://www.jns.org/jns/united-kingdom/23/7/9/301202/>.

1972 Lod Airport massacre, in which terrorists recruited by the PFLP gunned down 26 travelers, including American citizens.³⁶

B. Some Penn professors incorporate Festival events into their course curricula.

The Festival took place not only during the Jewish Sabbath but on the weekend between the Jewish New Year (Rosh Hashana) and Yom Kippur (the Day of Atonement). The conference culminated on the eve of Kol Nidre, which marks the beginning of Yom Kippur, the most solemn, holy day on the Jewish calendar. Displays from the conference continued to adorn the main walk on campus throughout the Jewish High Holiday season. The timing of the conference suggests either (a) stunning indifference to the Jewish faith or (b) deliberate harassment of Jewish students. As Jonathan Greenblatt, Chief Executive of the ADL, observed, “That this is happening during the High Holidays, the holiest time of the Jewish calendar, makes this even more insulting. Shame on Penn.”³⁷

Some of Penn’s professors told students taking their courses that attendance at the Festival was a course requirement. For example, the syllabus for Arabic 0300-401 stated that attendance at the Festival was required because “activities in class will be structured around some of the events.”³⁸

When students alerted the University to the fact that the event was not only anti-Semitic but taking place on a Jewish holiday, Penn informed Jewish students that they could seek an exemption if they did not wish to attend the rally.³⁹ The University did not make clear, however, whether that meant Jewish students would be excused from attending, while other students would still be required to attend, or whether *all* students were told that attendance was optional. A Festival featuring anti-Semitic speakers should not be mandatory for any student at Penn.

³⁶ *Id.*

³⁷ Matthew Kassel, “UPenn to Host Festival Featuring Speakers Calling for the Destruction of Israel,” *Jewish Insider*, (Sept. 13, 2023), <https://jewishinsider.com/2023/09/university-of-pennsylvania-palestinian-writes-literature-festival-israel/>.

³⁸ Jared Mitovich, “Penn students in some Arabic courses no longer required to attend Palestine Writes festival,” *The Daily Pennsylvanian*, (Sept. 21, 2023), <https://www.thedp.com/article/2023/09/penn-nelc-arabic-students-class-requirement-palestine-writes>.

³⁹ *Id.*

Making the Festival mandatory or the subject of any coursework violates Penn’s religious accommodation policy, which states that “no examinations may be held on Saturdays or Sundays... unless they are also available on other days. Nor should seminars or other regular classes.”⁴⁰ The University also recognizes that there are several secular and religious holidays..., including Rosh Hashanah, Yom Kippur, the first two days of Passover, and Good Friday. In consideration of their significance for many students, no examinations may be given, and no assigned work may be required on these days.”⁴¹

C. Penn leadership is urged by students, faculty, alumnae, and trustees to distance itself from the Festival, but fails to do so.

In response to criticism about its sponsorship of the Festival, Penn put out a statement on September 12, 2023 condemning anti-Semitism generally but saying nothing about the Festival’s promotion of anti-Semitism. The School did not respond to or heed requests to take the Penn name off the Festival, to distance itself from the Festival, or denounce the Festival’s anti-Semitic speakers.

Challenged by Jonathan Greenblatt, CEO of the ADL, President Magill promised to increase security for Hillel and possibly for Jewish students; to include the IHRA Definition in its training programs, and to hold meetings with Jewish and Palestinian students. She continued to cite academic freedom as the reason she could not do anything to renounce the Festival. In the wake of Hamas atrocities and Penn student celebrations of the carnage, President Magill acknowledged that she had not spoken out as strongly as she should have against the Festival.

D. The Festival delivers its anti-Semitic message.

As anticipated, the invited speakers known for their anti-Semitism delivered as anticipated at the Festival.

The three-day festival included at least 71 distinct sessions, including 16 sessions specifically for children (from 3 to 18 years of age). In stark contrast to this public self-portrayal of the festival as a literary – and distinctly cultural – affair, the

⁴⁰ *University of Pennsylvania, Policy on Secular and Religious Holidays, PENNBOOK, (May 23, 2023), <https://catalog.upenn.edu/pennbook/secular-religious-holidays/>.*

⁴¹ *University of Pennsylvania, Policy on Secular and Religious Holidays, PENNBOOK, (May 23, 2023), <https://catalog.upenn.edu/pennbook/secular-religious-holidays/>.*

actual festival content was overtly political, and overwhelmingly concerned with Israel, Zionism, and Jews.

In the event's opening speech, Palestine Writes executive director Susan Abulhawa mocked and derided Jewish students' concerns about the presence of many documented terrorism supporters and even a convicted terrorist at Palestine Writes. Abulhawa called Jewish student concerns "hysterical and racist accusations that our presence here poses a threat to Jewish students on campus, making them feel unsafe and fearful of wearing their kippas. Again, this is an old, well-worn colonial script of the violent, dark, irrational and savage, which I will not dignify with a response."⁴²

Three different festival speakers made false equivalencies between Israel and Nazi Germany. One festival speaker called for the Jewish residents of Israel to be concentrated in "three cantons" – reminiscent of Europe's Jewish ghettos. Perhaps those ghettos were an inspiration, because the same speaker claimed that all Israeli Jews are "settlers from Europe."

Another festival speaker Bassam Abun-Nadi used the term "Jewish Supremacism." This term was popularized by, and is most commonly associated with, David Duke, the Holocaust-denier and former Grand Wizard of the Ku Klux Klan. (In 2003, Dr. Duke published the book, "Jewish Supremacism: My Awakening on the Jewish Question.")

Marc Lamont Hill spoke of the so-called "Deadly Exchange" campaign, which blames Israel and Jews for police brutality in America. The campaign seeks to prevent American police forces from participating in educational programs with their Israeli counterparts based on the false assertion that Israel trains U.S. police to use violence against African Americans in the United States.

Noura Erakat used her platform at the conference to criticize Palestinian leaders for renouncing (in name, at least) violence, instead urging that they should have used violence (or the threat of violence) as "leverage" in negotiations.

⁴² See <https://zoa.org/2023/09/10448530-zoa-response-to-misleading-article-in-upenn-newspaper-about-palestinian-anti-israel-conference/>.

Tom Suarez, a New York-born violinist living in London, called support for Israel a “cult” and a “psychosis,” which he sought to “expose.” He described “religious Jews” as having a “messianic mindset,” claiming they are “willing to put up with anything to take over more land.” Mr. Suarez also claimed that the “West” has “embraced this psychosis” for “amoral political reasons.”

At least two festival sessions advocated for the wholesale liquidation of Israel as a Jewish State. Denying Jews the right to self-determination and calling for the destruction of the Jewish state is anti-Semitic. The session titled “One State,” featuring Ghada Karmi and moderated by Noura Erakat, repeatedly advocated for the so-called one-state solution, which seeks the eradication of Israel as a Jewish state. Karmi conceded that her “one-state” solution would necessitate substantial violence. Ms. Erakat stated that she and others are “punished” (criticized) for advocating the one-state solution: “This ... punishment continues to frame our very generous, visionary offerings, not only to Zionists, ... but also to a world beyond fascism.”

In a session titled “The Right of Return and How to Achieve It,” Salman Abu Sitta and Diana Buttu openly advocated for a policy that would see Jews reduced to a minority in Israel. Both sessions advocated for an end to the Jewish state, varying only on the means employed in pursuit of that end. Dr. Abu Sitta characterized all Jewish Israelis as “settlers from Europe,” ignoring that at least half of Jewish Israelis today trace their heritage to Arab countries and Iran, which expelled them when Israel became a state. He also promoted rounding up Israel’s Jewish communities and confining them to concentrated population centers, which would effectively ghettoizes Jews in their homeland.

Instead of Palestinian culture and poetry, the Festival celebrated ideologists advocating for the destruction of Israel as a Jewish State.

Anti-Semitic vandalism continued in the wake of the Festival, with a Chabad sukkah being vandalized with graffiti on September 27, a few days before the Jewish holiday Sukkot (Feast of Tabernacles).⁴³ Although the city’s Division of

⁴³ See https://www.chabad.org/library/article_cdo/aid/4784/jewish/What-Is-Sukkot.htm (“Sukkot is a weeklong Jewish holiday that comes five days after Yom Kippur. Sukkot celebrates the gathering of the harvest and commemorates the miraculous protection G-d provided for the children of Israel when they left Egypt. We celebrate Sukkot by dwelling in a foliage-covered booth (known as a *sukkah*) and by taking the “Four Kinds” (*arba minim*), four special species of vegetation.”)

Public Safety found no connection to anti-Semitism, the incident disturbed Jewish students who saw the desecration of a holy structure as more evidence of anti-Semitism on campus.

E. After the October 7 massacre by Hamas on Israeli civilians, Penn’s environment becomes increasingly hostile to Jewish students.

1. The University remains silent while PAO mobilizes support for Hamas.

The day of the October 7 massacre, the University was silent. Penn did not make any statement at all about the massacre until October 10, two days after the PAO promoted its first rally to “cheer for Hamas.”⁴⁴

In the October 10 email to the Penn community, the President and Provost stated they were “devastated by the horrific assault on Israel.”⁴⁵ They made no mention of events on campus, which already included the rally and a Penn Arab Student Society event mourning the “lives lost in Gaza and across occupied Palestine.”

On October 15, after fall break, President Magill issued a second statement, this time condemning Hamas and emphasizing the University’s stance against anti-Semitism. She observed that Penn was facing “a difficult moment on campus.” And she admitted that the University could have been “more forceful” in communicating its views on the Festival and distancing itself from speakers with “a public history of speaking out against the Jewish people,” implicitly acknowledging that her failure to do so softened the ground for students and nearby residents to harass Jewish students with their gatherings in support of Hamas and their calls for the destruction of Israel.

⁴⁴ Jared Mitovich and Sara Forastieri, “Penn defers University-affiliated travel to Israel, Palestine amid war in region,” *Daily Pennsylvanian*, (Oct. 10, 2023), <https://www.thedp.com/article/2023/10/penn-abroad-global-travel-israel-gaza-palestine-response>.

⁴⁵ *Id.*

2. PAO organizes daily rallies in support of Hamas

The next day, over a hundred Penn “community members” gathered in front of Van Pelt library (Penn’s main library) for seven hours. The event featured dozens of speakers, including students, faculty members, and community residents, who spoke out to express their solidarity with Hamas, the terrorist group that massacred, tortured and held hostage over a thousand Israeli civilians, including babies and children. After the speakers finished, participants marched through campus⁴⁶ with Palestinian flags, chanting statements in support of Hamas’ violence, including “there is only one solution: intifada resolution” (deliberately echoing Hitler’s “final solution”); “from the river to the sea” (meaning that the entire land of Israel should be emptied of Jews and occupied only by Palestinians), “intifada intifada” (a call for deadly violence against Israel) and a chant heard by some as “We want Jewish genocide” and by others as “We charge you with genocide.” The PAO insists that only the latter slogan was chanted, but the message was clear: Hamas was being exonerated for its brutality and urged to continue carrying out what it euphemistically calls “armed resistance.”

An unidentified speaker declared that “all settlers [Israelis] are legitimate military targets and they will be targeted.” and told Jewish students to “go back to Moscow, Brooklyn ... f*cking Berlin where you came from,” while Penn Professor Huda Fakhreddine enthusiastically clapped her approval. At the same rally, Professor Fakhreddine went so far as to associate what is happening in Gaza with Auschwitz and other concentration camps when she stated that Israel “is the epitome of anti-Semitism,” and that the State of Israel “desecrates the memory of the Holocaust victims.”⁴⁷

During the march, a participant pushed a bystander and tore down pictures of missing Israeli civilians. He was charged with assault and taken into custody.⁴⁸ On the same day, PAO organized a vigil and walkout for Penn and Drexel outside Van Pelt Library.⁴⁹

⁴⁶ The demonstrators effectively blocked access to Penn buildings such as Van Pelt Library, where the speakers set up during the protest. Many university buildings including Wharton, Claudia Cohen Hall, and the Penn Bookstore are on Locust Walk, which is property that is shared with the public but serves as a main thoroughfare through campus.

⁴⁷ See, Instagram, <https://www.instagram.com/p/CyeKO5Ap5Ce/>.

⁴⁸ See <https://www.thedp.com/article/2023/10/penn-walkout-palestine-rally-march-magill>.

⁴⁹ <https://www.instagram.com/p/Cyg3chGpqsJ/>.

While these rallies were in full swing, noise levels made it impossible to hold midterm exams at Van Pelt library, requiring professors to reschedule them, while Jewish students skipped class and stayed in their dorms out of concerns for their physical safety.

The next day, on October 19, 2023, PAO posted a “Mass Mobilization to City Hall For Palestine,” on its Instagram account, stating: “WE DEMAND PHILLY CITY COUNCIL CONDEMN OCCUPATION AND APARTHEID IN PALESTINE, SCRAP ANY ANTI-BDS RESOLUTIONS AND REAFFIRM PALESTINIAN AND ALL INDIGENOUS PEOPLE’S RIGHT TO SOVEREIGNTY AND SELF-DETERMINATION !!”⁵⁰

On October 20, 2023: PAO hosted a Palestine 101 Teach-in at 4:30 pm. At 11:30 pm that evening, a vacant property run by Campus Apartments, which is next door to the Alpha Epsilon Pi fraternity chapter house at 4040 Walnut St., was vandalized with antisemitic graffiti. The graffiti read, “The Jews R Nazis.” AEPi contacted the University’s Division of Public Safety to investigate. DPS wrote to the Daily Penn (the campus newspaper) in a statement on Saturday that they would investigate the incident as “a potential hate crime.”⁵¹ Following this incident, AEPi members were so frightened that they left their fraternity house and spent the night elsewhere. A Penn library staffer was caught in the act of tearing down posters of Israeli children kidnapped by Hamas. When questioned by a Penn student, he said that people were killed in a hospital bombing, referring to a deadly explosion at a Gaza hospital the night before, which certain media outlets blamed on Israel before correcting themselves in light of unequivocal evidence the bomb originated with Islamic Jihad. Wharton junior Sydney Freeman wrote the following about the incident:

I had an altercation with a man on Locust Walk who was tearing down posters of kidnapped hostages. When I asked him why he was doing that and explained that the hostages were innocent civilians he yelled at me to get the F away from him and said that innocent people were killed in a hospital bombing in Gaza. I replied that the source of that rocket was still unknown and may well have been a Hamas misfire. He yelled F YOU at me and

⁵⁰ https://www.instagram.com/p/CyhVDnfgewT/?img_index=1

⁵¹ <https://www.thedp.com/article/2023/10/penn-aepi-campus-apartments-antisemitic-vandalism-investigation>.

continued tearing down the posters. He was later identified as a Penn employee. His vicious verbal assault made me feel unsafe, but more than that, the knowledge that there are employees of this university who cannot sympathize with innocent civilians taken hostage by a terror organization was truly horrifying to me.

On Saturday, October 28, a prominent off-campus Orthodox house that regularly hosts Jewish students for dinner, games, and other events was vandalized when its Israeli flag was ripped down and stolen by a member of Penn Against the Occupation (PAO).⁵²

3. Penn faculty make pro-Hamas statements on social media.

During this period, Penn professors who participated in the Festival, including Ahmad Almallah, Huda Fakhreddine, and Fatmeh Shams, posted vitriolic anti-Israel and pro-Hamas statements and cartoons on their X and Instagram accounts. According to student reports⁵³ and backed by Instagram postings, these Professors spoke out as follows.

Professor Huda Fakhreddine asserted that “Israel is the epitome of antisemitism.” This exploitation of the term anti-Semitism undermines, and indeed erases, the legitimate threats that the Jewish people face and mocks the horrific events they have endured. It is classic victim-blaming. The intent is to turn the Jews into the aggressors, as Hamas and its supporters routinely do even as Hamas slaughters innocent civilians and celebrates such barbarity. Such distortion of the truth, designed to blame the Jews for the discrimination of Jews, cannot be tolerated.

⁵² The house had video cameras and the perpetrator was shown on video to be a member OF PAO who is now being investigated by the Philadelphia police.

⁵³ See https://www.change.org/p/remove-anti-semitic-professors-from-upenn-s-campus?recruiter=1320003946&recruited_by_id=b3b4af30-7205-11ee-bddf-c17fbc2a897d&utm_source=share_petition&utm_campaign=petition_dashboard&utm_medium=copylink.

On the morning of October 7, when the only activity that had occurred in the region was the brutal and barbaric rape and slaughter of Israel civilians, Fakhreddine tweeted “كنا نائمين وكانت فلسطين تخترع الحياة من جديد,” roughly translated as, “While we were asleep, Palestine invented a new way of life.” Though this tweet has since been deleted (without retraction or apology), it remained up for at least 10 days.

Professor Fatemeh Shams stated at Monday’s rally that, “Netanyahu’s government is giving [IRGC and Hamas] every reason to exist.” After the rally, Professor Shams tweeted, “These kinds of statements that “Hamas” is responsible for the lives of the people of Gaza are pure nonsense,” ignoring that Hamas is directly responsible for the lives of the people of Gaza and was democratically elected in 2007.

On October 20th, Professor Shams reposted that Israel had bombed the Al Ahli hospital in Gaza, spreading the blood libel that had clearly been debunked by all western governments, major media outlets, and Rep. Ilhan Omar, who on October 19 walked back her own statements.

Professor Shams also tweeted, “if you’re a Jewish college student who feels this way [supporting Israel], please DM me. You’ve been brainwashed, as I was,” singling out Jewish students for their presumed support of Israel.

Professor Almallah spoke at an on-campus rally and concluded his speech by chanting “intifada, intifada, intifada,” which is a call for the murder of Jewish Israeli civilians. He also called for a “revolution” and stated, “there is only one solution,” namely, the elimination of Jews from Israel.

Penn should discipline these professors just as it did other professors who have made derogatory remarks against minorities—e.g., Amy Wax, who was denounced by Penn Law School Dean Theodore Ruger in 2022 after she made “anti-intellectual and racist comments” about Asian immigrants. The Dean explained that such comments were “diametrically opposed to the policies and ethos of this institution.”⁵⁴ Ruger also asked Penn’s Faculty Senate to initiate disciplinary

⁵⁴ PennCareyLaw, “A Statement from Dean Ruger in Response to Recent Comments Made by Professor Wax,” (Jan. 3, 2022), <https://www.law.upenn.edu/live/news/14369-a-statement-from-dean-ruger-in-response-to-recent>.

proceedings against Wax for inviting what he called a white supremacist to lecture to her class.⁵⁵

Professors calling for the death of Israeli Jews should be investigated and disciplined, not given a free pass to engage in threatening hate speech.

4. Penn students feel threatened and unable to engage fully in their classes or student life.

The following statements were provided to the Brandeis Center by students who asked that their names be withheld to protect their identities.⁵⁶

Student 1 is a Jewish student who is a dual citizen of Israel and the United States. As he advised an administrator, the pro-Hamas rallies on campus calling for the deaths of Jewish Israelis are so disturbing they prevent him from sleeping, attending classes regularly, and concentrating on mid-terms. The administrator to whom he turned advised him that her office could not tell him whether Penn has a policy on support for terrorism and encouraged him to reach out to the Division of Public Safety if he felt physically imperiled or to Special Services if he needed “support.”

The same student advised us that he was forced to miss class when an 8-hour rally organized by Penn students and professors blocked walkways he uses to get to class. Student 1 is unable to participate fully in classes taught by professors who espouse hatred of Jews and support for Hamas. He fears that these professors, whose courses he must take to complete his major in Middle East Studies, will not review his work fairly given their awareness of his Jewish and Israeli identity and given their open antipathy to persons of his ethnicity and national origin.

Student 2 is a Jewish undergraduate who witnessed a library staff member tear down posters of Israeli hostages. When Student 2 asked the university employee why he was vandalizing the posters he yelled “F - you” and told her that Israel killed innocent people when it bombed a hospital in Gaza. When Student 2 told the employee that the hospital was not bombed by Israel, he continued to yell “F - you.”

⁵⁵ Colleen Flaherty, “What a Professor Can’t Say,” Inside Higher Ed (Marc. 15, 2018), <https://www.insidehighered.com/news/2018/03/15/penn-says-amy-wax-will-no-longer-teach-required-first-year-law-courses-after-more>.

⁵⁶ The Brandeis Center invited Penn students to provide us with written statements describing what they are experiencing on campus.

Watching a Penn employee tear down the posters and yell profanities at her frightened and alarmed Student 2.

Student 3 is a Penn nursing student who lives in a house off campus that is widely known to be a Jewish house. She and the eight other Jewish students living there put up an Israeli flag outside the house. On October 28th, Student 3 found that the flag had been ripped down and stolen. She reported the event to the police and learned through videos from the police and social media that the perpetrator was a UPenn student involved in Penn Against Occupation (PAO). Student 3 reports that she is “terrified that a student in our Penn community aggressively tore down and stole my property because it was in support of Israelis and Jews.” The police assured Student 3 that she has the right to support her friends and family by putting up the Israeli flag. “It is petrifying that at a campus that claims to promote free speech my house was targeted for showcasing our beliefs and our support for Jews,” said Student 3.

Student 4 is a Jewish undergraduate and an Israeli citizen. Due to the rallies in support of Hamas and a bomb threat to the Hillel building, Student 4 feels physically unsafe on campus. Student 4 has missed class, avoided specific parts of campus (including Locust Walk), stopped wearing things that identify him as being Jewish, and feels unsafe going to Hillel. Student 4 reports that the “protests here have invited students, professors, and community members to gather here on campus, disrupt class, intimidate Jewish students, and physically assault Jewish students.” He adds that he has “had many meetings with campus security and police about the threats that face our community, and we continue to face these threats and news of a new attack every day.”

Student 5 is a Jewish undergraduate who reports that she feels compelled to hide her Star of David necklace under her shirt because she fears being targeted when walking down Locust Walk.

Penn Hillel’s rabbi relates in a community email that “a small number of Penn staff members received vile, disturbing antisemitic emails threatening violence against members of our Jewish community, specifically naming Penn Hillel and Lauder College House. These messages also included hateful language, targeting the personal identities of the recipients. Penn’s Division of Public Safety was immediately notified and responded. Penn Police also notified the FBI of this potential hate crime and a joint investigation is underway.” While no threat was

substantiated, such threats invariably create anxiety and fear within the Penn campus Jewish community and add to the hostile environment for Jews at Penn.

IV. Penn has violated Title VI by allowing a hostile environment to develop and flourish on its campus.

Title VI of the Civil Rights Act of 1964 (Title VI) protects Jewish and Israeli students studying at American colleges from harassment that creates a hostile campus environment.⁵⁷ Guidance issued by the Department of Education’s Office for Civil Rights (OCR) and the Department of Justice in 2004, 2010, 2017 and 2023 specifies that Title VI covers discrimination against Jews on the basis of their “actual or perceived shared ancestry or ethnic characteristics.”⁵⁸ According to Executive Order 13899, which has been incorporated into OCR’s current policy guidance, Title VI must be enforced “against prohibited forms of discrimination rooted in anti-Semitism as vigorously as against all other forms of discrimination prohibited by Title VI.”⁵⁹

⁵⁷ 42 U.S.C. §2000d *et seq.*; Executive Order 13899, Combating anti-Semitism, December 11, 2019, 3 C.F.R. §§68779-68780, available at <https://www.federalregister.gov/documents/2019/12/16/2019-27217/combating-anti-semitism> (“EO 13899”).

⁵⁸ See *Dear Colleague Letter*, U.S. DEP’T OF EDUC.–OFFICE FOR C. R. (Nov. 7, 2023), available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-202311-discrimination-harassment-shared-ancestry.pdf>. See also *FACT SHEET: Protecting Students from Discrimination Based on Shared Ancestry or Ethnic Characteristics* (Jan. 4, 2023), <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-shared-ancestry-202301.pdf>; *Know Your Rights: Title VI and Religion*, U.S. DEP’T EDUC.–OFFICE FOR C.R., January 17, 2017, available at <https://www2.ed.gov/about/offices/list/ocr/docs/know-rights-201701-religious-disc.pdf>; Letter from Assistant Secretary for Civil Rights Russlyn Ali, U.S. DEP’T OF EDUC.–OFFICE FOR C. R., October 26, 2010, available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf> (“2010 Dear Colleague Letter”); Letter from Thomas E. Perez, Assistant Att’y Gen., U.S. Dep’t of Just.–C.R. Div., to Russlyn H. Ali, Assistant Sec’y for C.R., U.S. DEP’T OF EDUC.–OFFICE FOR C.R., *Re: Title VI and Coverage of Religiously Identifiable Groups*, September 8, 2010, https://www.justice.gov/sites/default/files/crt/legacy/2011/05/04/090810_AAG_Perez_Letter_to_Ed_OCR_Title%20VI_and_Religiously_Identifiable_Groups.pdf; Kenneth L. Marcus, *Title VI and Title IX Religious Discrimination in Schools and Colleges: Dear Colleague Letter*, U.S. DEP’T OF EDUC.–OFFICE FOR C. R. (Sep. 13, 2004), available at <https://www2.ed.gov/about/offices/list/ocr/religious-rights2004.html>.

⁵⁹ EO 13899, §1. See also *Questions and Answers on Executive Order 13899 (Combating Anti-Semitism) and OCR’s Enforcement of Title VI of the Civil Rights Act of 1964*, U.S.

In January 2023, the Department of Education affirmed its commitment to the Executive Order, which incorporates the International Holocaust Remembrance Alliance Working Definition of Anti-Semitism (the IHRA Definition) when it issued a factsheet on discrimination based on shared ancestry.⁶⁰ The Department re-affirmed its commitment to the Executive Order as recently as May 2023, when it directed university administrators to review the Questions and Answers on Executive Order 13899 as a resource in OCR guidance issued with the White House National Strategy on Countering Antisemitism.⁶¹

As the IHRA Definition states, criticism of Israel similar to that leveled against any other country is not anti-Semitism. But demonizing the Jewish State, calling for its destruction, blaming Jewish students for the actions of the Israeli government, denying the Jewish people the right to self-determination—and/or subjecting Israel to double standards are classic earmarks of anti-Semitism. For purposes of Title VI, harassment creates a “hostile environment” when it “is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student’s ability to

DEP’T EDUC.—OFFICE FOR C.R., January 19, 2021, available at <https://www2.ed.gov/about/offices/list/ocr/docs/qa-titleix-anti-semitism-20210119.pdf>.

⁶⁰See, STATEMENT FROM U.S. ASSISTANT SECRETARY FOR CIVIL RIGHTS ON TITLE VI PROTECTION FROM DISCRIMINATION BASED ON SHARED ANCESTRY OR ETHNIC CHARACTERISTICS (Jan. 4, 2023), <https://brandeiscenter.com/statement-from-u-s-assistant-secretary-for-civil-rights-on-title-vi-protection-from-discrimination-based-on-shared-ancestry-or-ethnic-characteristics/>. In her email, Assistant Secretary for Civil Rights Catherine Lhamon, notes, “Additional resources, including a Questions and Answers guide released in January 2021 that affirms OCR’s commitment to complying with Executive Order 13899 on Combatting Anti-Semitism are available on the Shared Ancestry or Ethnic Characteristics page of OCR’s website.”

⁶¹See *Dear Colleague Letter*, U.S. DEP’T OF EDUC.—OFFICE FOR C. R. (Nov. 7, 2023), available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-202311-discrimination-harassment-shared-ancestry.pdf>. See also, STATEMENT FROM U.S. ASSISTANT SECRETARY FOR CIVIL RIGHTS ON TITLE VI PROTECTION FROM DISCRIMINATION BASED ON SHARED ANCESTRY OR ETHNIC CHARACTERISTICS (Jan. 4, 2023), <https://brandeiscenter.com/statement-from-u-s-assistant-secretary-for-civil-rights-on-title-vi-protection-from-discrimination-based-on-shared-ancestry-or-ethnic-characteristics/>. In her email, Assistant Secretary for Civil Rights Catherine Lhamon, notes, “Additional resources, including a Questions and Answers guide released in January 2021 that affirms OCR’s commitment to complying with Executive Order 13899 on Combatting Anti-Semitism are available on the Shared Ancestry or Ethnic Characteristics page of OCR’s website.”

participate in or benefit from the services, activities, or opportunities offered by a school.”⁶²

A Title VI recipient “*must* take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment, and prevent the harassment from recurring.”⁶³ Further, OCR has explained that a university can violate Title VI if peer harassment “is sufficiently serious that it creates a hostile environment and such harassment is encouraged, tolerated, not adequately addressed, or ignored by school employees.”⁶⁴ And a university must respond to discriminatory harassment when such harassment “negatively affect[s] the ability and willingness of Jewish students to participate fully in the school’s education programs and activities.”⁶⁵

Penn has failed to take *effective* steps “reasonably calculated to end the harassment, eliminate any hostile environment, and prevent the harassment from recurring.” Instead, its leadership refused to distance itself from or cease funding a Festival featuring at least 25 anti-Semitic speakers. In conversations with Hillel student leadership in the days leading up to the Festival, administrators acknowledged that the conference speakers were “problematic,” but instead of addressing the “problem,” and withdrawing the University’s imprimatur, they promised only to do better “in the future.” This did nothing to address the immediate problem. It failed to protect Jewish students from the hostile campus environment the Festival was already generating.

After the October 7 massacre of Jewish Israelis, Penn acknowledged it had not done enough about the Festival but did not condemn the pro-Hamas rallies that forced Jewish students to stay inside or take circuitous routes to get to their classes. Penn has also been inconsistent in how it responds to discriminatory, hateful rhetoric. On the one hand, it was quick to discipline Amy Wax, as noted above. On the other, it was silent when anti-Jewish speakers like Mohammed El-Kurd and

⁶² See “Dear Colleague Letter” at 2, U.S. DEPT’ EDUC.–OFFICE FOR C.R. (Oct. 26, 2010) [*hereinafter* 2010 Dear Colleague Letter],

<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>.

⁶³ See 2010 Dear Colleague Letter, *supra* note 62, at 2-3 (emphasis added).

⁶⁴ See 2010 Dear Colleague Letter, *supra* note 62, at 1; see also See Know Your Rights: Title VI and Religion, U.S. DEPT’ EDUC.–OFFICE FOR C.R. (Jan. 17, 2017),

<https://www2.ed.gov/about/offices/list/ocr/docs/know-rights-201701-religious-disc.pdf>.

⁶⁵ 2010 Dear Colleague Letter, *supra* note 62, at 5–6.

Noura Erakat made anti-Semitic statements when they spoke at the invitation of Penn students last March.⁶⁶ Mr. El-Kurd is a Palestinian activist notorious for promoting anti-Semitic conspiracy theories. Ms. Erakat opposes Israel's right to exist and supports military campaigns aimed at destroying the Jewish State. When it comes to anti-Semitism, Penn applies a double standard, which allows the hostile environment on its campus to fester and worsen.

V. Suggested Remedies.

For the foregoing reasons, we urge OCR to ensure that Penn's administration takes the **following steps** to demonstrate equal protection for its Jewish community and to ensure that members of the Penn community are held accountable for supporting discriminatory conduct.

*Appoint an independent investigator to examine the campus climate for University of Pennsylvania students, faculty, staff, with specific attention to the climate for Jewish and Israeli members of the Penn community; charge the investigator with conducting a campus climate survey to address the climate for all students, and especially for Jewish and Israeli students; and carry out such recommendations as are made by the investigator based upon the survey and additional analysis.

*Enforce the University's moral code of conduct, which applies to ALL students, employees and faculty members, in a manner that treats all students equally on the basis of race, color, or national origin. Announce that any member of the community who engages in discriminatory conduct, in violation of Title VI and Penn's code of conduct will be held accountable, including by suspension and expulsion.

*Adopt the IHRA Working Definition of Anti-Semitism, including all of its examples, and makes it the basis for future training, orientation, and a formal university statement on harassment, consistent with Executive Order 13899 and corresponding OCR guidance.

*Instruct Penn faculty, staff, and students that suppression of student speech on the basis of race, color, or national origin, including Jewish identity, will not be tolerated.

⁶⁶ Penn Against the Occupation, INSTAGRAM, (Mar. 23, 2023), <https://www.instagram.com/p/CpvgV4SJG5K/?hl=en>.

*Issue a strong statement that makes clear that Penn will forcefully condemn any conduct that harasses members of the Jewish community, or others, on the basis of their ethnic or ancestral background.

*Provide education about anti-Semitism. Create and conduct mandatory training for administrators and professors and consider hosting a conference addressing anti-Semitism in all its forms, including (a) anti-Zionism when it demonizes or delegitimizes the Jewish State, and (b) erasive anti-Semitism that erases or denies Jewish history and Jewish identity, so that administrators and faculty can better recognize harassment and discrimination that targets Jews.

*Institute strict review and approval policies to ensure that Penn administration does not conduct, or finance, programs that deny equal protection on the basis of race, color, or national origin. Ensure that university departments and faculty do not misuse the University's name or mark in furtherance of such programs.*Issue a statement like the one issued by the University of Illinois at Urbana Champaign (UIUC), which recognizes that for many students on campus, Zionism is an integral component of their Jewish identity and that their ability to fully engage safely in campus life must be protected. That statement included the following language:



The Louis D. Brandeis Center
for Human Rights Under Law

For many Jewish students, Zionism is an integral part of their identity and their ethnic and ancestral heritage. These students have the right to openly express identification with Israel. The university will safeguard the abilities of these students, as well as all students, to participate in university-sponsored activities free from discrimination.⁶⁷

Sincerely,

(b)(6); (b)(7)(C)

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⁶⁷ Office of the Chancellor, University of Illinois at Urbana-Champaign, “Joint Statement on anti-Semitism,” (Nov. 16, 2020), <https://blogs.illinois.edu/view/6231/1530347443>.

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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION III
DELAWARE
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MARYLAND
PENNSYLVANIA
WEST VIRGINIA

November 15, 2023

VIA EMAIL ONLY

M. Elizabeth Magill
President
University of Pennsylvania
1 College Hall, Rm 100/6380
Philadelphia, PA 19104
president@upenn.edu

Re: OCR Complaint No. 03-24-2044

Dear President Magill:

This letter is to notify you that the U.S. Department of Education, Office for Civil Rights (OCR), is opening for investigation the above-referenced complaint filed against the University of Pennsylvania (University). The Complainant alleges that the University discriminated against students and staff on the basis of national origin (shared Jewish ancestry) by failing to respond to incidents of harassment in September, October, and November 2023.

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. Section 2000d *et seq.*, and its implementing regulation, at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin, including shared ancestry, in any program or activity receiving federal financial assistance from the U.S. Department of Education. Because the University receives federal financial assistance from the U.S. Department of Education, OCR has jurisdiction over it pursuant to Title VI.

OCR is opening the following issue for investigation:

Whether the University failed to respond to alleged harassment of students and staff on the basis of national origin in a manner consistent with the requirements of Title VI.

Please note that opening the complaint for investigation in no way implies that OCR has made a determination on the merits of the complaint. During the investigation, OCR is a neutral fact-finder, collecting and analyzing relevant evidence from the Complainant, the University, and other sources, as appropriate. OCR will ensure that its investigation is legally sufficient and fully responds to the allegation in accordance with the provisions of the *Case Processing Manual*.

Our goal is the prompt, appropriate resolution of the complaint. While we are proceeding with an investigation, there are other approaches that can achieve this goal. In particular, please note the section on resolution of a complaint prior to the conclusion of an investigation. If the University expresses an interest in resolving the complaint and OCR determines that resolution of the complaint prior to the completion of the investigation is appropriate, OCR may attempt to

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

negotiate an agreement with the University pursuant to Section 302 of the *Case Processing Manual*.

Attached is a request for data necessary to investigate this complaint. The Department's regulation implementing Title VI of the Civil Rights Act of 1964, at 34 C.F.R. § 100.6(c) gives OCR the authority to request this information. Please note that OCR has the right of access to records that are necessary for OCR's investigation, even if those records contain names or other personally identifiable information. *See* 20 U.S.C. §§ 1232g(b)(1) and 1232g(b)(3) regarding the applicable provisions of the Family Educational Rights and Privacy Act; *see also* 34 C.F.R. § 100.6(c) and 34 C.F.R. § 99.31(a)(3)(iii).

OCR requests that the University submit this information within 21 calendar days of the date of this letter (i.e., by **December 6, 2023**). We prefer that you submit information electronically, if feasible. If any item in our request is unclear, or if you experience any difficulty complying with this request, please contact us at the telephone number(s) provided below prior to the expiration of the 21-day period. Please be aware that OCR may need to make additional requests for information in the future. If OCR needs to conduct an on-site investigation, we will notify you in advance.

Please be advised that the University must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We look forward to your cooperation during the resolution of this complaint. If you have any questions, please contact Amy Niedzalkoski, Chief Attorney, at amy.niedzalkoski@ed.gov or (202) 987-0699.

Sincerely,

(b)(6); (b)(7)(C)

Beth Gellman-Beer
Regional Director
Philadelphia Office
Office for Civil Rights

Enclosure

University of Pennsylvania
OCR Complaint No. 03-24-2044
Data Request

Please submit the following information to Amy Niedzalkoski at amy.niedzalkoski@ed.gov within 21 calendar days of the date of this letter (i.e., by **December 6, 2023**). We prefer that you submit information electronically, if feasible. If you are sending a large electronic file, please contact OCR for directions on how to upload the file to OCR’s secure file-sharing platform. Additionally, if any of the information is available online, you may provide the URL in lieu of hard copy documents. Please note that OCR is not requesting, and the University should not provide, any social security numbers in response to this data request. If any item in our request is unclear, or if you experience any difficulty complying with this request, please contact us prior to the expiration of the 21-day period. Please be aware that OCR may need to make additional requests for information in the future. If OCR needs to conduct an on-site investigation, we will notify you in advance.

Preservation of requested and relevant data and documents: OCR may request supplemental data and documents that are relevant to the allegation(s) under investigation. To ensure that OCR can assess the recipient’s compliance with the statutory and regulatory obligations at issue in this investigation, please ensure that recipient employees preserve the data and documents requested below for any timeframe specified in these requests and going forward until OCR closes this case. Please also ensure that recipient employees preserve other data and documents that are relevant to the allegation(s) under investigation until OCR closes this case.

The regulation implementing Title VI, at 34 C.F.R. §§ 100.6(b) and (c), requires that a recipient of federal financial assistance make available to OCR information that may be pertinent to reach a compliance determination.

Please provide the following data by **December 6, 2023**:

1. The name, title, and contact information of the University’s:
 - a. Contact person for this complaint;
 - b. Person authorized to resolve this complaint;
 - c. Person responsible for responding to Title VI complaints; and
 - d. Person responsible for handling complaints of harassment and/or discrimination on the basis of national origin, including shared Jewish ancestry, at each level of the process.
2. A copy of the University’s policies and procedures and a description of the University’s practices governing the investigation of complaints of harassment and/or discrimination on the basis of national origin, including shared Jewish ancestry. Include a detailed description of the complaint process, including each level of the process, the length of the process, and the types of records maintained.
3. All formal and informal reports/complaints, including records of oral reports/complaints, regarding the following during the 2023-2024 academic year:
 - a. the “Palestine Writes Festival;”

- b. antisemitic graffiti on any University buildings, including swastikas;
 - c. antisemitic graffiti at a vacant property run by Campus Apartments, including swastikas;
 - d. removal of an Israeli flag from Penn Hillel;
 - e. vandalism in Penn Hillel;
 - f. antisemitic slogans at student rallies;
 - g. assault(s) at student rallies;
 - h. antisemitic slogans projected onto University buildings;
 - i. antisemitic statements made by professors, faculty, or staff in the classroom or on social media;
 - j. antisemitic emails to students, professors, faculty or staff;
 - k. tearing down of Israeli posters by students, faculty or staff; and
 - l. tearing down of Israeli flags by students, faculty or staff.
4. All formal and informal complaints, including records of oral reports/complaints concerning alleged harassment and/or discrimination based on shared ancestry, including shared Jewish ancestry, brought by students, faculty, or staff against University professors Huda Fakhreddine, Fatemeh Shams, and/or Ahmad Almallah.
 5. To the extent not included in response to Item 3 and 4, above, all formal and informal reports/complaints, including records of oral reports/complaints, concerning alleged harassment and/or discrimination based on shared Jewish ancestry. The University's response should include information for the 2022-2023 and 2023-2024 academic years.
 6. For each report/complaint in response to Items 3, 4, and 5 provide the following:
 - a. the name(s) and title(s) of the individual(s) to whom the complaint/report was made, the date of the complaint/report, and the date of the incident;
 - b. a detailed description of the complaint processing procedures employed to resolve the report/complaint;
 - c. the length of the investigative process;
 - d. the name(s) and title(s) of the individual(s) involved in the handling of the report/complaint;
 - e. all actions the University took in response to the report/complaint;
 - f. the University's final determination regarding the report/complaint;
 - g. any corrective action taken, including discipline and/or supportive measures; and
 - h. any notice of the findings provided to the complainant.
 7. All documentation related to any and/or all complaints/reports identified in response to Item 3, 4, and 5, including but not limited to correspondence, internal and external memoranda, investigative reports, witness statements, logs, forms, meeting minutes, personnel file documents, disciplinary documents, supportive measures provided, and notes generated for each complaint.
 8. For the "Palestine Writes Festival," please describe all advertising of the event and provide OCR with copies of the advertising and links to promotional materials online. Please state whether the University's name and logo appeared on any promotional materials, and whether

the event was sponsored by any program or department at the University, identifying the specific program or department that provided sponsorship.

9. Please identify the sources of funding for the “Palestine Writes Festival,” including through the University’s Middle East Center.
10. Please state whether attendance at the “Palestine Writes Festival” was made mandatory for students by any University professor. Please identify each professor and course where such attendance was required and produce all written communications to students regarding attendance at the “Palestine Writes Festival.”
11. Please provide a copy to the University’s religious accommodation policy.
12. A statement regarding whether the University conducts trainings and/or holds informational sessions with the student community and/or University staff regarding students’ rights under Title VI, how to report possible violations of Title VI, and/or the University’s obligation to respond to Title VI complaints. If so, provide the dates of such events, a description of the attendees, and any materials presented and/or distributed.
13. The names and titles of all persons who assisted in the preparation of these data responses.
14. A narrative response to the allegations in this complaint.
15. Any other information that the University believes will be helpful to OCR or relevant in this investigation.