

TESTIMONY OF HON. KENNETH L. MARCUS
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THE LOUIS D. BRANDEIS CENTER FOR HUMAN RIGHTS UNDER LAW
"CONFRONTING THE SCOURGE OF ANTI-SEMITISM ON CAMPUS" TESTIMONY
BEFORE THE UNITED STATES HOUSE COMMITTEE ON EDUCATION AND THE
WORKFORCE SUBCOMMITTEE ON HIGHER EDUCATION AND WORKFORCE
DEVELOPMENT
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CHAIRMAN OWENS, RANKING MEMBER WILSON, AND MEMBERS OF THE
SUBCOMMITTEE:

I am honored to appear before you today at this briefing on “Confronting the Scourge of Antisemitism on Campus.”¹ 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 college and university campuses, in the workplace, and elsewhere. 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.

Of course, we are here today because of the rampant anti-Semitism we have witnessed across the country, particularly at the university level, in the wake of Hamas’ attack on October 7th. Jewish students are being physically and verbally attacked on campus, harassed online, and intimidated into silence. Forced to hide their Jewish identity out of fear of repercussions, some are too afraid to even walk across campus or attend classes, let alone show their support for Israel. While the majority of Jews consider Zionism and an affinity for Israel to be an integral part of their identity, Jewish students are forced to shed or hide their religious, historical, and cultural connection to Israel.²

But it is important to remember that anti-Semitism was already prevalent prior to October 7th and that Jewish students were already suffering from a lack of support from their schools’

¹ Emma Enig provided research assistance for this testimony.

² “U.S. Jews’ Connections with and Attitudes toward Israel.” Pew Research Center’s Religion & Public Life Project, May 11, 2021. <https://www.pewresearch.org/religion/2021/05/11/u-s-jews-connections-with-and-attitudes-toward-israel/>; Alyza D. Lewin, *Recognizing Anti-Zionism as an Attack on Jewish Identity*, 68 CATH. U. L. REV. 643 (2019). Available at: <https://scholarship.law.edu/lawreview/vol68/iss4/8>

administrations. Over the last decade, the Brandeis Center has tracked anti-Semitic incidents on college campuses, provided legal representation and support to affected students, and demanded that university administrators uphold their legal obligation to protect students' civil rights. As early as 2005, the U.S. Commission on Civil Rights warned that campus anti-Semitism had become a serious problem. They were right, and it has only gotten worse. A 2013 Pew Research Center survey of Jews found that experience with anti-Semitism was more prevalent among young adults in higher education. In 2014, a Brandeis Center-Trinity College study found that anti-Semitism was particularly pervasive on college campuses, with 54% of responding Jewish students on 55 campuses reported experiencing or witnessing anti-Semitism during the 2013-2014 academic year.³ In 2021, the Brandeis Center conducted a survey of Jewish fraternity and sorority students, finding that most have felt unsafe as a Jew at some point while on campus or in virtual campus settings.⁴ Over 80% of these students were pro-Israel, yet more than half of them avoided expressing their views on Israel.⁵ As Jews and Zionists, they were concerned about being verbally or physically attacked, being socially excluded or harassed online, and being marginalized or penalized by a professor.⁶

Unfortunately, their fears are not unfounded. At the University of Southern California, a Jewish student body vice-president was forced to resign after anti-Zionist harassment.⁷ At Tufts

³ Barry A. Kosmin & Ariella Keysar, *National Demographic Survey of American Jewish College Students 2014: Anti-Semitism Report*, The Louis D. Brandeis Center for Human Rights Under Law & Trinity College (2015), available at https://www.bjpa.org/content/upload/bjpa/c_c/Anti-SemitismReportFinal.pdf.

⁴ "ANTI-SEMITISM @ College Survey (Spring 2021)." The Louis D. Brandeis Center for Human Rights Under Law. Accessed November 5, 2023. <https://brandeiscenter.com/wp-content/uploads/2021/09/Brandeis-Survey-Findings.pdf>

⁵ *Ibid.*

⁶ *Ibid.*

⁷ Vera, Amir, and Stella Chan. "US Department of Education Opens Investigation into USC after a Student Accused the School of Allowing Antisemitism on Campus." CNN, July 27, 2022. <https://www.cnn.com/2022/07/27/us/usc-antisemitism-complaint-us-education-department-reaj/index.html>.

University, a Jewish student was harassed and marginalized by his fellow judiciary council members, pressured to recuse himself for his Zionist identity.⁸ At University of California, Berkeley Law School, student groups amended their constitutions and bylaws to ensure that their organizations will never invite any speakers, on any topic, that support Israel or Zionism.⁹ At SUNY New Paltz, two Jewish students were excluded from a sexual assault support group.¹⁰ The Department of Education’s Office for Civil Rights (OCR) found that University of Vermont had failed to address campus antisemitism after a teaching assistant threatened to treat Jewish students in a discriminatory fashion and urged others to join her in bullying and ostracizing students based on their Jewish and Zionist identities. She ultimately fostered a hostile environment on campus that led student organizations to ban Zionist students from joining their clubs.¹¹ These are just a few examples, but they represent countless Jewish students who have been targeted based on their ethnic and ancestral identity. And of course, it’s not just university students being subjected to anti-Semitic hate. Recent data shows a nearly 50% increase in anti-Semitic incidents at K-12 schools.¹² Jewish students need not wait until they hit a university campus to experience anti-Semitism.

⁸ Weiss, Melissa. “Tufts Student Alleges Antisemitism and Harassment at University.” Jewish Insider, February 24, 2021. <https://jewishinsider.com/2021/02/tufts-university-student-harassment/>.

⁹ Marcus, Kenneth L. “Berkeley Develops Jewish-Free Zones.” Jewish Journal, January 15, 2023. <https://jewishjournal.com/commentary/opinion/351854/berkeley-develops-jewish-free-zones/>.

¹⁰ Bandler, Aaron. “Two Jewish College Students Claim They Were Excluded from Sexual Assault Survivors Group Because of Pro-Israel Views.” Jewish Journal, August 23, 2022. <https://jewishjournal.com/news/united-states/350832/complaint-filed-to-education-dept-after-jewish-students-allege-suny-new-paltz-sexual-assault-survivors-group-excluded-them/>.

¹¹ Dion J. Pierre, Dion J. “‘Historic Victory’: US Gov’t Rules That University of Vermont Failed to Address Campus Antisemitism.” Algemeiner, April 4, 2023. HYPERLINK "https://www.algemeiner.com/2023/04/03/historic-victory-us-govt-rules-that-university-of-vermont-failed-to-address-campus-antisemitism/"<https://www.algemeiner.com/2023/04/03/historic-victory-us-govt-rules-that-university-of-vermont-failed-to-address-campus-antisemitism/>.

¹² ADL. “Audit of Antisemitic Incidents 2022.” March 23, 2023. <https://www.adl.org/resources/report/audit-antisemitic-incidents-2022>.

In the wake of Hamas' October 7th attack on Israel, things have only gotten worse for Jewish students on campus. At Cooper Union in New York City, visibly Jewish students were forced to shelter inside a library as pro-Palestinian protesters tried to gain entry, banging on doors and windows.¹³ Jewish Tulane University students were physically assaulted at a nearby protest – one ending up with a broken nose.¹⁴ An Israeli student at Harvard Business School was physically and verbally assaulted while pleading with protesters to stop grabbing him.¹⁵ A Cornell University student was arrested for making death and rape threats against Jewish students on campus.¹⁶ Hamas' call for a "Global Day of Jihad" on October 13th led Jewish students at University of California, Berkeley to fear for their physical safety on campus.¹⁷ On many campuses across the country, Jewish students are hanging flyers of kidnapped civilians currently being held in Gaza. Their fellow students are tearing them down while calling it propaganda.¹⁸ They are not even allowed to publicly mourn their Jewish brethren slaughtered by

¹³ Shanahan, Ed, and Maria Cramer. "Israel-Hamas War Protest Leads to Tense Scene at Cooper Union Library." The New York Times, October 26, 2023. <https://www.nytimes.com/2023/10/25/nyregion/cooper-union-protest-israel-hamas.html>.

¹⁴ Smilk, Carin M. "Anti-Israel Protesters 'Broke My Nose,' Says Jewish Student at Tulane." Jewish News Syndicate, November 2, 2023. <https://www.jns.org/they-broke-my-nose-jewish-tulane-student-tells-jns-of-anti-israel-protesters/>.

¹⁵ "Israeli Student at Harvard Business School Attacked as Video Shows Him Saying 'Don't Grab Me.'" National Post, November 3, 2023. <https://nationalpost.com/news/harvard-law-review-antisemitic-attacker>.

¹⁶ Barr, Luke, and Sarah Beth Hensley. "Student Charged with Making Antisemitic Threats to Cornell's Jewish Students." ABC News, November 1, 2023. <https://abcnews.go.com/Politics/fbi-investigating-antisemitic-threats-targeting-cornell-universitys-jewish/story?id=104480004>.

¹⁷ McSweeney, Terry. "Tensions Rise at UC Berkeley amid Israel-Hamas War." NBC Bay Area, October 31, 2023. <https://www.nbcbayarea.com/news/local/tensions-uc-berkeley-israel-hamas-war/3356755/>.

¹⁸ Alexander, Harriet. "Student at George Mason Destroys Poster of Hamas Hostage Claiming It's 'propaganda' - While Yale Censors pro-Israel Writer's Column on Terror Atrocities - and Man Goes on Disgusting Antisemitic Rant Outside Harvard University." Daily Mail Online, November 2, 2023. <https://www.dailymail.co.uk/news/article-12691203/ivy-league-antisemitism-yale-harvard-upenn-cornell-columbia.html>.

Hamas or call out the rise in anti-Semitism since October 7th, fearing for their physical safety on campus.

While we can hope that university administrators have the moral clarity to call out the anti-Semitic harassment of their students, many don't. And while we may wish that the Department of Education had the tools available to keep those university administrators in check, they don't. Fortunately, there are several steps the government can take to assist in protecting Jewish students.

This past June, the White House released "The U.S. National Strategy to Counter Antisemitism."¹⁹ The strategy was timely and noble in its objectives, but lacking in the substance needed to curb the anti-Semitism we are seeing at schools. The Biden administration, through the Office for Civil Rights (OCR), issued a Dear Colleague letter to colleges and universities, reminding them of their legal obligation under Title VI of the Civil Rights Act of 1964 to address complaints of discrimination, including harassment based on race, color, or national origin, including shared ancestry, such as Jewish ancestry and ethnic characteristics.²⁰ This was a good move on the administration's part, but how are schools expected to protect Jewish students and comply with Title VI when they are fundamentally unable to identify anti-Semitism?

Next month, the White House is supposed to issue a notice of proposed regulations implementing President Donald Trump's Executive Order 13899 on Combating Anti-Semitism.²¹ The Executive Order codified important rules under which Jewish students receive

¹⁹ <https://www.whitehouse.gov/wp-content/uploads/2023/05/U.S.-National-Strategy-to-Counter-Antisemitism.pdf>

²⁰ <https://www2.ed.gov/about/offices/list/ocr/docs/antisemitism-dcl.pdf>

²¹ Executive Order 13899 (Combating Anti-Semitism), 84 Fed. Reg. 68779 (Dec. 11, 2019), <https://www.federalregister.gov/documents/2019/12/16/2019-27217/combating-anti-semitism>.

civil rights protections on American campuses. It also directed federal agencies to consider the “gold-standard” International Holocaust Remembrance Alliance (IHRA) Working Definition of Antisemitism.²² By codifying the Executive Order, including the Working Definition, OCR would have a clear guide to follow during investigations into anti-Semitic incidents on campuses. We’ve been waiting for this formal regulation, and it’s been delayed and postponed multiple times. It is now more important than ever.

There has also been congressional action on adopting the IHRA Working Definition of Antisemitism. The bipartisan, bicameral Antisemitism Awareness Act was recently introduced, which would require the Department of Education to consider the IHRA Working Definition while enforcing federal anti-discrimination laws.²³ Any adoption of the IHRA Working Definition would be welcome since it properly defines the anti-Semitic abuse that we are seeing on campuses today. The IHRA definition underscores that anti-Semitism includes denying Jewish self-determination to their ancestral homeland of Israel and holding Jews collectively responsible for the actions of the State of Israel.²⁴

The Department of Education should not wait for formal complaints to come in. The Secretary of Education has the authority to commence self-directed investigations and proactive compliance reviews. The Department of Education also needs to pay more prompt attention to pending complaints. Jewish students should not be forced to wait months for a decision on

²² “What Is Antisemitism?” The International Holocaust Remembrance Alliance. Accessed November 5, 2023. <https://www.holocaustremembrance.com/resources/working-definitions-charters/working-definition-antisemitism>.

²³ Christ, Lacey. “GOP and Dem Lawmakers Back Bill to Crack down on College ‘Hotbeds of Antisemitism.’” Fox News, October 26, 2023. <https://www.foxnews.com/politics/gop-dem-lawmakers-back-bill-crack-down-college-hotbeds-antisemitism>.

²⁴ “What Is Antisemitism?” The International Holocaust Remembrance Alliance. Accessed November 5, 2023. <https://www.holocaustremembrance.com/resources/working-definitions-charters/working-definition-antisemitism>.

whether or not their university protected them. They have already been victimized by anti-Semitism on campus -- there is no need to draw out their trauma. Additionally, involving the Department of Justice may be necessary for more serious cases.

On November 7th, OCR released a new Dear Colleague letter reminding schools of their legal obligation under Title VI to address prohibited discrimination against students and others on their campus, or else risk federal funding.²⁵ While the Biden administration should receive credit for sending the letter, it was something of a missed opportunity for its lack of specificity, new policy, or helpful explanation. While this letter, like prior moves by this administration, helpfully raises attention to the problem, it does not take action in any significant way. What is needed, at this point, is not more public attention but rather serious action to resolve a serious problem.

Thank you again for inviting me to testify. I look forward to your questions.

²⁵ Deutch, Gabby. "Education Dept. Pens Letter to Universities Urging Them to Address Antisemitism, Islamophobia." Jewish Insider, November 8, 2023. https://jewishinsider.com/2023/11/education-department-dear-colleague-letter-universities-antisemitism/?utm_source=Campaign+Monitor+JI&utm_medium=email&utm_campaign=Daily+Kickoff+Nov+8+2023&utm_content=Daily+Kickoff+Nov+8+2023%2BCID_06f08a44dc17c3d2bb7bb738ff8d37cf&utm_term=Read+the+full+story+here.